

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER, MS 43
1727 30th STREET
P. O. BOX 168041
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6280
FAX (916) 227-6282
TTY 711



*Flex your power!
Be energy efficient!*

August 19, 2013

Facsimile: (415) 457-5820

Robert O. Valentine, President
Valentine Corporation
P.O. Box 5337
San Rafael, CA 94912

04-4S1604
04-Son-1-21.7
B.O. 07/30/2013

Dear Mr. Valentine:

The Department of Transportation (Caltrans) received the attached letter from Valentine Corporation (Valentine) dated August 13, 2013, protesting a nonresponsive bid finding for contract 04-4S1604. The protest states that the nonresponsive finding was initiated or triggered by a failure to submit the commitment form. Valentine upholds that its bid is responsive because it met the requirements of 2010 Standard Specifications, Section 2-1.12B (2). The protest further states that the commitment form was submitted within the required time frame and that Caltrans is attempting to deem its bid nonresponsive for failure to submit supporting quotes for listed DBEs.

Section 2-1.12B(2) of the 2010 Standard Specifications states in part... "Submit written confirmation from each DBE shown on the form stating that it will be participating in the contract. Include confirmation with the DBE commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE will be participating in the contract". In addition, the instructions on the DBE Commitment form states in part... "Copies of the DBE quotes are required".

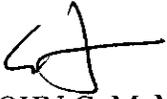
Caltrans utilizes its Standard Specifications as a basis or foundation upon which each project is built and makes these Standard Specifications available to each bidder. It is the sole responsibility of each bidder to comply with those Standards. As evidenced, failure to comply with the standards results in a nonresponsive bid. Attached for Valentine's reference are the specific sections which detail the requirements and instructions for submitting the DBE commitment forms and confirmations. Unfortunately, Valentine did not submit written confirmation with its DBE submittal until August 13, 2013. The due date for this documentation was August 5, 2013, at 4:00 p.m.

Based on the above, Caltrans upholds its nonresponsive finding and will proceed to award the contract to the lowest responsible bidder.

Mr. R. Valentine
August 19, 2013
Page 2

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

SECTION 2

BIDDING

2-1.12B(2) UDBE Commitment Submittal

Submit UDBE information on the *Caltrans Bidder - UDBE - Commitment* form (UDBE commitment form) included in the *Bid* book. If the form is not submitted with the bid, remove the form from the *Bid* book before submitting your bid.

If the UDBE commitment form is not submitted with the bid, the apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the form to the Office Engineer. The UDBE commitment form must be received by the Office Engineer no later than 4:00 p.m. on the 4th business day after bid opening.

Other bidders are not required to submit the UDBE commitment form unless the Department requests it. If the Department requests a UDBE commitment form from you, submit the completed form within 4 business days of the request.



Submit written confirmation from each UDBE shown on the form stating that it will be participating in the Contract. Include confirmation with the UDBE commitment form. A copy of a UDBE's quote will serve as written confirmation that the UDBE will be participating in the Contract.

If you do not submit the UDBE commitment form by the specified time, your bid is nonresponsive.

2-1.12B(3) Good Faith Efforts Submittal

If you have not met the UDBE goal, complete and submit the *Good Faith Efforts Documentation* form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed toward obtaining participation by UDBEs are considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Office Engineer no later than 4:00 p.m. on the 4th business day after bid opening.

If your UDBE commitment form shows that you have met the UDBE goal or if you are required to submit the UDBE commitment form, you must submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Department finds that the UDBE goal has not been met. Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to UDBE firms. Identify those items of work you might otherwise perform with your own forces and those items that have been broken down into economically feasible units to facilitate UDBE participation. For each item listed, show the dollar value and percentage of the total bid. You are responsible to demonstrate that sufficient work to meet the goal was made available to UDBE firms.
2. Names of certified UDBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty whether the UDBEs were interested and include the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified UDBEs through all reasonable and available means and provide enough time to allow UDBEs to respond.
3. Name of selected firm and its status as a UDBE for each item of work made available. Include name, address, and telephone number of each UDBE that provided a quote and its price quote. If the firm selected for the item is not a UDBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested UDBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using UDBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested UDBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the UDBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested UDBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials excluding supplies and equipment that the UDBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the UDBE assisted, nature of the assistance offered, and date assistance was offered. Provide copies of supporting documents, as appropriate.



