



February 5, 2013

(Sent via Facsimile: 510-286-7015 and email)

John C. McMillan
Deputy Division Chief
Division of Engineering Services
California Department of Transportation
Office Engineer, MS 43
1727 30th Street
P.O. Box 168041
Sacramento, CA 95816-8041

Re: Caltrans Contract No. 04-014084
Construction on State Highway in Alameda County
At the San Francisco – Oakland Bay Bridge Maintenance Yard

Dear Mr. John McMillan,

It is clear that C. Overaa & Co. (Overaa) failed to adhere to Caltrans specification and bidding instructions. Overaa demonstrated a complete disregard for compliance with requirements set forth by Caltrans. They admittedly failed to list correct percentages of work, changed a subcontractor scope of work, used a question mark when listing a scope of work, failed to accurately describe work, did not comply with the Painting Certification required and violated Subcontractor Listing Laws. F&H Construction (F&H) requests that Caltrans rejects Overaa's bid as nonresponsive and award the Contract to F&H.

In response to the Overaa's various letters, F&H submits the following:

OVERAA ADMITS THAT ITS SUBCONTRACTOR PERCENTAGES ARE WRONG

On February 1, 2012, Caltrans asked Overaa to respond to F&H's third protest letter. In response, the law firm of Smith and Brockhage on behalf of Overaa admits that the "Overaa put the percentages of its total bid for each listed subcontractor and related bid items, rather than the percentages of the bid items." Based on this admission alone, Caltrans should immediately reject Overaa's bid as being non-responsive. Caltrans' bid instructions are very clear and straightforward. The Bid Instructions and Contract Documents require that bidders provide the "Percentage of Bid Item Subcontracted." Caltrans does not allow bidders to aggregate many different bid items together and then list the total of these bid items as a percentage of the total bid because doing this would defeat the purposes of the Subcontracting and Subletting Fair Practices Act. For instance, Overaa listed Carone's percentage of work as 14% for Items 38 (Partial), 39 (Partial), 40, 50, 51, 52, 53, 54 and 55. Based on this nonconforming listing, it is impossible for Caltrans to determine what percentage of Items No. 38 and No. 39 Carone will be performing; it is somewhere above 0% but below 100%. For all practical purposes, Overaa might as well have written "varies" for the percentages of Carone's Item 38 and Item 39 work.

In a letter dated January 4, 2012 to Caltrans, this same law firm of Smith and Brockhage wrote of the dangers of failing to list specific percentages of work for subcontractors with regard to Contract 04-049074. On this Project, the low bidder (West Coast) had used the word "varies" to describe the portion of work performed by one subcontractor. In protesting West Coast's bid, Smith and Brockhage, for Golden State Bridge, wrote:

"In fact, however, the purpose of listing the percentages of work to be performed is to prohibit contractors from revising the percentage of work to be performed after the subcontractor listing form is submitted. Allowing a contractor to say, in effect 'we haven't decided how much work will be subcontracted,' would allow renegotiation and bid shopping after the bid was submitted."

West Coast claimed that the percentages of each bid item to be subcontracted could be determined from the Certified DVBE form as Overaa now claims. In response to this claim, Smith and Brockhage wrote:

"[West Coast] claims that the percentages of each item to be subcontracted can be determined from the Certified DVBE form that is submitted with its bid. That is also incorrect. To use the same example, the form submitted by West Coast states that, for bid items 10, 12 and 22, C&W will be subcontracting \$160,000 of the work within those three bid items. It is simply impossible from that broad description how much of each bid item will be subcontracted out. Is the \$160,000 to be split evenly among the three bid items? Is it to be applied in a greater amount to one rather than the others? Since the percentage of the bid items to be subcontracted cannot be determined from any information submitted by West Coast, the bid is nonresponsive."

Similarly, here, it would be impossible to determine the percentage of Item No. 38 and No. 39 Carone is to perform when Overaa failed to provide percentage numbers for these individual items and only broadly described Carone's work as "Partial." Despite Overaa's arguments to the contrary, no mathematical manipulations will reveal the individual percentages for Items No. 38 and 39.

In determining that West Coast's bid was nonresponsive for Contract 04-049074, Caltrans reviewed West Coast's use of "varies" to describe the portion of work to be performed by subcontractors and wrote (see attached):

"Also when looking at the DVBE form the Department could not produce a percentage for each the subcontractors bid items because there was only one total for all the bid items listed for each subcontractor on the DVBE form...Furthermore, West Coast failed to properly submit the Subcontractor List. West Coast failed to submit the percent of bid item subcontracted as required in column 3 for C&W Diving Services and Sudden Sam Trucking"

Because West Coast failed to list individual percentages for items subcontracted and Caltrans was unable to determine the percentages from the West Coast's bid documents, Caltrans found West Coast's bid as nonresponsive. For the same reasons that Caltrans determined that West Coast's bid was nonresponsive, Caltrans must now find Overaa's bid as nonresponsive.

