

MASSA CONSTRUCTION COMPANY, INC.

BUILDING & ENGINEERING CONTRACTOR

November 18, 2013

Mulissa Smith, Contract Awards Branch Chief
Department of Transportation
1727 30th Street
Sacramento, CA 95816-8041

Re: **Contract No. 04-3G0204: Bid Protest**

Dear Ms. Smith:

Massa Construction Co., Inc. requests that the proposals from Pavex and Gordon Ball, Inc. for Contract No. 04-3G0204 be declared non-responsive to the bid requirements and be disqualified to receive the contract award for the project. Massa Construction Co., Inc. is the apparent 3rd low bidder for Contract No. 04-3G0204 based on the issuance of non-responsiveness notifications to the original 3rd, 4th, and 5th bidders.

The proposals submitted by Pavex and Gordon H. Ball Inc. on October 9, 2013, for Contract No. 04-3G0204 contain inconsistent and inaccurate information. These proposal deficiencies are a violation of compliance with Caltrans bid documents requirements; therefore, each of these proposals is nonresponsive.

Pavex: Non-Responsive Subcontractor List/Caltrans Bidder-DBE-Commitment Form

The proposal submitted by Pavex for Contract No. 04-3G0204 contains inconsistent information in the Subcontractor List and the Caltrans Bidder-DBE-Commitment form for the same items of work.

The Caltrans Bidder-DBE-Commitment form states (*italics and underline added by MCC*):

"IMPORTANT. Identify all DBE firms being claimed for credit regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable, with the names and items of work in the "Subcontractor List" submitted with your bid."

The inconsistency of the listings in the "Subcontractor List Column 4: Description of Subcontracted Work" and the Caltrans Bidder-DBE-Commitment column entitled "Item of Work and Description of Services to be Contracted..." is evident by a lack of descriptions for "Bid Item Nos. 5, 6, 49, 50, 27, 28, 29, 30, & 31" on the Caltrans Bidder-DBE-Commitment form as required.

As an example, Pavex indicates this information in the "Bid Date" and the "24-Hour" Subcontractor Lists:

Column 1-"Business Name": *"Frank Medina"*

Column 4-"Description of Subcontracted Work": *"Work as described in bid item #: 40, 41, 45-48"*

This listing method utilized by Pavex in "Column 4: Description of Subcontracted Work" to describe the subcontracted work with bid item numbers is accepted by Caltrans and is not an issue of this bid protest.

However, in the Caltrans Bidder-DBE-Commitment form submitted by Pavex, the required information, which is inconsistent with the Subcontractor List information, is listed with descriptive words that are repeatedly incorrect or excluded for specific bid items instead of the accepted specific "bid item #" references:

Column-"Bid Item No.": *"40-41"*

Column-"Item of work and description of services to be subcontracted...": *"Temporary Fence"*.

The correct description for Bid Item 41 is "Temporary Gate", not "Temporary Fence" as described numerically in column 4 of the Subcontractor List as *"Work as described in bid item#: 40, 41, 45-48"*.

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Pavex fails to be consistent with the explicit Caltrans listing requirements and with their own preferred "Description of Subcontracted Work" numerical listing method. A correct, consistent "item of work" description is mandatory for compliance with the Caltrans Bidder-DBE-Commitment requirements; therefore, the proposal by Pavex is non-responsive to the bid requirements and should be disqualified.

Pavex: Incorrect DBE Cost Information

Pavex is non-compliant with the submittal of accurate DBE cost information that correlates correctly with the costs proposed by the DBE subcontractor. Pavex overstates a cost of \$8,863.00 for Nitta Erosion Control in the column entitled "Dollar Amount DBE" on their Caltrans Bidder-DBE-Commitment form.

The subcontractor proposal from Nitta Erosion Control dated October 8, 2013, enclosed with the DBE documentation from Pavex, includes the following six bid items:

Item 13	2140.00
Item 27	3727.80
Item 28	342.00
Item 29	1170.00
Item 30	1026.00
Item 31	513.00

The summation amount for these six bid items is \$8,826.30, not \$8,863.00, as incorrectly listed by Pavex.

The inaccurate subcontractor cost information provided by Pavex on the Caltrans DBE Commitment form, whether related to the achievement of the DBE goal or whether the cost difference is insignificant to impact the outcome of the bid proposal, is not in conformance with the proposal requirements. The submittal of incorrect DBE cost information by Pavex may have had the potential to negatively influence the outcome of this proposal. However, incorrect information is not acceptable for compliance with the bid requirements; therefore, the proposal by Pavex is non-responsive to the bid requirements.

