

THE LAW OFFICE OF  
GEORGE WILLIAM WOLFF

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SAN FRANCISCO, CA 94111

P.O. 26749  
94126-6749

November 23, 2015

John C. McMillian, Deputy Division Chief  
Department of Transportation  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> Street  
Sacramento, California 95816  
Facsimile: (916) 227-6282

11-24-15A11:28 RCVD

Re: Caltrans Bid Protest - Contract Number: 04-1A6724

Dear Mr. McMillian,

Our office represents Certified Coating Company ("CCC") with regard to the bid protest for the Caltrans state highway project in Alameda, California Route 80/580/880 (Contract No.: 04-1A6724) (hereinafter "Project").

CCC submitted a bid for the Project in an amount of \$12,998,408. CCC was the lowest bidder on Project.

The bid submitted by CCC has been challenged by the second lowest bidder Golden State Bridge, Inc. ("GSB"). The bid submitted by GSB in an amount of \$14,033,917 is significantly higher than the bid submitted by the lowest bidder. The difference between the bids is approximately One Million Dollars.

CCC is the lowest responsible bidder on the Project and the bid submitted by CCC is responsive. To the extent that any minor deviations exist in CCC's bid package, said deviations are inconsequential and cannot result in any competitive advantage.

The rule that requires "strict compliance with bidding requirements does not preclude the contracting entity from waving inconsequential deviations." *Bay Cities Paving & Grading, Inc. v. City of San Leandro*, (2014) 223 Cal. App. 4th 1181, 1188.

However, it is further well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential.

*Bay Cities Paving & Grading, Inc. v. City of San Leandro*, (2014) 223 Cal. App. 4th 1181, 1118. (emphasis added).

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### First Bid Protest

GSB submitted two bid protests against CCC. This first bid protest by GSB dated November 11, 2015, alleges that CCC failed to strictly comply with the bid specifications for the Project by not including a Department of Industrial Relations (DIR) registration number for a listed subcontractor.

GSB contends that CCC's bid is non-responsive because no DIR registration number was listed for CCC's bid for Water Components & Building Supply as required by Caltrans Revised Standard Specification, Section 2-1.05.

However, as the name suggests, Water Components & Building Supply is a material supply company. Water Components & Building Supply will be supplying materials for the Project, but it will not be providing any labor.

A copy of Water Components & Building Supply's material quote for the Project is included in CCC's bid package to Caltrans. This document, which was supplied to Caltrans, confirms that Water Components Building Supply is providing materials only and no labor to the Project. (Attached hereto as Exhibit A).

To the extent that CCC inadvertently listed Water Components & Building Supply as a subcontractor in its rush to get the bid out, the listing of a DBE material supplier in the section reserved for subcontractors should not have any impact on the responsiveness of the bid. It is evident from the bidding documents that Water Components & Building Supply was not a "contractor," within the meaning of Labor Code Section 1722.1 or Public Contract Code Section 4113, as CCC correctly noted that both the contractor's license and DIR number did not apply to their activities contemplated for this contract.

"The test for measuring whether a deviation in a bid is sufficiently material to destroy its competitive character is whether the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed by other bidders." *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal. App. 4<sup>th</sup> 897, 906.

The fact that CCC erroneously included material supplier Water Components & Building Supply in the subcontractor column, is inconsequential and does not change the amount of the bid, or confer any benefit or advantage to CCC.

CCC's bid must be found responsive on this issue, as no violation of the specifications has occurred with regard to material supplier Water Components & Building Supply.

### Second Bid Protest

GSB submitted a second bid protest against CCC on November 13, 2015. The second bid protest alleges that CCC did not report a mobilization percentage for subcontractor Bortolussi & Watkins, Inc., bid item 49 mobilization.

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GBS alleges that CCC's failure to list a subcontractor percentage for Bortolussi & Watkins, Inc. creates an advantage to CCC not available to other bidders, and gives CCC the opportunity to bid shop a significant element of the Project and obtain a lower pricing subsequent to the bid opening. This characterization is incorrect.

Although CCC may have missed the mobilization percentage for item 49 in its rush to get its bid out, the necessary information was still contained in CCC's bid package. A copy of the Bortolussi & Watkins bid estimate for this Project was submitted by CCC in its bid package to Caltrans. (Exhibit B).

