

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER,
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SACRAMENTO, CA 95816-8041
PHONE (916) 227-6195
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www.dot.ca.gov/hq/esc/oe



*Flex your power!
Be energy efficient!*

August 26, 2013

Facsimile: (714) 935-1199

Joe Fuentes, Estimator
Marina Landscape, Inc.
1900 South Lewis Street
Anaheim, CA 92805

07-2768U4
07-LA-210-R0.8/R4.9
B.O. 08/08/2013

Dear Mr. Fuentes

The Department of Transportation (Caltrans) received the attached letter from Marina Landscape, Inc. (Marina) on August 23, 2013, protesting a nonresponsive bid finding for Contract No. 07-2768U4. The protest states that Marina submitted its documentation within the required time-frame and furnished a complete Disadvantage Business Enterprise (DBE) form and Good Faith Effort document package. In addition, the protest also states that Marina would like to understand the Department's position as to its interpretation of this requirement.

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 and foundation, upon which each project is built and makes these Standard Specifications available to each bidder; it is the sole responsibility of that bidder to adhere and comply with those Standards. As evidenced, failure to comply with the standards, results in a nonresponsive bid. Attached for Marina's reference are the specific sections which detail the requirements and instructions for submitting the DBE commitment forms and confirmations. Unfortunately, Marina did not submit written confirmation with the DBE Commitment form or Good Faith Efforts documentation. The DBE form and the Good Faith documentation was provided on August 13, 2013. However, did not contain any written confirmations from the participating DBE's listed on the DBE commitment form.

As you are aware, Caltrans receives many bids in response to their highway construction contract needs. It is the sole responsibility of the bidder to provide accurate and responsive bids. A change or providing a bidder with an opportunity to submit its documentation outside of the submittal deadline circumvents the competitive bidding process and provides an unfair advantage, as well as a material benefit to Marina.

Mr. J. Fuentes
August 26, 2013
Page 2

Based on the above, Caltrans upholds its original finding of a nonresponsive bid and will proceed to award this contract to lowest responsive and responsible bidder.

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

Sincerely,


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

Attachments

SECTION 2

BIDDING

As-built drawings may not show existing dimensions and conditions. Where new construction dimensions are dependent on existing bridge dimensions, verify the field dimensions and adjust dimensions of the work to fit existing conditions.

2-1.06C–2-1.06D Reserved

2-1.07–2-1.11 RESERVED

2-1.12 DISADVANTAGED BUSINESS ENTERPRISES

2-1.12A General

Section 2-1.12 applies to a federal-aid contract.

Under 49 CFR 26.13(b):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the Contract (49 CFR 26).

2-1.12B Underutilized Disadvantaged Business Enterprises

2-1.12B(1) General

Section 2-1.12B applies if a UDBE goal is shown on the *Notice to Bidders*.

To ensure equal participation of DBE groups provided in 49 CFR 26.5, the Department shows a goal for UDBEs. A UDBE is a firm that meets the definition of DBE and is a member of one of the following groups:

1. Black Americans
2. Native Americans
3. Asian-Pacific Americans
4. Women

References to DBEs include UDBEs, but references to UDBEs do not include all DBEs.

Make work available to UDBEs and select work parts consistent with available UDBE subcontractors and suppliers.

Meet the UDBE goal shown on the *Notice to Bidders* or demonstrate that you made adequate good faith efforts to meet this goal.

You are responsible to verify that the at the bid opening date the UDBE firm is certified as DBE by the CA Unified Certification Program.

Only UDBE participation will count toward the UDBE goal. DBE participation will count toward the Department's federally-mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from UDBEs counts toward the goal in the following manner:

1. 100 percent if the materials or supplies are obtained from a UDBE manufacturer.
2. 60 percent if the materials or supplies are obtained from a UDBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies, if they are obtained from a UDBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit toward the goal if you employ a UDBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1)–(4), (6).

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.

8. Any additional data to support demonstration of good faith efforts.

The Department may consider UDBE commitments of the 2nd and 3rd bidders in determining whether the low bidder made good faith efforts to meet the UDBE goal.

