



May 22, 2015

Mr. John McMillan
DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
Office Engineer, MS 43
1727 30TH Street
P.O. Box 168041
Sacramento, CA 95816

RE: CalTrans Contract #01-262064, for Construction adjacent to the State Highway in Mendocino County near Willits at Assessor's Parcel Number 108-030-0500 in District 01 on Route 101

FORMAL PROTEST OF BID SUBMITTED BY EMPIRE LANDSCAPING

Dear Mr. McMillan:

Please accept this letter to be a formal protest of the bid submitted by Empire Landscaping, Inc. (ELI), the apparent low bidder on the project noted above. The bid turned in by ELI is non-responsive and therefore must be rejected based on the Department's bidding requirements, strictly enforced policies and governing applicable Federal Regulations.

#1 ELI bid is Mathematically Unbalanced, items 2 and 3

Upon review of the bid summary listings provided by the CalTrans' website on this project, it is clear that ELI has submitted a mathematically unbalanced bid for items 2, Time Related Overhead and 3, Job Site Management. Title 23 of the Code of Federal Regulations, Section 635.102 provides that a bid is mathematically unbalanced if the bid contains "lump sum or unit bid items which do not reflect reasonable costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other direct costs." The bid submitted by ELI is mathematically unbalanced to even the most casual review. Though minor differences are evident between ELI and the other bidders on this project, bid item numbers 2, Time-Related Overhead and 3, Job Site Management do not accurately reflect the contractor's reasonable costs nor a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other costs.

Bid item 2 for Time Related Overhead was bid by ELI at \$10 per work day, whereas the next 4 bidders submitted this item from a range of \$293 per work day to \$1,000 per work day. Not only does the amount bid by ELI for this item demonstrate a blatant unbalancing, but when reviewing the scope of work included in the CalTrans Standard Specification, it is obvious this work cannot be accomplished for \$10 per day with, or without, the anticipated profit or overhead. Per Section

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9-1.11A of the Standard Specifications, Time Related Overhead "includes costs for field and home-office overhead for the time required to complete the work." Clearly these tasks cannot be performed for \$10 per day.

Additionally, bid item 3 for Job Site Management was bid by ELI at \$10,000 for the duration of the job, whereas the next 4 bidders submitted this item from a range of \$65,000 to \$311,800. Per Section 13-4.01A of the Standard Specifications, Job Site Management "includes specifications for performing job site management, including spill prevention and control, material management, waste management, nonstormwater management, and dewatering activities." Per the project's Special Provisions, this job is projected to take 1,250 working days, approximately 4.8 years, which means, per the ELI bid, job site management will be performed for \$8 per day, including the anticipated profit and overhead. Clearly this task cannot be performed for \$8 per day.

In determining whether a bid is materially unbalanced, CalTrans is required to consider the risks to the government associated with the unbalanced pricing in making the award decisions, and whether a contract will result in unreasonably high prices for contract performance. Per FAR §15.404-1(G)(2), a bid should be rejected if CalTrans determines that the unbalanced bid poses an unacceptable risk to the government. The Department must ask itself for these bid items grossly underbid, did the bidding contractor actually bid according to the plans and specifications. The answer is "no" when the work included in each of the bid items 2 and 3 are reviewed on a daily basis and concluded that the work included in Time Related Overhead cannot be performed for \$10 per day, nor can the work included in Job Site Management be performed for \$20 per day.

The seriousness of this gross understatement is magnified when one considers what happens if the opposite occurs, if the actual amount of the item exceeds 125% provision of the Standard Specifications for item 3 or 149% provision for item 2, when ELI would be entitled to their actual costs and CalTrans would have no ability to analyze the actual costs incurred because a reasonable value was not used for these bid items.

#2 ELI bid is Mathematically Unbalanced, item 29

Upon review of the bid summary listings provided by the CalTrans website on this project, it is clear that ELI has submitted a mathematically unbalanced bid for item 29, Develop Water Supply.

Bid item 29 for Develop Water Supply was bid by ELI for the lump sum of \$50,000, whereas the next 4 bidders submitted this item ranging from \$225,000 to \$799,000. Not only does the amount bid by ELI for this item demonstrate a blatant unbalancing, but when reviewing ELI's subsequently submitted DBE supporting documentation, the water material being supplied by ELI's supplier, Double G's Supply, Inc. includes irrigation parts for this work totaling \$203,743. This number from Double G does not include labor, equipment, nor the proportionate share of ELI's anticipated profit, overhead costs, and other costs, to complete item 29 for developing the water supply. Clearly adding these related costs to ELI's supplier amount results in ELI's bid for item 29 of \$50,000 is an obvious unbalanced bid condition.

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Again, the Department must ask itself if this item is changed in the course of the work, how does CalTrans quantify a reasonable measurement to compensate ELI for extra work, or compute any cost savings to CalTrans if the scope of work is reduced. If the assumption made by ELI was correct, then the proper method would be to place the reasonable value of the cost for this item and not mask it with an unbalanced bid, allowing for protected hidden profit dollars to the contractor on other line items and effectively negating the ability for CalTrans to share in any cost savings.

#3 ELI bid includes supplier not recognized by CalTrans, thereby failing to meet the required DBE participation goal of 6%

Upon review of the bid summary listings provided by CalTrans' website on this project, ELI listed The Watershed Nursery (TWN) in Richmond, California as one of their DBE sources. Upon a review of TWN's qualifications, TWN is not listed on the CalTrans website as being recognized in District 01, which this project is being bid and administered from, nor are they identified as an authorized DBE supplier for Mendocino County.

