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State of California, Department of Transportation
Division of Engineering Services
Office Engineer
1727 30th Street, MS-43
P.O. Box 168041
Sacramento, CA 95816

Attention: John C. McMillan
Deputy Division Chief

Re: Caltrans Contract No. 04-2J0704
Project: Construction on State Highway in Alameda County from Fremont
Boulevard in Fremont to High Street in Oakland

Dear Mr. McMillan:

I am the legal representative of DeSilva Gates Construction, LP ("DGC"), one of the bidders for the above referenced contract. By way of this letter, DGC is hereby formally protesting the bid submitted by Bay Cities Paving & Grading, Inc. ("Bay Cities") for the above-referenced contract, for the reasons set forth below.

**BAY CITIES' BID IS NON-RESPONSIVE BECAUSE OF ITS FAILURE TO
INCLUDE REQUIRED INFORMATION ON ITS SUBCONTRACTOR
LISTING FORM**

Bidders were required to submit a subcontractor list with their bids identifying each subcontractor performing work in excess of one-half of one percent of the prime contractor's total bid. Public Contract Code section 4104; Revised Standard Specification Section 2-1.10. With regard to each of these listed subcontractors, Caltrans Revised Standard Specification Section 2-1.10 provides, in part, as follows:

For each subcontractor listed, the Subcontractor List **must show**:

4. Portion of work it will perform. Show the portion of work by:
 - 4.1 Bid item numbers for the subcontracted work
 - 4.2 Percentage of the subcontracted work for each bid item
 - 4.3 **Description of the subcontracted work if the percentage of bid item listed is less than 100 percent. (Emphasis added).**

On its Subcontractor List, Bay Cities listed FBD Vanguard Construction ("Vanguard") for 85% of Bid Item 102, 75% of Bid Item 106, and 85% of Bid Item 108. (Copies of the relevant page of Bay Cities' Subcontractor Listing are enclosed). Accordingly, because the percentage of the work to be subcontracted was less than 100% for these Bid Items, Revised Standard Specification Section 2-1.10 required that Bay Cities describe, on its Subcontractor List, the work to be subcontracted to Vanguard for each of these Bid Items.

Yet, Bay Cities failed to provide the required information. Instead, for each of these three Bid Items, Bay Cities simply described the entire bid item and then put the word "only." Specifically, Caltrans' Item Description for Bid Item 102 was "CONCRETE BARRIER (TYPE 60G MOD)," and yet, in describing what portion of that work would be performed by Vanguard, Bay Cities simply put "Install concrete barrier only." Similarly, Caltrans' Item Description for Bid Item 106 was "CONCRETE BARRIER (TYPE 60G)," and yet, in describing what portion of that work would be performed by Vanguard, Bay Cities simply put "Install concrete barrier only." Likewise, Caltrans' Item Description for Bid Item 108 was "CONCRETE BARRIER (TYPE 60GE)," and yet, in describing what portion of that work would be performed by Vanguard, Bay Cities simply put "Install concrete barrier only."

Describing the portion of an item of work by merely paraphrasing the Caltrans' Item Description for the entire bid item obviously fails to describe the portion of that item that would be subcontracted. It is tantamount to putting no description at all.

Bay Cities' bid must be rejected as non-responsive because Bay Cities failed to provide the required information with its bid. Subsection 2-133A of Revised Standard Specification Section 2-1.33 BID DOCUMENT COMPLETION AND SUBMITAL provides: "Failure to submit the forms and **information** as specified may result in a nonresponsive bid." (Emphasis added). Accordingly, where, as here, a bidder lists a subcontractor for less than 100% of a bid item and yet fails to comply with the requirement that the bidder describe what portion of that bid item is subcontract work, Caltrans rejects the bid as nonresponsive.

A recent example is Caltrans' rejection of the bid of Chumo Construction, Inc. ("Chumo") in connection with Caltrans Contract No. 07-293404. Caltrans rejected Chumo's bid, as nonresponsive, because Chumo had listed a subcontractor for less than 100% of a bid item, but failed to provide the required description of the portion of that bid item that was subcontract work. A copy of Caltrans' rejection letter dated October 8, 2015, is enclosed.