Gordon Ball: Non-Responsive Subcontractor List/Caltrans Bidder-DBE-Commitment Form

The "24-Hour" Subcontractor List" provided by Gordon Ball on October 10, 2013, is inconsistent compared with the "Bid Date" Subcontractor List. Caltrans has determined that a bid proposal is non-responsive if the information on the "Bid-Date" Subcontractor List is changed on the "24-Hour" Subcontractor List. Based on the Caltrans position, the proposal submitted by Gordon Ball is nonresponsive to the bid requirements.

Gordon Ball submitted the "Bid Date" Subcontractor List with specific descriptive inclusions in Column 4; however, the "Bid Date" Column 4 information is changed on the "24-Hour" Subcontractor List as indicated:

Chrisp

"Bid Date" List: Chrisp is listed in column 1 to perform "*Striping & Marking & Markers*" in column 4.

"24-Hour" List: Chrisp is listed in column 1 to perform Bid Item Nos. 4, 5, 6, 49, & 50 as indicated in column 2. The description for these bid items in column 4 has been changed by Gordon Ball to a generalized description "*Striping*" which excludes "*Markings & Markers*" on the "Bid Date" List

"24-Hour" List: Chrisp is listed in column 1 to perform Bid Item 4 as indicated in column 2. The correct description for Bid Item 4 in column 4 is "*Traffic Control System*", not "*Striping*" as incorrectly stated by Gordon Ball.

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Frank Medina

"Bid Date" List: Frank Medina is listed in column 1 to perform "*Fence & Railing*" in column 4.

"Bid Date" List: Frank Medina is listed in column 1 to perform "*MBGR (partial) & Delineators*" in column 4.

"24-Hour" List: Frank Medina is listed in column 1 to perform Item 41 as indicated in column 2. The correct description for Bid Item 41 in column 4 is "*Temporary Gate*", not "*Fence & Railing*" as incorrectly stated by Gordon Ball.

"24-Hour" List: Frank Medina is listed in column 1 to perform Item 43 as indicated in column 2. The correct description for Bid Item 43 in column 4 is "*Guard Rail Delineator*", not "*MBGR (partial)*" as incorrectly stated by Gordon Ball.

"24-Hour" List: Frank Medina is listed in column 1 to perform Bid Item 48 as indicated in column 2. The correct description for Bid Item 48 in column 4 is "*Alternate In-Line Terminal System*", not "*MBGR (partial)*" as incorrectly listed by Gordon Ball.

The changes to the "24-Hour" Subcontractor List by Gordon Ball revises the descriptions of the scope of work to be performed by Chrisp and Frank Medina from their respective "Description of Subcontracted Work" categories stated in the "Bid Date" Subcontractor List.

These changes provide Gordon Ball with an unfair advantage over the other bidders that permits Gordon Ball to modify their original Subcontractor List and to substitute a modified "24-Hour" Subcontractor List. Therefore, the proposal submitted by Gordon Ball is nonresponsive to the bid requirements.

Request to Award Contract to Massa Construction Co., Inc.

Massa Construction Co., Inc. requests that Caltrans avoid granting an exception from compliance with the bid requirements for Pavex and Gordon Ball that ultimately categorizes their proposals as responsive; especially, if selection of the low responsive bidder is based on incorrect and changed information.

The inconsistencies, changed information, and inaccurate costs in the Subcontractor Lists and DBE Commitment forms submitted by Pavex and Gordon Ball are non-responsive to the Caltrans bid requirements and the specific instructions in the Subcontractor Lists and the DBE Commitment forms.

Caltrans has set the standard for responsiveness with the disqualification of proposals that include listing deficiencies similar to the non-compliant issues presented in this bid protest. Acceptance of noncompliant proposals from Pavex and Gordon Ball by Caltrans will establish a precedent that bid proposals with defective and inconsistent Subcontractor List and DBE cost information are to be categorized as responsive.

Caltrans should proceed to award Contract No. 04-3G0204 to Massa Construction Co., Inc. as the lowest responsible bidder. Please contact me if you require additional information in regard to this letter. Thank you for your time to review this request.

Sincerely,

K. Massa
Kenneth Massa, President