

MERCER-FRASER COMPANY
CONTRACTORS & ENGINEERS
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December 24, 2014

Mr. Earl Seaberg
Contract Awards Branch Chief
State of California
Department of Transportation
Office Engineer MS 43
1727 30th Street
Sacramento, Ca 95816

Reference: Caltrans Contract 01-4154U4, Hwy 101 near Laytonville

Subject: Response to Bid Protest

Mr. Seaberg:

On December 22nd, Mercer-Fraser discovered that Ghilotti Construction Company had filed a bid protest on Contract 01-4154U4. Ghilotti's protest requests that the California Department of Transportation reject Mercer-Fraser Company's bid as nonresponsive. Ghilotti disagrees with how Mercer-Fraser described its listed subcontractor's work. However, Ghilotti does not identify a single way in which Mercer-Fraser's bid is non-responsive, so its protest should be denied.

A bid is responsive if it promises to do what the solicitation requires. *See Valley Crest Landscape, Inc. v. City of Davis*, 41 Cal. App. 4th 1432, 1438 (1996). Conversely, a bid that contains a deviation from what the IFB requires is non-responsive. Ghilotti has not identified any way in which Mercer-Fraser failed to provide information or a response required by the solicitation document. To the contrary, the portion of Mercer-Fraser's bid attached to the protest letter reflects that Mercer-Fraser provided the subcontractor name, location, license number, portion of work, and bid item numbers, at the time of bid, which specify exactly the type and amount of work to be performed by Apply-A-Line.

Ghilotti apparently believes that the shorthand description of the work to be performed – which is entered in the very short time that bidders have available to compile and list subcontractors – should have said something different from “striping.” However, Ghilotti's opinion, expressed in an effort to secure a contract, is irrelevant. All work to be performed by Apply-A-Line is in the general nature of striping work. Further, the work was more specifically defined by the bid item numbers included in Mercer-Fraser's bid. Thus, no ambiguity exists as to the “portion” of the work for which Apply-A-Line was listed and that it will perform. Ghilotti's assertion that, in its opinion, a different descriptor should have been used does not establish either failure to comply with the solicitation document or failure to comply with Public Contract Code section 4104.

It is worth noting that in Ghilotti's subcontractor listing, they only list the bid item number as the description of work, not an actual description. In this case, Mercer-Fraser's description of "Striping" is actually more descriptive of the work than just the bid item number.

Ghilotti listed Telfer Highway Technologies as performing 100% of Item 30 and 36. Item 36 includes all work associated with placing the Bonded Wearing Course. However, in their bid, Telfer explicitly excluded trucking, furnishing the HMA and a significant portion of the labor and equipment required to complete the work. In the subcontractor listing, Ghilotti has certified that Telfer will perform a significant amount of work (100% of the item), which they did not bid.

For the reasons above, Mercer-Fraser requests that Caltrans reject Ghilotti's protest against the award to Mercer-Fraser as unfounded, and also reject Ghilotti's bid as non-responsive.

Respectfully,
MERCER-FRASER COMPANY



Charles M. Anderson
Project Manager

MERCER-FRASER COMPANY

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
<i>Earl Seaberg</i>	<i>Cherli Anderson</i>
COMPANY:	DATE:
<i>Cal Trans</i>	<i>12/29/14</i>
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
<i>916 227 6282</i>	<i>3</i>
RE:	
<i>Contract 01-415444</i>	

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NOTES/COMMENTS:

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