Bortolussi & Watkin's mobilization is 1.6% of the total mobilization. Bortolussi & Watkin's quote is included in CCC's DBE submittal and the percentage of their mobilization is correctly hand written on the quote and that percentage is also independently calculable from the dollar amount Bortolussi & Watkins listed for item 49 in its subcontract bid. CCC's missed entry for the 1.6% in the Bid Express software does not make a material difference in CCC's bid and does not give CCC any advantage over other bidders.

The information necessary to find the bid responsive is contained in the CCC bid package. Furthermore, the full details of the Bortolussi & Watkins, Inc. subcontractor bid amount have been provided to Caltrans. As such, GBS's allegations of advantage and opportunity to bid shop are not realistic or viable. There is simply no indication that there is any advantage or benefit conferred to CCC as a result of the mobilization percentage error.

#### Other Documents in Bid Package Can be Utilized to Establish Responsiveness

In the case of *Bay Cities Paving & Grading, Inc. v. City of San Leandro*, a contractor failed to submit the first page of the bid bond form as required by the bid specifications. *Bay Cities Paving & Grading, Inc. v. City of San Leandro*, (2014) 223 Cal. App. 4th 1181. However, it was clear from the second page of the form that the bid bond had been obtained. (Id. at 1186). It was determined that the missing page was a "minor irregularity" and the information necessary to conform to the bid requirements could be obtained from the context of the other documents provided in the bid package. (Id.). The bid was found responsive and the irregularity waived. (Id.).

"In short, when the City determined which contractor was the lowest responsible bidder it had before it the information it needed to make clear that G&B had, indeed, satisfied the requirement of supplying the requisite bond."

*Bay Cities Paving & Grading, Inc. v. City of San Leandro*, (2014) 223 Cal. App. 4th 1181, 1191.(*emphasis added*).

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Similar to the *Bay Cities Paving* case, CCC has provided in its bid package to Caltrans, all the information necessary for Caltrans to find CCC's bid responsive. The information missing from item 49 can be determined from information already available in CCC's bid package. Therefore, in accordance with the *Bay Cities Paving* case, if Caltrans has before it the information needed to ensure that CCC has satisfied the specification requirements, then Caltrans can properly waive the error as inconsequential, and deem CCC's bid responsive. (Id).

An awarding body may waive minor items of non-compliance from the bid specifications when "[t]here is no evidence of favoritism, corruption, fraud, extravagance or uncompetitive bidding practices." *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal. App. 4<sup>th</sup> 897, 909. There is no evidence in the present case of favoritism, corruption, fraud, extravagance or uncompetitive bidding. Therefore, the Project contract can be properly awarded to CCC.

#### Public Policy Against Cancellation of Bid Due to Minor Technicalities

It would be against established public policy to allow GSB to leverage minor bidding errors so that GSB could obtain the benefit of the contract award as the second lowest bidder.

"It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.

*Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal. App.4th 889, 908-909.  
(*emphasis added*).

In the case at hand, the difference between the lowest bid and the second lowest bid is approximately One Million Dollars. A finding of non-responsiveness of CCC's bid, and a subsequent award to GSB would have substantial adverse consequences to the public, as the tax-paying public would need to spend approximately One Million dollars more for the same work.

#### Conclusion

GSB has not made an adequate showing that the bid errors in CCC bid package are anything other than inconsequential deviations from the bid specifications. Furthermore, there is no support for the contention that the minor errors provided any advantage, benefit or competitive advantage to CCC.

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As such, Caltrans has the necessary authority to waive the irregularities as inconsequential deviations and find that CCC is the lowest responsible bidder for the Project. Such a finding would be in accordance with the laws and policies of the State of California.

It is requested that Caltrans deem the clerical errors in CCC's bid immaterial and award the Project contract to the lowest responsible bidder Certified Coatings Company.