OVERAA CHANGED A SUBCONTRACTOR SCOPE OF WORK & USED A QUESTION MARK

First, it is clear from viewing Overaa's actual bid that Overaa made an obvious mistake and it is now trying to create some explanation to excuse the mistake. Overaa described Carone's work with two independent descriptions: "Hazardous Soil Excavation" and "Site Utilities." There clearly is Site Utility work on the Project such as Items No. 65 (12" Alternative Pipe Culvert), Item 66 (18" Alternative Pipe Culvert) Item 67 (24" Alternative Pipe Culvert) and the site utility work for the Building (Item 86). But apparently, Overaa argues that when it described Carone's work as "Site Utility" work, it really meant none of this work. They actually put a question mark (?) on their bid form which leaves this item open to future interpretation. Instead Overaa has written, it meant only that portion of Site Utility work that is being paid as Roadway Excavation (Class 2 and Type H). This work is already covered by Overaa's description of "Hazardous Soil Excavation." The only reason any bidder would include an additional description for "Site Utility Work" is because the Subcontractor was performing Site Utility work such as the installation of utilities in addition to any work covered by Items 38 and 39. Overaa's argument would be similar to a Contractor describing a striping subcontractor's work as "Lead Abatement" and "Striping" and then only listing the subcontractor for the "Lead Abatement" Item and arguing that they described the Subcontractor's work as Striping because a portion of the Lead Abatement involves the removal of stripes.

OVERAA FAILED TO ACCURATELY DESCRIBE WORK

Overaa has still not responded to the fact that their bid is nonresponsive because it changed the work which Overaa listed Carone as performing. On bid day, Overaa's description of Carone's work included "Hazardous

Soil". On the day after the bid opening, Overaa listed Carone for: Items 38 Roadway Excavation (Class 2), Item 39 Roadway Excavation (Type H), Item 39 Type H Waste, is defined by Caltrans as: "Contaminated material regulated as a hazardous waste under California law but not under RCRA and designated as roadway excavation (Type H)." Special Provisions Section 10-1.29, Item 38, Class II Waste is defined by Caltrans as: "Contaminated material that is not regulated as hazardous waste but requires handling as designated waste under Water Code 13173. Designated as roadway excavation (Class II)" Special Provisions Section 10-1.29 Item 38 is Contaminated Material and not "Hazardous Waste" per California law, Federal law and the Specifications. Overaa's listing of Carone for Item 39 as "Hazardous Waste" may be acceptable because this contaminated material is regulated as hazardous waste under California law. But Item 38, Class 2 Roadway Excavation, is not "Hazardous Waste" and not paid as a hazardous waste item.

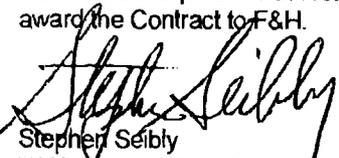
The Contract Documents require that Bidders accurately describe the work which its listed subcontractors will perform. As stated in F&H's letter of January 23, 2012, Overaa listed Carone for "Hazardous Soil Excavation" and then listed Carone for Items No. 38 (Roadway Excavation, Class 2) and Item No. 39 (Roadway Excavation, Type H). Class 2 Material is material that is not regulated as "Hazardous Waste." It is commonly known as Contaminated Waste. In fact, Caltrans describes both Item No. 38 and 39 in Special Provision Section 10-1.29, "Handling, Transportation, and Disposal of Contaminated Material." Type H material is regulated as a hazardous material under California law but not under RCRA so it could be described as either "contaminated" or "hazardous" depending upon whether California or Federal regulations were being applied. On bid day, Overaa described Carone's work as "Hazardous Soil Excavation." By listing Carone's work to include Item No. 38, Overaa increased Carone's work to include Contaminated Soil Excavation. Overaa has failed to respond to F&H's protest regarding this defect because it has no explanation. Overaa's bid day description for Carone does not match the bid items for Carone and its bid should be rejected as nonresponsive

OVERAA FAILED TO TURN IN SSPC CERTIFICATION & LISTED AN UNCERTIFIED PAINTER

Both of the SSPC-QP1 required criteria are met on this project. There is a requirement for "surface preparation and coating application" and the total area of steel to be surface prepped and coated/painted is more than 30,000 square feet. Thus the SSPC-QP1 certificate was required to be turned in no later than 4:00 p.m. on the 2nd business day after the bid opening. Overaa failed to adhere to Caltrans specification for demonstrating compliance with requirements for listing a SSPC QP-1 certified painter on bid day.

