

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER, MS 43

1727 30th STREET

P. O. BOX 168041

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6299

FAX (916) 227-6282

www.dot.ca.gov/hq/esc/oe

*Flex your power!
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September 18, 2013

Facsimile: (530) 757-1355

Ahmet Gulcu, President
Empire Landscaping, Inc.
P.O. Box 35
Davis, CA 95617

04-2356A4
04-SM-101-0.9/3.6
B.O. 08/20/2013

Dear Mr. Gulcu:

The Department of Transportation (Caltrans) received the attached letter from Empire Landscaping, Inc. (Empire) on August 27, 2013 protesting the bid submitted bid certifications submitted by Bortolussi & Watkin's (Bortolussi). The protest alleges that Bortolussi falsely responded to the Bidder Responsibility Questionnaire by answering "No" to questions relative to non responsibility determinations. Empire is requesting that Caltrans find Bortolussi nonresponsive and award the contract to Empire.

The Public Contracting Code defines a responsive bidder as one who meets the goals and requirements of a specific contract. A determination of non-responsibility, speaks to whether or not a determination was made by Caltrans or any other entity that the bidder or in this case Bortolussi was unable to perform the required scope of work as prescribed by the contract after award.

Caltrans reviewed the bid documents and the protest and determined that Bortolussi did not have a determination of non responsibility while performing for Caltrans. In addition, the example provided by Empire demonstrated that Bortolussi did not meet the requirement for submitting a Disadvantaged Veteran Enterprise Summary (DVBE) form and its bid was found nonresponsive.

Based on the above determination, Caltrans finds that Empire's protest lacks merit and will proceed to award this contract to the lowest responsive and responsible bidder, provided that all requirements have been met.

Mr. Gulcu
September 18, 2013
Page 2

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

Sincerely,



Pen
JOHN C. MCMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services

Attachment

Empire Landscaping Inc.

118 Hickory Ln Davis CA 95616

Lic#811554

Ph: 530 400-3943 Fax: 530 757-1355

gulcu@sbcglobal.net

August 27, 2013

State of California, Department of Transportation

Division of Engineering Services

Office Engineer, MS 43

1726 30th Street

P.O. Box: 168041

Sacramento, CA 95816-8041

Fax 916-227-6282

RE: Formal Bid Protest

04-2356A4 Replace Highway Planting and Irrigation

B.O: 08/20/2013

Dear Mr. McMillan,

Bortolussi & Watkin Inc did false statement for bidder responsibility questionnaire on page 15 in bid book 04-2356A4 contract. Bortolussi & Watkin's answer was no for question; within the past 10 years has the Bidder been found to be a nonresponsible bidder by any public entity including federal, state local or regional entities under penalty of perjury and also failed to submit date of each nonresponsibility determination, name of each public agency issuing the nonresponsibility determination and contract number for each nonresponsibility determination. Truth is Bortolussi & Watkin Inc was found nonresponsive by Caltrans and did proceed to award the contract to the lowest responsible bidder on November 20, 2012 contract number 04-014074 Bid opening date: November 7, 2012

Caltrans in this bid book and all other public work agencies clearly stated that "Failure to truthfully answer the following questions will result in a finding that the bid is nonresponsive. The Bidder must complete under penalty of perjury the following questionnaire." There for Empire Landscaping Inc request that Caltrans award this contract to lowest responsible bidder provided all requirement are met to Empire Landscaping Inc.

Cordially

Ahmet Gulcu President



DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
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1727 30th STREET
P. O. BOX 168041
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6280
FAX (916) 227-6282
TTY 711



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November 20, 2012

Facsimile: (415) 453-2978

Raul Garcia, President
Bortolussi & Watkin, Inc.
77 Larkspur Street
San Rafael, CA 94901

04-014074
04-Ala-80-1.7/2.2
B.O. 11/7/12

Dear Mr. Garcia:

The Department of Transportation (Caltrans) received a bid submitted by Bortolussi & Watkin, Inc. (Bortolussi & Watkin) for Contract No. 04-014074 on November 7, 2012. By this letter, Caltrans notifies Bortolussi & Watkin that its bid is nonresponsive since Bortolussi & Watkin did not comply with Contract Special Provision Section 2-1.15 DISABLED VETERAN BUSINESS ENTERPRISES, which states in part:

"... Certified DVBE Summary...is received at the Office Engineer no later than 4:00pm on the 4th business day after bid opening."

