



C.C. MYERS INC.

October 23, 2014

| | | | |
|-----|---------------|-----------|------|
| zf: | Date: 23Oct14 | SHIPPING: | 0.02 |
| rp: | Wgt: 0.50 LBS | SPECIAL: | 0.81 |
| | DV: | HANDLING: | 0.00 |
| | | TOTAL: | 9.83 |

Svos: PRIORITY OVERNIGHT
TRCK: 5808 8901 3473

State of California Department of Transportation
 Division of Engineering Services
 Office Engineer
 1727 30th Street
 P.O. Box 168041, MS-43
 Sacramento, CA 95816-8041
 Phone: (916) 227-6299
 Fax: (916) 227-6282

Attn: Mr. John C. McMillan

Re: Caltrans Contract 04-041004

Subject: Protest of Caltrans' Nonresponsive Finding

Dear Mr. McMillan:

C.C. Myers, Inc. is in receipt of Caltrans' October 21, 2014 letter notifying us that Caltrans has found our bid to be nonresponsive based on a claim that we changed the percentage of work to be performed by Bay Line Cutting & Coring ("Bay Line") from partial to 100 percent. We hereby protest the nonresponsive finding as the percentage for Bay Line was never changed.

C.C. Myers, Inc. did not change the percentage of work to be performed by Bay Line Cutting & Coring. The "portion" of the work to be performed is not the same as the "percentage" of the bid item subcontracted. The Subcontractor List submitted with our bid clearly set forth the "Description of Portion of Work" Bay Line would be performing, and did not list the "Percentage of Bid Item Subcontracted" as this information was not required to be submitted with the bid. Pursuant to Caltrans' requirements, and as correctly outlined in Caltrans' own determination on Contract No. 04-0G2224, the bidder is not required "to provide the percentage of the bid item subcontracted on bid day, rather it is a requirement by 2:00 PM, 1 business day following bid day." Our Subcontractor Listing subsequently turned in within 24 hours of the bid included the percentages, as required by Caltrans. The 24-hour Subcontractor List is the only list submitted that included percentages, and at no time were any percentages changed.

As held by the California Court of Appeal in Valley Crest v City of Davis, (1996) 41 Cal. App. 4th 1432, the "portion of work" to be performed pursuant to the Public Contract Code sections 4100 *et seq* listing means the type of work to be performed, not the percentage of work. Likewise, here, the portion of the work to be performed by C.C. Myers, Inc.'s listed subcontractors as identified in the Description of Portion of Work column in the Subcontractor List form, and any reference to how much of that work (the "portion") will be performed by the subcontractor, is not required to be or necessarily the same as the "percentage", which is based

on a dollar amount, identified in the Percentage of Bid Item Subcontracted column of the Subcontractor List form. This is supported by Caltrans' instructions on the Subcontractor List form that [t]he Bidder must submit within 24 hours of the bid opening the bid item numbers with percentages of the portion of the work subcontracted." If "portion" and "percentage" meant the same thing, as Caltrans stated in its October 21 letter, then why would a bidder need to submit the "percentage" of the "portion" of work subcontracted? The fact is that "portion" and "percentage" clearly do not mean the same thing and Caltrans has reinforced this in past rulings.

To find a bidder nonresponsive for using the word "Partial" in a subcontractor's description of portion of work column and listing the same subcontractor to perform 100% of a bid item subcontracted would be contradictory to Caltrans' explicit instructions on how to submit a responsive bid. Caltrans' instructions state unequivocally that "Percentages are the amount of the bid item subcontracted divided by the bid item total." This is a very direct and simple mathematical equation based on dollar amounts, not type (portion) of work. To list something less than 100% for a subcontractor who will be paid in excess of the bid item total would be incorrect and inappropriate, even when that subcontractor is not performing the entire scope of work encompassed by that bid item. What the subcontractor is being paid to perform that work, and what the prime contractor is being paid under the applicable bid item, has no relationship to the description of the work itself, and it would be impermissible for a bidder to manipulate the percentages on the 24-hour Subcontractor List to accommodate the description of work provided on the day of bid.

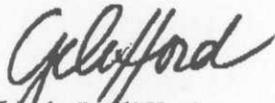
For example, as pointed out in our original response, Myers and Sons/ACC's bid clearly shows that Safety Striping Service, Inc. will be performing only 95% of the applicable bid items- \$189,426 to be paid to Safety Striping (per the DVBE submittal) divided by the applicable bid items total of \$199,568 (Myers and Sons/ACC cumulative bid for bid items 12, 16 and 45-50). The failure of Myers and Sons/ACC A Joint Venture to list "Partial" for the description of work being performed by Safety Striping on bid day does not justify their listing Safety Striping for 100% of the applicable bid items, a percentage that is factually incorrect. They are simply trying to accommodate the description of work provided on bid day. Likewise, C.C. Myers, Inc. should not and did not list Bay Line to perform less than 100% of the dollar value of the bid item simply because we included the word "Partial" in the description of the scope of work to be performed by Bay Line. Instead, we correctly listed Bay Line's percentage as 100%. So, in fact, if Caltrans were to reverse its explicit instructions regarding the listing of subcontractors on both bid day and 24 hours later as well as its previous, consistent rulings supporting such, Caltrans would have to find both C.C. Myers, Inc. and Myers and Sons/ACC nonresponsive.