ELI's DBE Commitment form included four entities that are proposed to work on the subject project that are DBE qualified. They include Double G's Supply for "erosion, vegetation control, and irrigation materials", TWN for "contractor supplied nursery" and two minor companies for "prepare SWPPP and storm water annual report." TWN makes up \$259,721 of the \$512,923 included in ELI's DBE disclosure, however, since TWN is not an authorized DBE supplier for District 01 and Mendocino County, ELI must delete TWN from this form and recompute their DBE participation. According to our computations, without TWN, the total DBE participation amount is \$154,161.54 (60% of Double G Supply plus the other two minor service providers). This DBE total divided by ELI's total bid of \$4,176,090 results in a DBE participation 3.7%. The project's DBE goal was 6%, thereby resulting in a non-responsive bid from ELI, and subsequent required bid rejection.

#4 ELI bid includes supplier on DBE form with no noted item numbers, thereby failing to meet the required DBE participation goal of 6%

Upon review of the bid summary listings provided by CalTrans' website on this project, ELI listed Double G's Supply (DGS) in Roseville, California as one of their DBE sources, however, no Bid Item Number was included on the DBE form for this supplier. Without the required Bid Item Number required on this form, Caltrans is unable to ascertain what tasks ELI intends to use DGS's material and leaves an unreasonable risk for CalTrans in that ELI has the unconstrained ability to account for these material expenses as they feel fit with no strict basis for CalTrans' objections.

Because of ELI's incorrect completion of the DBE Commitment Form, DGS must be omitted from the DBE commitment disclosure and resulting calculation. DGS makes up \$267,602 of the \$512,923 included in ELI's DBE disclosure, however, since there is no Bid Item Number included for DGS, the entire \$267,602 amount must be deleted from the DBE participation calculation. According to our calculations, without DGS, the total DBE participation amount is \$245,321, when divided by ELI's total bid of \$4,176,090 results in a DBE participation of 5.8%. The project's DBE goal was 6%, thereby since ELI's participation did not meet the goal, ELI's bid must be considered non-responsive.

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Additionally, when this bid protest item is coupled with the protest item #3 included above, omitting both DGS and TWN for the reasons noted above, the remaining DBE participation is \$5,600. This revised DBE total divided by ELI's total bid of \$4,176,090 results in a DBE participation of 0.1%. Again, since the project's DBE goal was 6%, and by including only the DBE suppliers that meet CalTrans' standards and certifications, ELI's dismal participation requires you to consider their bid non-responsive, and gives rise for you to reject their bid proposal.

CONCLUSION

Based on the information presented herein, governing regulations and specifications, the bid provided by ELI should be rejected as mathematically and materially unbalanced and non-responsive. Therefore, Pacific Parks Landscaping, Inc. respectfully and formally requests that the Department uphold and validate our bid protest.

If we can provide any further information regarding this matter, please feel free to contact me at 916-253-0204.

Very truly yours,
PACIFIC PARKS LANDSCAPING, INC.



Dan McElvain, CPA
Chief Financial Officer

5/11/2015

Unified Certification Program

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Search Returned 1 Records

Mon May 11 08:53:34 PDT 2015

Query Criteria

Firm/DBA Name: WATERSHED NURSERY

Firm Type: DBE

Firm ID	39720
Firm/DBA Name	THE WATERSHED NURSERY
Address Line1	601A CANAL BLVD.
Address Line2	
City	RICHMOND
State	CA
Zip Code1	94804
Zip Code2	
Mailing Address Line1	
Mailing Address Line2	
Mailing City	
Mailing State	
Mailing Zip Code1	
Mailing Zip Code2	
Certification Type	DBE
EMail	diana@thewatershednursery.com
Contact Name	DIANA BENNER
Area Code	(510)
Phone Number	234-2222
Fax Area Code	(510)
Fax Phone Number	234-2242
Agency Name	BAY AREA RAPID TRANSIT DISTRICT (BART)
Counties	01; 07; 21; 28; 38; 41; 43; 48; 49;
Districts	04;
DBE NAICS	444220;

ACDBE NAICS

Work Codes F5260 RETAIL NURSERIES & GARDEN STORES;

Licenses

Trucks

Gender F

Ethnicity CAUCASIAN

Firm Type DBE

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CALIFORNIA COUNTY CODES

01 - ALAMEDA	21 - MARIN	41 - SAN MATEO
02 - ALPINE	22 - MARIPOSA	42 - SANTA BARBARA
03 - AMADOR 	23 - MENDOCINO	43 - SANTA CLARA
04 - BUTTE	24 - MERCED	44 - SANTA CRUZ
05 - CALAVERAS	25 - MODOC	45 - SHASTA
06 - COLUSA	26 - MONO	46 - SIERRA
07 - CONTRA COSTA	27 - MONTEREY	47 - SISKIYOU
08 - DEL NORTE	28 - NAPA	48 - SOLANO
09 - EL DORADO	29 - NEVADA	49 - SONOMA
10 - FRESNO	30 - ORANGE	50 - STANISLAUS
11 - GLENN	31 - PLACER	51 - SUTTER
12 - HUMBOLDT	32 - PLUMAS	52 - TEHAMA
13 - IMPERIAL	33 - RIVERSIDE	53 - TRINITY
14 - INYO	34 - SACRAMENTO	54 - TULARE
15 - KERN	35 - SAN BENITO	55 - TUOLUMNE
16 - KINGS	36 - SAN BERNARDINO	56 - VENTURA
17 - LAKE	37 - SAN DIEGO	57 - YOLO
18 - LASSEN	38 - SAN FRANCISCO	58 - YUBA
19 - LOS ANGELES	39 - SAN JOAQUIN	
20 - MADERA	40 - SAN LUIS OBISPO	