Caltrans rejected Chumo's bid as nonresponsive because Chumo did not provide a description for a partial listing of work valued at only \$3,800. Here, Bay Cities' failure to provide a proper description of the work to be subcontracted to Vanguard is much

more egregious. The total amount bid by Bay Cities for Bid Item Nos. 102, 106 and 108 is \$14,274,498, and, multiplying the amounts bid by Bay Cities for these bid items by the percentages of these bid items to be subcontracted to Vanguard, one obtains a value for Vanguard's work on these items of \$11,240,865. Yet it is impossible to tell from Bay Cities' Subcontract List what portions of the work included in these bid items would be subcontracted to Vanguard.

Obviously, Bay Cities cannot avoid the requirement that it specify the portion of subcontract work in each bid item by the subterfuge of simply paraphrasing Caltrans' bid item description. Again, this is tantamount to putting no description at all.

By failing to disclose what Bid Item 102, 106 and 108 work Bay Cities would subcontract to Vanguard, Bay Cities gave itself the unfair advantage of being able to decide, after bid, exactly what work to subcontract to Vanguard, and the ability to negotiate with Vanguard after bid. This is not only directly contrary to the purpose of the subcontracting listing requirements; it would also give Bay Cities a competitive advantage over other bidders, such as DGC, who complied with Caltrans' subcontractor listing requirements.

Accordingly, Caltrans should reject Bay Cities' bid as nonresponsive.

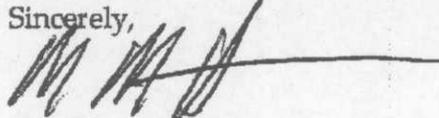
BAY CITIES BID IS ALSO DEFECTIVE WITH REGARD TO BID ITEM 71

Bay Cities' DBE submittal to Caltrans included a DBE-Commitment form that claims \$540,835 in DBE participation for using G-C Equipment to supply materials for Bid Item 68, 69 and 71 work. (A copy of this page is enclosed). This form states that G-C Equipment is a "2nd Tier Supplier to Independent Structures." Yet, Independent Structures is legally precluded from performing any Bid Item 71 work, because it was not listed for any such work on Bay Cities' Subcontractor List. Instead, Bay Cities listed Farwest Safety, Inc. for 100% of the Bid Item 71 work. (A copy of the relevant page from Bay Cities' Subcontractor list is enclosed.)

CONCLUSION

For the reasons set forth above, DeSilva Gates Construction, LP respectfully requests that Bay Cities' bid be rejected, and that award of the above-referenced contract be made to DeSilva Gates Construction, LP, the low responsive bidder.

Sincerely,



Randall M. Smith

Attorney for DeSilva Gates Construction, LP

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 04-2J0704 Project ID: 0414000421

Bidder Name: Bay Cities Paving & Grading, Inc.

Bidder ID: VC0000017986

DES-OE-0102.2C (REV 03/2015)

Bidding Firm: Bay Cities Paving & Grading, Inc.

List this sub? Yes

7) Business Name FBD Vanguard Construction
 Location City Livermore State CA
 California Contractor License Number 833032
 Public Works Contractor Registration Number 1000008493
 Portion of Work Subcontracted:

Item #	Description
100 100	
101 100	
→ 102 85	Install concrete barrier only
103 100	
104 100	

List this sub? Yes

8) Business Name FBD Vanguard Construction
 Location City Livermore State CA
 California Contractor License Number 833032
 Public Works Contractor Registration Number 1000008493
 Portion of Work Subcontracted:

Item #	Description
105 100	
→ 106 75	Install concrete barrier only
107 100	
→ 108 85	Install concrete barrier only
109 100	

List this sub? Yes

9) Business Name FBD Vanguard Construction
 Location City Livermore State CA
 California Contractor License Number 833032
 Public Works Contractor Registration Number 1000008493
 Portion of Work Subcontracted:

Item #	Description
110 100	
111 100	
112 100	
113 100	
114 100	

DEC. 8. 2015 9:53AM MCM CONSTRUCTION

NO. 4786 P. 7

STATE OF CALIFORNIA - CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUNDO G. BROWN Jr. Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER
1727 30th STREET, MS-43
P.O. BOX 168044
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6299
FAX (916) 227-6282
TTY 711
www.dot.ca.gov



Severe Drought
Help save water!