F&H has reviewed and attached a breakdown (Attachment #1) from Mason Painting, Inc. (Mason) showing the actual footage of Structural Steel to be painted. Please note that there is approximately 40,005 square feet of structural steel. The attached list identifies the location and type of structural steel to be painted. In addition, there is 30,140 square feet of exposed metal deck, which should fall under the SSPC QP Certification as well.

In conclusion, Overaa failed to adhere to Caltrans specification and bidding instructions in so many ways. They have demonstrated a complete disregard for compliance with requirements set forth by Caltrans. They admittedly failed to list correct percentages of work, changed a subcontractor scope of work, used a question mark when listing a scope of work, failed to accurately describe work and did not comply with the Painting Certification required. F&H reiterates, its request, that Caltrans rejects Overaa's bid as nonresponsive and award the Contract to F&H.


Stephen Seibly
F&H Construction / Secretary-Treasurer

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STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

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*Flex your power!
Be energy efficient!*

February 8, 2012

Facsimile: (541) 269-1600

David Kronsteiner, President
Oregon West Coast Contractors, Inc.
61050 Highway 101
Coos Bay, OR 97420

04-049074
04-CC,Sol-80-13.9
B.O. 12/14/11

Dear Mr. Kronsteiner:

The Department received the attached letter dated January 17, 2012 from Oregon West Coast Contractors, Inc. (West Coast) protesting their nonresponsive of Contract 04-049074. West Coast's protest alleges that West Coast was told "Varies" to describe the amount of work to be done by the subcontractor would be okay since West Coast listed the dollar amount on the DVBE form. Also that Mr. Kronsteiner contacted Caltrans on December 15, 2011 and asked if all the paperwork was in order, specifically the subcontractors list, and was told that it appeared to be in order and that there were no problems. West Coast requests the Department find their bid responsive.

The Department reviewed the protest and finds that when Mr. Kronsteiner called regarding the subcontractors list he was calling before a complete analysis of the documents was performed. Also when looking at the DVBE form the Department could not produce a percentage for each of the subcontractors bid items listed because there was only one total for all the bid items listed for each subcontractor on the DVBE form.

Furthermore, West Coast failed to properly submit the Subcontractor List. West Coast failed to submit the percent of bid item subcontracted, as required in column 3 for C&W Diving Services and Sudden Sam Trucking. The Subcontractor List form states in part, "...Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a non-responsive bid."

Based on the above, the Department stands by our prior decision and finds West Coast's protest lacks merit and will award the contract to Golden State Bridge.

If you have any questions, please contact Loren Newell, Contract Awards Branch Chief, at (916) 227-6285,

Sincerely,

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

Attachments

MASON PAINTING, INC.

P.O. BOX 1115 ORANGEVALE, CA 95662

PHONE: 916.852.8060 FAX: 916.852.8034

Stephen,

As you requested here is the steel and other metal surfaces that fall under
The guide lines of SSPC that Mason Painting quoted for the SFOBB project.

Exposed structural steel in ceiling- web steel joists, steel beams-27,055 sf
Exposed steel columns-10,568 sf
Miscellaneous steel-breezeway steel, chevron bracing, sun shade supports,
Courtyard canopy steel-2,382 sf
Exposed metal deck-30,140 sf

If you have any questions please call me or contact me via email.

Thanks,

Bill Chapman
Mason Painting Inc.
Office 916-852-8060
Cell 916-458-1631
wjchap@msn.com



Fax

TO: John McMillan, Deputy Division Chief, Caltrans FROM: Stephen Scibly - Secretary / Treasurer

FAX: 916-227-6282 PAGES: 6

PHONE: 916-227-8704 DATE: 2/6/2013

RE: Contract No. 04-014084 - Response to Overaa CC:

- Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Attached is F&H Construction's letter addressing C. Overaa & Co.'s Protest Response to Caltrans for Contract No. 04-014084 that bid on January 16, 2013. This is a copy of the fax sent in yesterday but we have also included a finding that was referenced in our response and should have been included. I apologize for any confusion.

We hope this information is helpful in making your decision to award this contract to F&H Construction.

If you have any questions, please let me know.

Thank you!!

Stephen Scibly

3
Revised