Bortolussi & Watkin failed to submit the Certified DVBE Summary within the allotted time.

Based on the above, Caltrans finds your bid is nonresponsive. Caltrans will proceed to award the contract to the lowest responsible bidder provided all requirements are met.

Your attention is directed to Section 3-1.04 of the Standard Specifications. The Department is not obligated to offer an extension of the award period for a non-responsive bid. Should you wish to offer to extend your bid while resolving a non-responsive finding you must send your request to the Office Engineer no later than 4:00 pm two business days prior to the expiration of your bid.

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

Sincerely,


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

CERTIFICATIONS

UNDOCUMENTED ALIENS EMPLOYMENT

Under Pub Cont Code § 6101, the Bidder certifies compliance with state and federal law respecting the employment of undocumented aliens.

NONCOLLUSION

NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID
Under PCC 7106 and 23 USC 112, the bidder declares as follows:

State of California County of Marin

Raul Garcia, being first duly sworn, deposes and says that he or she is

President of Bortolussi & Watkins Inc. the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

CHILD SUPPORT COMPLIANCE ACT

Under Pub Cont Code § 7110, the contractor acknowledges that:

1. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
2. The contractor to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

NATIONAL LABOR RELATIONS BOARD

Under Pub Cont Code § 10232, the contractor, swears under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two year period because of the contractor's failure to comply with an order of a federal court which orders the contractor to comply with an order of the National Labor Relations Board.

VIOLATION OF LAW OR A SAFETY REGULATION

Under Pub Cont Code § 10162, the Bidder must complete, under penalty of perjury, the following questionnaire:

Has the Bidder, any officer of the Bidder, or any employee of the Bidder who has a proprietary interest in the Bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes

No

If the answer is yes, explain the circumstances in the following space.

ANTITRUST LAW

Under Pub Con Code § 10285.1, the Bidder declares under penalty of perjury under the laws of the State of California that the Bidder has has not been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Pub Cont Code § 1101, with any public entity, as defined in Pub Cont Code § 1100, including the Regents of the University of California or the Trustees of the California State University. The term "Bidder" includes any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

If the Bidder has been convicted of an offense within the past 3 years, provide the conviction details including the date and ultimate resolution of each conviction in the space below.

PERMITS, LICENSES, AGREEMENTS, CERTIFICATIONS, AND RAILROAD RELATIONS AND INSURANCE REQUIREMENTS

Bidder acknowledges that permits, licenses, agreements, certifications, and the requirements in the document titled "Railroad Relations and Insurance Requirements" are components of the Contract under section 5-1.02 of the *Standard Specifications*.

BIDDER RESPONSIBILITY QUESTIONNAIRE

Failure to truthfully answer the following questions will result in a finding that the bid is nonresponsive. The Bidder must complete, under penalty of perjury, the following questionnaire:

1. Within the past 10 years, has the Bidder been found to be a nonresponsive bidder by any public entity, including federal, State, local, or regional entities?
 Yes No
2. Within the past 10 years, have any of the Bidder's officers or employees with a proprietary interest in the Bidder been determined to be a nonresponsive bidder by a public entity, including federal, State, local or regional entities?
 Yes No
3. Is there any officer or employee of the Bidder who now has or has had any proprietary interest in another company that bid or bids on public works projects whose company has been determined to be a nonresponsive bidder by any public entity, including federal, State, local, or regional entities?
 Yes No
4. If the answer to any of the 3 preceding questions is yes, disclose all pertinent details of the determination of nonresponsibility, including:
 - 4.1. Date of each nonresponsibility determination
 - 4.2. Name of each public agency issuing the nonresponsibility determination and a contact person at that agency who would have information about the determination
 - 4.3. Contract number for each nonresponsibility determination

END CERTIFICATIONS

False statement

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

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

Sep 18 2013 04:17pm

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
915307571355	Normal	18:04:16pm	1'39"	6	* O K	

STATE OF CALIFORNIA - CALIFORNIA STATE TRANSPORTATION AGENCY

TRANSPORTATION DEPARTMENT

DEPARTMENT OF TRANSPORTATION

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