2-1.13–2-1.14 RESERVED

2-1.15 DISABLED VETERAN BUSINESS ENTERPRISES

2-1.15A General

Section 2-1.15 applies to a non-federal-aid contract.

Take necessary and reasonable steps to ensure that DVBEs have opportunity to participate in the Contract.

Comply with Mil & Vet Code § 999 et seq.

2-1.15B Projects \$5 Million or Less

Section 2-1.15B applies to a project with an estimated cost of \$5 million or less.

Make work available to DVBEs and select work parts consistent with available DVBE subcontractors and suppliers.

Meet the goal shown on the *Notice to Bidders*.

Complete and submit the *Certified DVBE Summary* form. List all DVBE participation on this form. For an informal-bid contract, submit the form with your bid. For a non-informal-bid contract, you may submit the form with your bid; if you do not, submit it such that it is received at the Office Engineer no later than 4:00 p.m. on the 4th business day after bid opening. If a DVBE joint venture is used, submit the joint venture agreement with the *Certified DVBE Summary* form.

List each 1st-tier DVBE subcontractor in the *Subcontractor List* form regardless of percentage of the total bid.

2-1.15C Projects More Than \$5 Million

2-1.15C(1) General

Section 2-1.15C applies to a project with an estimated cost of more than \$5 million

The Department encourages bidders to obtain DVBE participation to ensure the Department achieves its State-mandated overall DVBE goal.

If you obtain DVBE participation:

1. Complete and submit the *Certified DVBE Summary* form. List all DVBE participation on this form.
2. List each 1st tier DVBE subcontractor in the *Subcontractor List* form regardless of percentage of the total bid.

2-1.15C(2) DVBE Incentive

The Department grants a DVBE incentive to each bidder who achieves a DVBE participation of 1 percent or greater (Mil & Vet Code 999.5 and Code of Regs § 1896.98 et seq.).

To receive this incentive, submit the *Certified DVBE Summary* form. For an informal-bid contract, submit the form with your bid. For a non-informal-bid-contract, you may submit the form with your bid; if you do not and you are the low bidder or the 2nd or 3rd low bidder, submit it such that it is received at the Office Engineer no later than 4:00 p.m. on the 4th business day after bid opening. If a DVBE joint venture is used, submit the joint venture agreement with the *Certified DVBE Summary* form. Other bidders may be required to submit this form if bid ranking changes.

2-1.15C(3) Incentive Evaluation

The Department applies the small business and non–small business preference during bid verification and proceeds with the evaluation specified below for DVBE incentive.

Add to the table in section 1-1.11:

Office Engineer–All Projects Currently Advertised	http://www.dot.ca.gov/hq/esc/oe/weekly_ads/all_advertised.php		01-20-12
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2 BIDDING

07-19-13

Replace the 3rd paragraph of section 2-1.06B with:

If an *Information Handout* or cross sections are available:

01-20-12

1. You may view them at the Contract Plans and Special Provisions link at the Office Engineer–All Projects Currently Advertised Web site
2. For an informal-bid contract, you may obtain them at the Bidders' Exchange street address

Add a paragraph break between the 1st and 2nd sentences of the 5th paragraph of section 2-1.06B.

01-20-12

Add between "and" and "are" in item 2 in the list in the 7th paragraph of section 2-1.06B:

they

04-20-12

Delete "Underutilized" in "Underutilized Disadvantaged Business Enterprises" in the heading of section 2-1.12B.

06-20-12

Delete *U* in *UDBE* at each occurrence in section 2-1.12B.

06-20-12

Replace the 2nd paragraph of section 2-1.12B(1) with:

To ensure equal participation of DBEs provided in 49 CFR 26.5, the Department shows a goal for DBEs.

06-20-12

Delete the 3rd paragraph of section 2-1.12B(1):

06-20-12

Replace the 7th paragraph of section 2-1.12B(1) with:

All DBE participation will count toward the Department's federally-mandated statewide overall DBE goal.

06-20-12

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

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

Aug 26 2013 03:05pm

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STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

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