October 8, 2015

Facsimile: (626) 960-3887

George Chumo, President
Chumo Construction, Inc.
14425 Joanbridge Street
Baldwin Park, CA 91706

07-293404
07-LA-5-25.2/25.9
B.O. 09/17/2015

Dear Mr. Chumo:

The Department of Transportation (Caltrans) received a bid submitted by Chumo Construction, Inc. (Chumo) for Contract 07-293404 on September 17, 2015. Caltrans notifies Chumo that its bid is nonresponsive because it failed to properly submit the Subcontractor List form.

2-1.10 Subcontractor List states in part... "For each subcontractor listed, the Subcontractor List form must show: (4.3) Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent."



Chumo listed Calstripe to perform 21 percent of bid item 1, but failed to provide the description of subcontracted work.

Based on the above, 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 2010 Standard Specifications. Caltrans is not obligated to offer an extension of the award period for a nonresponsive bid. Should you wish to extend your bid while resolving a nonresponsive finding, you must send your request to the Office Engineer no later than 4:00 p.m., two business days prior to the expiration of your bid.

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

Sincerely,

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

12-09-15 10:54 AM

Low Bidder

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
DBE - COMMITMENT
DES-DB-0122100 - PREV 12/2014

CONTRACT NO: 04-2J0704

BID AMOUNT: \$ 49,896,755.⁰⁰

BID OPENING DATE: December 3, 2015

BIDDER NAME: Bay Cities Paving & Grading, Inc.

DBE GOAL FROM CONTRACT NO: 18

DBE PRIME CONTRACTOR CERTIFICATION: _____

TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE): _____

TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE): _____

DBE ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED*	WORK CATEGORY CODES*	NAME OF DBE - Must be certified on the date bids are opened. Include Contractor's certification no., DBE address, and phone number. Show bid and lower tier subcontractors.	AMOUNT (\$)
68,69 (71) (Partial)	2nd Tier Supplier to Independent Structures - Structural Steel Sign Structure & Metal	C0699 C0600	G-C Equipment 1875 West Redwood Road Gardena CA 90247 310-515-6715 CT-520	\$90,835-

Show all DBE firms being claimed for credit, regardless of tier. Attach written certification from each DBE showing that it will be participating in the contract to perform the specific work shown for the specific amount claimed.

The names of the tier DBE subcontractors and items of work must be consistent with the Subcontract List (Pub Cost Code § 4100 et seq.).

Each DBE prime contractor must enter the certification number and show all work to be performed by DBEs, including work performed by its own forces.

If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be performed or furnished.

*Use Major Category Codes from the California Unified Certification Program database.

Total Claimed Participation: _____

The bidder acknowledges that it is permitted to use the DBE's address on this form to one of the contract goals (49 CFR 26.53).

Signature of Bidder: _____

Date: _____ (Area Code) Tel. No. _____

Person to Contact: _____ (Phone Type or Print) _____

See Page 1

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Contract No. 04-2J0704

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
 Contract No.: 04-2J0704 Project ID: 0414000421
 Bidder Name: Bay Cities Paving & Grading, Inc. Bidder ID: VC0000017986
 DES-OE-0102.2C (REV 03/2015)

Bidding Firm: Bay Cities Paving & Grading, Inc.

List this sub? Yes

- 1) Business Name Farwest Safety Inc
 Location City Lodi State CA
 California Contractor License Number 523187
 Public Works Contractor Registration Number 1000001371
 Portion of Work Subcontracted:

Item #	Description
4 100	
7 100	
10 100	
29 100	
71 100	



List this sub? Yes

- 2) Business Name Farwest Safety Inc
 Location City Lodi State CA
 California Contractor License Number 523187
 Public Works Contractor Registration Number 1000001371
 Portion of Work Subcontracted:

Item #	Description
72 100	
75 100	
77 100	
88 100	
90 100	

List this sub? Yes

- 3) Business Name Farwest Safety Inc
 Location City Lodi State CA
 California Contractor License Number 523187
 Public Works Contractor Registration Number 1000001371
 Portion of Work Subcontracted:

Item #	Description
76 43	Sheeting for Roadside Signs Only