Yours Truly,



Kristin Kerr

1541-01

cc: client

**EXHIBIT A**

We can use 60%

WATER COMPONENTS & BUILDING SUPPLY, INC.  
 44 SIMMS ST., SAN RAFAEL, CA 94901  
 P: 415.524-8290 F: 415.524.8293  
 CALTRANS DBE # 27363 (EXP 4/27/19)  
 CALIFORNIA SBE # 14184 (EXP 4/30/16)  
 CPUC WBE # 9FN00045 (EXP 6/19/18)

MATERIAL QUOTE

PROJECT: CALTRANS - 04-1A6724

BID #	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
9	TEMPORARY DRAINAGE INLET PROTECTION				
	NAG SC150 BN BLANKET (8' x 112.5')	1	ROLL	\$ 125.00	\$ 125.00
	4' x 225' JUTE MESH ROLL	1	ROLL	\$ 58.00	\$ 58.00
	CLASS B RSP FABRIC (15' x 300')	1	ROLL	\$ 575.00	\$ 575.00
	8" x 2" x 8" - 8 GA. STAPLES (500 / BOX)	1	BOX	\$ 70.00	\$ 70.00
	8" x 25' BIODEGRADABLE STRAW WATTLE	1	LF	\$ 1.00	\$ 1.00
	1" x 1" x 24" REG WOOD STAKE (50 / BUNDLE)	1	BUNDLE	\$ 12.00	\$ 12.00
	3" x 100' SILT FENCE W/ POLES 6' OC	1	ROLL	\$ 35.00	\$ 35.00
	** EXCEPTION TAKEN TO SEWN POCKETS				
	15" x 28" - 8 OZ - 35# GRAVEL FILLED BAGS	1	EA.	\$ 4.25	\$ 4.25
	DI BAG - LP TO: L = 48" x W = 36" x H = 18"	1	EA.	\$ 55.00	\$ 55.00
					NO SUB TOTAL
10	TEMPORARY FIBER ROLLS				
	8" x 25' BIODEGRADABLE STRAW WATTLE	5,000	LF	\$ 1.00	\$ 5,000.00
					\$ 5,000.00
	TYPE 1 INSTALLATION				
	1" x 1" x 24" REG WOOD STAKE (50 / BUNDLE)	25	BUNDLE	\$ 12.00	\$ 300.00
	OR				\$ 300.00
	TYPE 2 INSTALLATION				
	1" x 2" x 24" NOTCHED WOOD STAKE (50 / BUNDLE)	80	BUNDLE	\$ 20.00	\$ 1,600.00
	1/4" SISAL ROPE (1200' / COIL)	5	COIL	\$ 60.00	\$ 300.00
					\$ 1,900.00
11	TEMPORARY ESA FENCE				
	4' x 100' DOT ESA FENCE	5,200	LF	\$ 0.35	\$ 1,820.00
	6' LGHT WEIGHT T-POST	845	EA	\$ 4.25	\$ 2,741.25
	T-POST SAFETY CAPS - NON OSHA	845	EA	\$ 0.25	\$ 167.70
	11" ZIP TIES (1000 / BAG)	4	BAGS	\$ 60.00	\$ 240.00

Item 10

Item 11

Quantities are estimates only; prices subject to change if WCB cost change. Contractor is responsible for verifying types and quantities before bidding and or purchasing. Quote valid for 30 days only. Sales tax not included. Terms: Net 30. Full T.L. IOB jobsite. 10% deposit may be required when order is placed. Subject to terms in subsequent PO or contract.

WATER COMPONENTS & BUILDING SUPPLY, INC.  
 44 SIMMS ST., SAN RAFAEL, CA 94901  
 P: 415.524-8290 F: 415.524.8293  
 CALTRANS DBE # 27363 (EXP 4/27/19)  
 CALIFORNIA SBE # 14184 (EXP 4/30/16)  
 CPUC WBE # 9FN00045 (EXP 6/19/18)

