



06-17-14A10:44 RCVD

NV Lic. # 19007A

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John C. McMillan  
Deputy Division Chief  
Office Engineer  
State of California  
Department of Transportation  
Division of Engineering Services  
1727 30th Street - MS-43  
Sacramento, CA 95816-8041

**RE:** Contract No. 03-4M8404, State Highway in Nevada County near Truckee from Truckee River Bridge No. 17-0012 to Truckee River Bridge No. 17-0063

**SUBJECT:** Your Letter dated June 9, 2014 - Caltrans determination of nonresponsive bid submission by Diversified Concrete Cutting

Dear Mr. McMillan:

Diversified Concrete Cutting (DCC) is the lowest responsible responsive bidder on the referenced project. This letter is intended to be:

- (1) A protest against any award of that contract to any other bidder other than DCC;
- (2) A request under Gov. Code 54954.1 for mailed notice of all meetings awarding authority at which any issues pertaining to the award of that contract are on the agenda for the meeting. If there is any fee for this service, please telephone that information to us immediately so we can pay the fee;
- (3) A request to be informed (by telephone or fax) as soon as any staff reports or recommendations concerning any issues pertaining to the award of that contract are available to the public, so we can immediately inspect those reports or recommendations;
- (4) A request to address the awarding authority before or during consideration of any issues pertaining to the award of that contract, which opportunity is guaranteed by Gov. Code 54954.3(a).

If this letter is not sufficient to accomplish any of these purposes, please let us know immediately what else is required so we can comply. If we do not hear from you, we will proceed on the basis that this letter is sufficient.



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### **Contest of Caltrans Determination of Bid Non-Responsiveness**

By your letter of June 9, 2014, Caltrans has determined that DCC's bid on this herein referenced project is non-responsive and therefore rejected. Your letter of June 9 essentially gives two (2) reasons:

1. DCC's Subcontractor List form indicated "None", and;
  2. DCC did not list Lindys Cold Planing as a subcontractor but did list Lindys Cold Planing on its May 13, 2014, Disadvantaged Business Enterprise Commitment Form as "cold plane rental".
- With regard to Caltrans reason No. 1, the electronic bid form Subcontractor List states:

The bidder must identify each subcontractors performing work in an amount in excess of 2 of 1 percent of the total bid or \$10,000, whichever is great. (Pub Cont Code ' 4100 et seq.) Complete business name, location, and description of subcontracted work and submit with the bid. Complete bid item numbers and percentage of bid item subcontracted and submit with the bid, or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in all areas within the time specified will result in a nonresponsive bid. (Emphasis added)

DCC did provide the complete business name, location and description of subcontracted work together with the bid. See: Caltrans Bidder-DBE-Commitment at pg. 11, identification of Northern Industrial Electrical, 2430 Radial Lane, Redding, CA 96001, Caltrans Cert. No. 34396, and dollar amount DBE \$249,400.00.

With respect to Caltrans' reason No. 2 enumerated above given by the Department of Transportation for a finding of non-responsiveness is the subsequent listing of Lindys Cold Planing within DCC's submitted Disadvantaged Business Enterprise Commitment Form forwarded on May 13, 2014, the purpose being to apply the weighted points to be credited to DCC for rental of equipment from a DBE certified entity. Lindys Cold Planing is not a subcontractor. Lindys Cold Planing, however, is authorized and operates as a certified DBE under NAICS Code 238910, site preparation contractor, which certification and code designation allows for the renting and leasing of equipment, as disclosed within DCC's DBE Commitment Form and submitted documentation. DCC is unaware of any regulation prohibiting the rental of operated equipment on an hourly basis leaving to DCC full responsibility for work performance, liability and payment on such a basis as is true of any supplier.

Caltrans' finding seems to rest upon failure of DCC to redundantly list Northern Industrial Electrical twice on the same bid form. The above-quoted language contained within the bid form provided by Caltrans under the heading "Subcontractor List" requires only that Caltrans be provided, "Complete business name, location, and description of subcontracted work and submit with the bid." Further, "Complete bid item numbers and percentage of bid item . . . within 24 hours . . .". DCC complied with that directive.

**DIVERSIFIED  
CONCRETE  
CUTTING**

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The knee-jerk reaction of Caltrans to declare DCC's bid non-responsive due to a failure to redundantly list the identified subcontractor, Northern Industrial Electrical, is contrary to the judicially pronounced public policy of the State of California as applies to public works bids and specifically, responsiveness thereof.

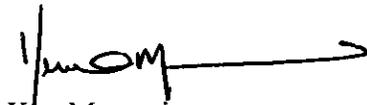
The true test of whether or not the bid is responsive is whether or not DCC could have withdrawn its bid and by so doing not subject its bid bond to jeopardy. In the case, DCC could not have done so inasmuch as DCC was fully committed to the project and submitted the complete bid information solicited by the owner.

Finally, the fact DCC listed its subcontractor within the submitted bid designating Northern Industrial Electrical as a DBE subcontractor complies with all statutory requirements of the State of California. Caltrans is clearly vested with entitlement to waive insubstantial irregularities, especially when as here, there is absolutely no potential for a bid advantage in DCC over other bidders when, in fact, its subcontractor was clearly identified in all material aspect and all requirements of the overall bid solicitation.

DCC is sensitive to the fact that this project was bid substantially over the projected project budget, DCC's bid being 35.8% over the engineers estimate. DCC's bid, however, clearly is the lowest responsive bid, which contains all solicited information in compliance with California statutory requirements. The second bid ranking is 68.6% over the engineers estimate resulting in a \$1,487,417.52 delta between the DCC bid and the second place bid.

Thank you for your reconsideration of this matter. The undersigned verily believes that the bidding requirements of the State of California, Department of Transportation have been fully met, statutes complied with and minor irregularities giving no unclear advantage to DCC and conversely no prejudice to other competing bidders, Caltrans should reconsider its finding of non-responsiveness and award this project to DCC. DCC's bid submission contains all statutorily required information and DCC is committed to perform the bid project in conformity with its bid contents and bid amount.

Sincerely,



Ken Mercurio  
President

**Diversified Concrete Cutting**

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