

# Empire Landscaping Inc

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State of California, Department of Transportation

Division of Engineering Services

Office Engineer, MS 43

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Sacramento, CA 95816-8041

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RE: Bid Protest #2

04-2G3614

B.O: 04/09/2013

Dear Mr. McMillan,

This is the response letter from Empire Landscaping, Inc to Bortolussi & Watkins Bid Protest #2 regarding the Subcontractor List from of Empire's Bid Book.

Empire Landscaping Inc. did provide all information on (OES-OE-0102.2) Subcontractor List. Column 1 through 4 were filled out.

On column 1; all the subcontractors name and location were listed.

On Column 2; all the bid items were listed for each subcontractors.

On Column 3; Empire did list the subcontractors work percentage compared to our total bid amount. These subcontractors will perform 100% of their bid items we listed them on. Empire Landscaping Inc, wanted to show Caltrans that we exceeded the DVBE requirements of this contract by showing the overall %'s along with all the subcontractor's original quotes with in the bid packaging. Empire landscaping believe that the subcontractor list was filled out with the full intention to meet and exceed the Public Contract Code 4100, which is the main purpose of the form in bid Books. The details Empire Landscaping inc used in filling out all four columns and submitting all subcontractor's original proposal with the bid packaging show Caltrans that we met the Subcontracting Fair Practice Act and that in no way does the %'s in columns three allow empire any bid shopping or cause any financial injustice/hardship to any subcontractors which is the main purpose of the form and law.

The minor error in column #3 didn't do any harm to any of the subcontractors and it did not point to any unfair competitive advantage to Empire Landscaping.

Case of Bortolussi & Watkin Inc's precedence Caltrans issued non-responsive bid letter to C. Overaa & Co is not the same, in fact it is completely deferent. Because C. Overaa & Co used 20 different subcontractor for just one bid item 86, and 25 of 56 bid item were listed partial on column # 2. Also some subcontractors listed doing multiple bid items and those are listed partials. For example; DVBE Tucking doing bid item 38 and Carone & Co doing bid item 38 as well. And description of subcontractors were not listed by bid items on column 4 in their bid book. C. Overeat & Co failed to provide complete and clear information in columns 1 through 4 within the time frame. That would make it impossible for Caltrans to figure out the true % given to the subcontractors. But, Caltrans could determine the dollar amounts going to the subcontractors because Empire Landscaping Inc included and marked all subcontractor proposals in our original bid package and Empire Landscaping did not list the word partial, all subcontractors will do %100 of their bid items.

On Column 4; all the subcontractor's work descriptions were listed individually on column four.

Empire landscaping Inc believe this protest lacks merit and goes against the main reason for having the subcontractor list form in the Bid Book. Six separate subcontractors, two of which are DVBE contractor who will receive over 5% of the total dollar amount for this project for no construction or bond/insurance issues. Subcontractors are protected and Empire Landscaping intentions with the bid in items to be sub out. Empire Landscaping Inc filled out all documents at original bid time and did not turn in any documents after the original bid time.

Empire Landscaping finds it interesting that Bortolussi & Watkin Inc. continues to protest this bid over minor issues not related to the actual construction of the project as they are sending over Bid Protest on company letterhead with an incorrect/invalid contractor license number. Should this make their protest letters to Caltrans void? With the wrong number is this even techically then a letter from a contractor who did the project as a prime contractor. Bortolussi & Watkin Inc keeps continue to accusing and protesting low bidder's bid document rather than giving more competitive and fair price at the initial bid opening time.

Empire Landscaping bids and bid practices were entirely consistent with the purposes of the Act. As set forth in public contract code section 4101 the purpose of the subcontracting fair practices act ("the Act") Empire Landscaping bid forms pose no harm to any subcontractor or public; that's the main purpose of biding form subcontractor list.

Empire Landscaping Inc found out that not only a few but hundreds of companies made the same minor mistakes in their bid books and Caltrans award them and there are some court decisions about same minor mistake made by companies as well.

Empire Landscaping request Caltrans reference both Ghillotti Construction Co. V City of Richmond 45Cal. App. 4<sup>th</sup> 987, at 905 and MCM Construction V. City and County of San Francisco.

The Chilloti case states among other things that, " 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 the other bidders."

In the MCM case the courts stated, these considerations must be evaluated from a practical rather than a hypothetical standpoint, with reference to the factual circumstances of the case. They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder."

Here is some of the awarded companies by Caltrans which made exactly same minor mistake on column # 3

Company: Decker Landscaping Rocklin CA

Project: Install erosion control and monitor in Santa County near Pleasanton CA

Bid Number: 04-172414

Bid Opening: 12/14/2010

Company: Marina Landscaping Anaheim CA

Project: Landscape mitigation as required in San Diego County in Chula CA

Bid Number: 11-081654

Bid Opening: 6/2/2011

Those companies were awarded by Caltrans because;

California statutes and case law make it clear that Caltrans has the discretion to "deal with (irregularities) in a sensible practical way" that promotes the best interest of the public. Empire Landscaping Inc. requesting that continue proceeding award to the lowest responsible bidder Empire Landscaping Inc for 04-2G3614 on April 9, 2013 bid opening date.

If you have any question or concern please call me at 530-400-3943

Cordially

A handwritten signature in black ink, appearing to read 'A. Gulcu', with a long horizontal flourish extending to the right.

Ahmet Gulcu president