The fact remains that the presence or absence of the word "Partial" in the portion of work column of the subcontractor listing has no bearing on the percentages listed for a subcontractor. It is simply a statement as to whether or not the prime contractor anticipates self-performing any of the work encompassed by the applicable bid item. In the event a prime contractor does anticipate self-performing a portion of work in a bid item that is otherwise subcontracted, not using the word "Partial" could lead to a dispute between the prime contractor and applicable subcontractor as to what that subcontractor's true scope of work is and whether or not the subcontractor's quote is even valid in regards to what the prime contractor expects the subcontractor to perform. Using the word "Partial" for a subcontractor's description of work and listing 100% for the percentage of that item is perfectly acceptable as it provides the most accurate and correct information for all parties.

Furthermore, by improperly finding C.C. Myers, Inc. nonresponsive, the State stands to pay an additional \$6 Million to complete this project. As previously noted, Myers and Sons/ACC A Joint Venture did not submit a compliant, correct and accurate Subcontractor List as required by the project specifications and under the California Public Contract Code, and therefore, apparently is nonresponsive. In addition to their failure to submit a compliant, correct and accurate Subcontractor List, they also bid to complete the project in 100 working days despite the fact that their listed subcontractor, Roadway Engineering Works Incorporated, provided a quote to complete the work in 140 working days. We have attached a copy of the quote submitted by Roadway Engineering to C.C. Myers, Inc. for reference and since all three bidders listed this same subcontractor and the third bidder, as did C.C. Myers, Inc., correctly listed the days required, then there are further reasons to find Myers and Sons/ACC nonresponsive. A prime contractor cannot bid to complete the work in fewer working days than its listed subcontractor requires, as confirmed by Caltrans in its determination on Contract No. 04-4A8104 where a bidder was found nonresponsive after the bidder's proposed "B" amount of days was less than the number of days one of its listed subcontractors required to perform the work. Since Myers and Sons/ACC submitted a nonresponsive bid, the next bid, in the current circumstances, Caltrans could possibly accept would come at an additional cost of over \$6 Million.

Finding C.C. Myers, Inc.'s bid nonresponsive based on the use of the word "Partial" while listing 100% would contradict the very instructions provided by Caltrans, and would be sending the message to bidders that providing misinformation in the Subcontractor List is acceptable, if not encouraged. The bid submitted by C.C. Myers, Inc. is fully responsive, in compliance with Caltrans explicit instruction and consistent with previous findings. We remain the lowest responsive and responsible bidder for this contract. Should you have any questions, please contact me.

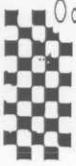
Very truly yours,



Linda J. Clifford
Chief Financial Officer
C. C. Myers, Inc.

Cc: SF
Golden State Bridge, Inc.
Myers and Sons/ACC A Joint Venture

Enclosure



Oct. 23. 2014 3:49PM

Received

Oct 23 2014 03:55pm

No. 8045

P. 4

Page 1. of 2.

ROADWAY ENGINEERING WORKS INCORPORATED

3442 6TH STREET

CERES, CA 95307

License: 845536 Expires: 8/31/2016

Phone (209) 541-0920

Fax (209) 541-1065

ESTIMATING

Phone (707) 928-0147

Fax (707) 928-0137

"A" "B" AND C-10 LICENSE CLASSIFICATIONS

Project: RESTORE ORTHOTROPIC DECK AND ELECTRICAL UPGRADES

Location: SANTA MATEO AND ALAMEDA COUNTIES

Bid Date: 9/9/2014

Contract: 04-041004

REVISION-01

| Bid Item | Description | Qty. | Unit Price | U/M | Total |
|----------|--|------|------------|-----|----------------|
| 51 | MAINTAIN "ETMS" ELEMENTS DURING CONST. | 1 | | LS | \$4,597.00 |
| 52 | 12 KV SYSTEM | 1 | | LS | \$2,141,000.00 |
| 53 | SUBSTATION NO. 1 | 1 | | LS | \$297,000.00 |
| 54 | SUBSTATION NO. 2 | 1 | | LS | \$266,000.00 |
| 55 | SUBSTATION NO. 3 | 1 | | LS | \$135,000.00 |
| 56 | SUBSTATION NO. 4 | 1 | | LS | \$135,000.00 |
| 57 | SUBSTATION NO. 5 | 1 | | LS | \$135,000.00 |
| 58 | SUBSTATION NO. 6 | 1 | | LS | \$135,000.00 |
| 59 | SUBSTATION NO. 7 | 1 | | LS | \$232,000.00 |
| 60 | SUBSTATION NO. 8 | 1 | | LS | \$220,400.00 |
| 63 | MOBILIZATION | 1 | | LS | \$399,000.00 |

140 Working days will be required to complete our scope of work.

BID TOTAL

\$4,099,997.00

RANDY CELL # 209-221-9979

Roadway Engineering Works, Inc.