MATERIAL QUOTE

PROJECT: CALTRANS - 04-1A6724

BID #	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
	PLASTIC PIPE				
31	0.75" SCH40 B x S WHITE PVC PIPE (20' LENGTHS)	450	LF	\$ 0.29	\$ 132.40
32	1" SCH40 B x S WHITE PVC PIPE (20' LENGTHS)	520	LF	\$ 0.43	\$ 223.60
33	1.25" SCH40 B x S WHITE PVC PIPE (20' LENGTHS)	80	LF	\$ 0.58	\$ 44.80
34	1.5" SCH40 B x S WHITE PVC PIPE (20' LENGTHS)	80	LF	\$ 0.67	\$ 53.60
35	2" SCH40 B x S WHITE PVC PIPE (20' LENGTHS)	120	LF	\$ 0.90	\$ 108.00
					\$ 563.40
	FIBER ROLLS				
38	8' x 25' BIODEGRADABLE STRAW WATTLE	2,525	LF	\$ 1.00	\$ 2,525.00
					\$ 2,525.00
	TYPE 1 INSTALLATION				
	1" x 1" x 24" REG WOOD STAKE (50' BUNDLE)	26	BUNDLE	\$ 12.00	\$ 312.00
					\$ 312.00
	WCBS DELIVERY TO JOBSITE	5	EA	\$ 50.00	\$ 250.00
	CUSTOMER TO UNLOAD				
				SUB TOTAL	\$ 9,190.40

Handwritten note: 1+2+3 = 312

Quantities are estimates only; prices subject to change if WCBS cost change. Contractor is responsible for verifying types and quantities before bidding and/or purchasing. Quote valid for 30 days only. Sales tax not included. Terms: Net 30. Full T.L. FOB jobsite. 10% deposit may be required when order is placed. Subject to terms in subsequent PO or contract.

Prepared by: Kiley Olson

**Search Returned 1 Records**

Thu Nov 05 08:58:52 PST 2015

**Query Criteria**

Firm ID: 27363  
Firm Type: DBE

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Firm ID	27363
Firm/DBA Name	WATER COMPONENTS & BUILDING SUPPLY, INC
Address Line1	P.O. BOX 10007
Address Line2	44 SIMMS STREET
City	SAN RAFAEL
State	CA
Zip Code1	94912
Zip Code2	
Mailing Address Line1	P.O. BOX 10007
Mailing Address Line2	
Mailing City	SAN RAFAEL
Mailing State	CA
Mailing Zip Code1	94912
Mailing Zip Code2	
Certification Type	DBE
E-Mail	jane@watercomponents.com; wcb@watercomponents.com
Contact Name	JANE JENNINGS FIELDS
Area Code	( 415 )
Phone Number	524-8290
Alt Area Code	( )
Alt Phone Number	
Fax Area Code	( 415 )
Fax Phone Number	524-8293
Agency Name	DEPARTMENT OF TRANSPORTATION
Counties	21; 28; 49;
Districts	04;
DBE NAICS	423320; 423510; 423840; 423990; 444190;

**ACDBE NAICS**

**Work Codes** C0612 SAFETY SUPPLIER; C0621 LANDSCAPING MATERIAL SUPPLIER; C0670 PIPE SUPPLIER; C0680 FENCING SUPPLIER; C0685 PAVEMENT MARKERS SUPPLIER; C0698 BUILDING MATERIAL SUPPLIER; C0699 TOOLS Supplier;

