

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER, MS 43

1727 30th STREET

P. O. BOX 168041

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6280

FAX (916) 227-6282

TTY 711

*Flex your power!
Be energy efficient!*

May 10, 2013

Facsimile: (707) 747-0593

Jeff Foerste, President
American Civil Constructors West Coast, Inc.
3701 Mallard Drive
Benicia, CA 94510

03-3M7204
03-Nev,Pla-65, 80, 174-VAR
B.O. 3/26/13

Dear Mr. Foerste:

The Department of Transportation (Caltrans) received the attached letter from American Civil Constructors (ACC) dated April 11, 2013, in response to the protest submitted by California Engineering Contractors (CEC), Inc. The protest from CEC alleged that ACC did not submit the required SSPC QP 2 Category "A" Certificate with its bid. CEC requested Caltrans to find the bid nonresponsive.

According to the Revised Standard Specifications Section 2-1.35 SSPC QP CERTIFICATION PREAWARD QUALIFICATION, states in part: "Submit proof of each required SSPC QP certification with your bid or fax it to (916) 227-6282 no later than 4:00 P.M. on the 2nd business day after bid opening. Failure to do so results in a nonresponsive bid".

Caltrans reviewed the bid documents submitted by ACC and found that ACC did not submit the correct certificate with its bid, and did not submit the required certificate until April 11, 2013, subsequent to the nonresponsive finding notification sent to ACC on the same day. Therefore, Caltrans has not changed its position regarding the original nonresponsive finding, and will proceed to award the contract to California Engineering Contractors, Inc.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. McMILLAN".

JOHN C. McMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services

Attachment

From:

04/11/2013 16:28

#726 P.002/004



April 11, 2013

California Department of Transportation
Division of Engineering Services
Office Engineer MS 43
1727 30th St.
Sacramento, CA 95816-8041
Fax: 916-227-6282

Re: Counter-Protest of California Engineering Contractors, Inc.
Contract: 03-3M7204
Bid Opening: March 26, 2013

Dear Sir or Madam,

In regards to the above referenced project, please accept this letter as response to the protest letter from California Engineering Company (CEC) dated April 9th as well as a protest of the award of this project to either the second or third low bidders.

CEC's letter states that ACC's bid should be found non-responsive since the SSPC QP-2 submittal provided at bid time for painting subcontractor Euro Style Management does not include the Category A classification.

Attached please see the SSPC QP-2 Category A certification for Euro Style Management. You will note that it shows a valid period of certification from March 31, 2013 through March 31, 2014. This period of time will cover the performance of the work required for this contract but does not include the bid date of March 26th. As of the bid date, the valid certification for Euro Style Management was submitted, which include SSPC QP-2 Category B, but certification for Euro Style Management under Category A is valid for the period of the performance of the work.

We believe that Caltrans should accept Euro Style's Certification of SSPC QP-2 Category B which was valid at time of bid as well as Euro Style Management's QP-2 Category A certification which will be valid during the performance of the work as sufficient evidence to indicate that the subcontractor listed to perform the painting work is properly certified to perform this painting work.

Revisions to the standard specifications page 5 of 89 section 2-1.35, says submit "proof of each required certification." The second low bidder (CEC) did not submit a SSPC QP-2 Category A certification that was valid as of the bid date. They submitted a SSPC QP-2 Category A

From:



certification that was valid from March 31, 2013 through March 31, 2014. The letter from the certifying authority they included with their bid packet is not a valid certification and cannot be used to meet the standard required for this certification. Caltrans would be establishing a dangerous precedent to allow a letter to serve in lieu of a certification.

Similarly, the third bidder submitted SSPC QP-2 Category A certifications that are valid from March 31, 2013 through March 31, 2014. Again, this certification is only valid for a future time period, not the bid date, therefore not valid at time of bid.

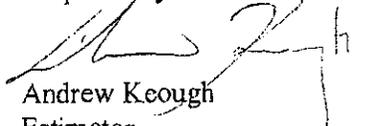
We maintain that if Caltrans finds that ACC's bid was non-responsive, then it must determine that the other two bidders did not submit valid certifications at time of bid. In the same way that Caltrans would not accept an SSPC certification whose valid period expired prior to bid date, it cannot accept a certification that is valid on any date after the bid date.

If Caltrans determines that the bid date (or the 2nd business day after) is the critical time for evaluating the certification of the painting contractor or subcontractor, then none of the bidders as of the bid date had valid certifications and all bids should be rejected.

If Caltrans determines that the certification valid period may be after the bid date but prior to the award of the contract, then all three bidders should be considered responsive since SSPC QP-2 Category A certifications for both painting entities involved here were submitted on bid date.

Caltrans has established the SSPC submittal requirement for bids to determine whether painting contractors and subcontractors are properly certified to perform the complex painting work required for these projects prior to award of the project. While ACC did not submit the SSPC QP-2 Category A certification for Euro Style Management at time of bid, it was submitted at time of bid by another prime contractor who listed them for the performance of the same scope of work. Caltrans is easily able to determine then that the subcontractor listed to perform the painting work is properly certified to perform such work—regardless of who the certifications were sent by.

Respectfully Submitted,



Andrew Keough
Estimator
American Civil Constructors



Euro Style Management, Inc.

of
North Highlands, CA

*has met or exceeded the requirements set forth in the
SSPC Painting Contractor Certification Program for*

**INDUSTRIAL HAZARDOUS
PAINT REMOVAL
SSPC-QP2**



"A"
Category

Stephen P. Collins
President, SSPC

March 31, 2013 – March 31, 2014
Validation Period

Orders are advised to contact SSPC at 412-281-2331 ext. 2339 or ext. 2209 to verify authenticity of certification.

From:

Received

Apr 11 2013 04:22pm
04/11/2013 16:29

#726 P.004/004

**** Transmit Conf. Report ****

P.1
CALTRANS CONTR AWARDS Fax 916-227-6282

May 10 2013 03:35pm

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STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

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DIVISION OF ENGINEERING SERVICES
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Sincerely,

JOHN C. McMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services

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