2. of 2.

Bld Date: 9/9/2014

Contract: 04-041004

Addendums Noted: 2.

Excludes:

- 1) Bonds. (1X)
- 2) Permits (By Others)
- 3) Traffic Control (CC to provide as requested).
- 4) Demo and repair of block wall for access at substation 3.

Clarifications:

- 1) Monthly progress payments paid pursuant to Public Contract Code 10262 & 10262.5 and Section 7108.5 of the business Professions Code
- 2) This proposal is to be attached and/or included to any subcontract agreement by amendment
- 3) All plan revisions, changes and correspondence will be delivered to Roadway Engineering Works, Inc. main office
- 4) Standard Insurance coverages apply.
- 5) Quote Includes providing Barges required for substation access for electrical installations.

Oct 23 2014 03:55pm
No. 8045 P. 6

Construction Contracting with Caltrans – How to Submit a Responsive Bid

Updated March 2010



Completing the Bid – Subcontractor Listing

- ④ Messy subcontractor list
- ④ Bidder must specify percentages for partial items
- ④ Percentages are the amount of the bid item subcontracted divided by the bid item total
- ④ Fax percentages to (916) 227-6282 within 24 hours of bid opening.
- ④ Late submittals not accepted

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
 Bidder Name: Bidder Kurt

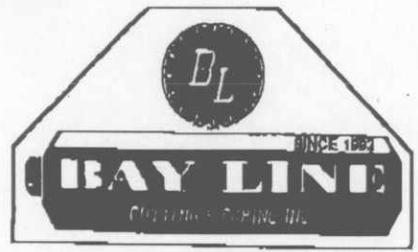
Bidder must detail subcontractors performing work in an amount: thousands of \$2.00 (minimum) to the total bid at a 10.000.
 10% (min) - 2% (max) (Pub Cost Code § 110041 sub.)

| Name and Address | Amount Bid (\$) | Percent of Bid Item Subcontracted | Description of Subcontracted Work |
|--|-------------------------|-----------------------------------|--|
| Parholl Company Sacramento, CA | various | 1-10% | grooving - partial |
| T&D Environmental Services Rancho Santa Margarita, CA | 43 partial | 4.1% | land reclamation, hauling & disposal - partial |
| Neil O Anderson HSSCO Sacramento, CA | 51 partial | 0.16% | QA/QC partial |
| Western Oil & Greasing Sacramento, CA | various | 0.6% | oil spreading |
| Chrisp Company Bloomington, CA | 14,162, 28,441, 114,113 | 0.75% | partial striping |
| Thomas & Pratt Highway Services Vallejo, CA | 13 | 1% | traffic control - partial |
| MC Water Inc. Vallejo | 60 | 1% | minor concrete - partial |
| Mean Electric Inc Sacramento, CA | 114,115, 117 | 2.5% | electrical - partial |
| Genco Irrigation Sacramento, CA | 47,52, 57 | 1% | landscape irrigation - partial |
| CC Meyers - Rancho Cordova | 10,13, 10 | 1% | curb & sidewalk concrete - partial |
| M&J - Stockton | various | 2.2% | M&J concrete barrier highway signs - partial |

Contract No. 03-TD144-1
10

Oct 23 2014 03:56pm
 No. 8045 P. 7

Received
 Oct. 23. 2014 3:50PM



License # 809660

October 23, 2014

Via Facsimile & U.S. Postal Service

Mr. Shane Dees
C.C. Myers, Inc.
3286 Fitzgerald Road
Rancho Cordova, CA 95742

Telephone Number: 916-635-9370

Facsimile Number: 916-635-8961

Re: Nonresponsive Finding, Caltrans Contract No. 04-041004

Dear Mr. Dees,

Bay Line Cutting & Coring, Inc. ("Bay Line") is in receipt of Caltrans' October 21, 2014 letter finding C.C. Myer, Inc.'s bid on the above referenced project nonresponsive. I am writing this letter to provide clarification and support evidencing that C.C. Myers, Inc.'s bid is, in fact, responsive.

I worked directly and exclusively with C.C. Myers, Inc. in bidding this project. I was at all times aware of exactly what my scope of work was on this project and that my subcontracted work did not comprise the entire scope of work on all of the bid items my company was listed to perform. At no time after the close of the bid has the scope of work being performed by Bay Line been changed. In reviewing the bid book posted on Caltrans' website, it is evident that the amount of my bid for certain bid items exceeds the amount that C.C. Myers, Inc. bid for the same bid items. While I understand that, based on Caltrans' instructions, this would require that C.C. Myers, Inc. list my company for 100% of those items, I also understand that this does not mean that I am performing 100% of the actual scope of work required by those bid items.

I trust this letter further clarifies the fact that the percentage you listed my company for does not dictate whether or not I am performing 100% of the actual scope of work, but please contact me should you have any additional questions.

Sincerely,
Bay Line Cutting & Coring, Inc.

Juan Arreguin,
President