**Licenses**  
**Trucks**  
**Gender** F  
**Ethnicity** CAUCASIAN  
**Firm Type** DBE

**EXHIBIT B**

Juan

**BORTOLUSSI & WATKIN, INC.**General Landscape Contractors

77 LARKSPUR STREET, SAN RAFAEL, CALIFORNIA 94901-4886 LIC. # 962905 C-27

(415) 453-4675 FAX (415) 453-2978

DGS Small Business # 1732424, Expires: 2/29/2016

DIR 1000000352

SUB-BID SUBMITTAL

STATE HIGHWAY CONSTRUCTION IN ALEMEDA COUNTY RT 80, 580/880 SEPAR

CALTRANS 04-1A6724

Bids: 10/28/2015

Time: 2:00 PM

Addendum noted: 2

Item	Item Code	Item	Unit Of Measure	Estimated Quantity	Unit Price (in Figures)	Total (in Figures)
15	200002	ROADSIDE CLEARING	LS	LUMP SUM	LUMP SUM	2,000.00
16	200122	WEED GERMINATION	SQYD	5700	0.20	1,140.00
17	200123	CULTIVATION	SQYD	5700	1.00	5,700.00
18	202006	SOIL AMENDMENT	CY	680	35.00	23,800.00
19	202039	SLOW-RELEASE FERTILIZER	LB	1,030	1.70	1,751.00
20	204009	PLANT (GROUP I)	EA	660	12.00	7,920.00
21	204035	PLANT (GROUP A)	EA	640	11.00	7,040.00
22	204038	PLANT (GROUP U)	EA	83	70.00	5,810.00
23	204096	MAINTAIN EXISTING PLANTED AREAS	LS	LUMP SUM	LUMP SUM	15,907.00
24	204097	PLANT ESTABLISHMENT WORK (MINIMUM BID)	LS	LUMP SUM	LUMP SUM	30,000.00
25	205035	WOOD MULCH	CY	480	45.00	21,600.00
26	206400	CHECK AND TEST EXISTING IRRIGATION FACILITIES	LS	LUMP SUM	LUMP SUM	6,500.00
27	206402	OPERATE EXISTING IRRIGATION FACILITIES	LS	LUMP SUM	LUMP SUM	5,000.00
28	206559	CONTROL AND NEUTRAL CONDUCTORS (ARMOR-CLAD)	LS	LUMP SUM	LUMP SUM	28,000.00
29	208221	3/4" DRIP IRRIGATION TUBING	LF	8,050	1.50	12,075.00
30	208449	POP-UP SPRINKLER ASSEMBLY	EA	11	75.00	825.00
31 (F)	208594	3/4" PLASTIC PIPE (SCHEDULE 40) (SUPPLY LINE)	LF	450	12.00	5,400.00
32 (F)	208595	1" PLASTIC PIPE (SCHEDULE 40) (SUPPLY LINE)	LF	520	13.00	6,760.00
33 (F)	208596	1 1/4" PLASTIC PIPE (SCHEDULE 40) (SUPPLY LINE)	LF	80	15.00	1,200.00
34 (F)	208597	1 1/2" PLASTIC PIPE (SCHEDULE 40) (SUPPLY LINE)	LF	62	16.00	992.00

All

**BORTOLUSSI & WATKIN, INC.**

35 (F)	208598	2" PLASTIC PIPE (SCHEDULE 40) (SUPPLY LINE)	LF	110	17.00	1,870.00
49	999990	MOBILIZATION (OUR SHARE)	LS	LUMP SUM	LUMP SUM	21,200.00

- 1.6 %

**TOTAL BID 212,490.00**

Item listed above constitute our base bid and must be taken as a whole - no splitting of bid

**EXCLUSIONS, QUALIFICATIONS, & CONDITIONS**

- 1 Percent retained from our payments to equal General Contractor's percent retained by owner
- 2 B&W needs 40 Working Days for Construction and 250 days for plant establishment
- 3 No traffic control. Work to be done when general has lanes or ramps closed, otherwise closures by others.
- 4 No pavement removal or replacement. No sawcutting, No patching, No temporary paving. No walls.
- 5 No clearing & grubbing, or tree removal is included. No tree protection. No pruning.
- 6 Grades and/or subgrades to  $\pm 0.1'$  by others.
- 7 No soil removal, no import or topsoil, no hazardous materials handling or removal.
- 8 We are signatory with the Laborers, Operators, and Plumbers Unions.
- 9 No bond is included with bid. B&W bond rate is 1.25%.
- 10 No insurance requirements beyond what is required by specs.
- 11 No railroad requirements. No Builders Risk.
- 12 Repair of existing landscape or irrigation damaged by others, is not included.
- 13 We must be notified in writing within 5 working days of damage to work of others by our forces.
- 14 This proposal shall be included as an attachment to the subcontract.
- 15 No erosion control or maintenance of erosion control items. No hydroseeding of any kind.
- 16 Bid includes irrigation costs for the contract working day limit ONLY.
- 17 Additional maintenance costs due to contract extension or suspension or delays are excluded.
- 18 No hand or truck watering due to disruption of water supply beyond our control.
- 19 No surveying. No arborist. No biologist. No pruning.
- 20 Water service and meters by others. Water development and water fees by others.
- 21 Electrical service and pullbox by others
- 22

If items are not legible or you have any questions please call or FAX us.

Juan Maravilla 415-453-4675 ext.350