GENERAL ENGINEERING CONTRACTORS



State of California
Department of Transportation
Office Engineer, MS 43
1727 30th Street
Sacramento, CA 95816

Attn: Mr. John McMillan, Deputy Division Chief

Fax 916-227-6282

VIA FACSIMILE & US MAIL

August 13, 2013

Re: Contract #04-4S1604

Dear Mr. McMillan,

Valentine Corporation is in receipt of your letter dated 8/8/13 providing notification that Valentine's bid for the subject project is non-responsive because "Valentine failed to submit the Disadvantaged Business Enterprise (DBE) commitment form and quotes with 4 business days after bid opening."

Valentine herein disagrees strongly with the State's determination and herein protests any finding that our bid is non-responsive. Valentine's bid is responsive and meets the requirements of the specifications for this project. To that end, please note the following:

- Valentine did submit its UBDE commitment form and Good Faith Effort (GFE) to Caltrans within 4 business days after the bid. This has been acknowledged by your staff, and your letter is incorrect in stating that Valentine failed to submit the commitment form within the required timeframe. Valentine sent our commitment form and GFE documentation to CalTrans via FedEx. Your attention is directed to the attached tracking correspondence from FedEx proving that Valentine's submittal was received by CalTrans at the correct mailing address within 4 business days of the bid date. Given this, Valentine bid is responsive insofar as the UBDE commitment form and GFE were submitted and received by CalTrans within the required time frame stipulated in Specification Section 2-1.12B(2).
- In talking to your staff, it appears CalTrans is deeming Valentine's bid non-responsive because we failed to submit copies of our listed UDDE quotes with our UDDE commitment form. While we acknowledge that these quotes were not contained in our original submittal, Specification Section 2-1.12B(2) clearly states that "if you do not submit the *UBDE commitment form* by the specified time, your bid is nonresponsive." The operative word for consideration here, as specified, is the word "*form*." Please note that while the specification requests copies of UDDE quotes as confirmation that the UDDE will be participating in the Contract, it clearly does not state that a Contractor's bid will be deemed non-responsive if he or she fails to submit the quotes within the required time frame.

Non-responsiveness is clearly initiated or triggered by a failure to submit the commitment form. Valentine upholds that our bid is responsive because we met the requirements of Specification Section 2-1.12B(2), filled out our UDDE commitment form accurately with all required fields, and submitted the form to CalTrans within the required time frame. CalTrans received our UDDE commitment within the required timeframe and is attempting to deem our bid non-responsive for a

VALENTINE CORPORATION

111 PELICAN WAY • SAN RAFAEL, CA 94901 • P.O. BOX 9337 • SAN RAFAEL, CA 94912 • (415) 453-3732 • FAX (415) 457-5820

00-10-13A11000 RCVD

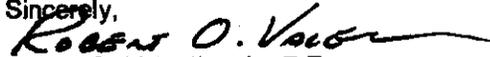
failure to submit supporting quotes for listed UDBE. This action is clearly not allowed per specification Section 2-1.12B(2) and we respectfully request that your decision be rescinded. Attached please find the UDBE quotes for those we have committed to use on this project. Please note that all quotes are date stamped and were received by Valentine prior to the bid delivery date.

- Your letter's rationale for the nonresponsive determination references language at the top of the DBE Commitment form which states "Failure to submit the required DBE information will be grounds for finding the proposal nonresponsive." While the form says this, it also states in the previous sentence that the UDBE commitment form "must be submitted and received as specified in section 2 of the specifications." Given this, it is clear that the language of Section 2-1.12B(2) provides the primary *controlling* criteria for determining responsiveness. As addressed in the prior bullet, the specification does not state unequivocally that one's bid will be deemed nonresponsive if the bidder does not submit the UDBE quotes for UDBE's listed on the commitment form within the required time frame for submission.

Given the above, Valentine herein requests that CalTrans decision contained in its 8/8/13 letter be rescinded so that it is consistent with section 2 of the specifications. If necessary, we herein request a formal hearing prior to award of this Contract to present our position to CalTrans.

Please advise as soon as possible.

Sincerely,


Robert O. Valentine Jr., P.E.
President

CC: DL, ROV
Bill McInerney Jr – McInerney & Dillon

ATTACH: (1) – FedEx Delivery Confirmation
(2) – Copy of UDBE quotes

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

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

Aug 19 2013 04:06pm

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
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STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

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