

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER
1727 30th STREET, MS-43
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6195
FAX (916) 227-6282
www.dot.ca.gov/hq/esc/oe



*Flex your power!
Be energy efficient!*

September 23, 2013

Facsimile: (800) 750-9094

Makana Amer, President
YAKAR
113 E. Arrow Hwy
San Dimas, CA 91773

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

Dear Mr. Amer:

The Department of Transportation (Caltrans) received the attached letters submitted by YAKAR dated August 16 and August 29, 2013, protesting the Disadvantaged Business Enterprise (DBE) commitment form submitted by Marina Landscape (Marina) and STL Landscape, Inc. (STL). The protests allege that the DBE commitment form submitted by Marina did not properly identify the DBE subcontractor nor did Marina submit written confirmation from the DBE, KRC Safety. In addition, the DBE commitment form submitted by STL was received after the 4th business day, following the bid opening.

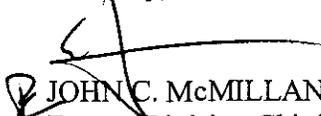
Caltrans reviewed the bid documents for Marina, as well as the protest and determined that the bid submitted by Marina was found nonresponsive. Regarding the DBE submittal for STL, as you are aware, the Contract Special Provision Section 2-1.12B (2) Disadvantaged Business Enterprises, states in part: ... "Other bidders are not required to submit the DBE commitment form unless the Department requests it. If the Department requests the DBE commitment form from you, submit the completed form within 4 business days of the request."

Since STL was not the low, second or third bidder, the DBE commitment form and written confirmation(s) were not required to be submitted unless, it was requested. In this case, Caltrans requested the DBE documentation on August 16, 2013, with a due date of August 22, 2013. Caltrans received that documentation on August 21, 2013, within 4 business days of the request.

Based on the above, the protest submitted by YAKAR lack merit and Caltrans will proceed to award this contract to the lowest responsive and responsible bidder provided that all requirements are met.

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

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.

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
---	---	----	----------

AA

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



August 29, 2013

Via Facsimile & U.S. Mail
Atten: John Mc Millan
Department of Transportation
Division of Engineering Services
Office Engineer MS 43
1727 30th Street
Sacramento, CA 95816-804

Re: Contract Number: 07-2768U4
Bid Opening Date: 08-08-13
Bid Protest: STL Landscape

Dear Mr. McMillian,

YAKAR has reviewed the bid forms and DBE Commitment Form as submitted by the apparent low bidder, STL Landscape and is requesting that Caltrans find STL non-responsive due to the following reasons:

DBE Submittal:

Upon observation of STL Landscape DBE Submittal, STL Landscape has not met the requirements of Section 2, 2-1.12B(2) of Caltrans Special Provisions. Section 2 indicates, "If the UDBE commitment form is not submitted with the bid.... 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."

Please see attached STL Landscape DBE Submittal; Project bid date is 8-8-13, pursuant to Section 2, the DBE Commitment form must be submitted no later than 8-14-13, 4pm. STL Landscape DBE Commitment form has been stamped received by the Office Engineer on 8-21-13, which deems STL Landscape non-compliant and non-responsive with Section 2.

In addition, to solidify the statement, within STL's DBE Submittal, STL has procured DBE Subcontractors information from, Department of Transportation, Query Search on 8-20-13, after the deadline of 8-14-13, 4pm.

STL has also failed to submit any good faith efforts pursuant to Section 2-1-12B(3).



Inconsistencies Listed in its Subcontractors List Form and DBE Commitment Form:

STL submitted its DBE Commitment form listing ESWPP Consultants to perform Bid Item, 1, 4, 5 and 6, decried as, Lead Compliance Plan, Job Site Management, Prepare Storm Water Pollution Prevention Plan, Storm Water Annual Report. However, on the Subcontractors List form submitted on 8-8-13, ESWPP was not listed. STL failed to list ESWPP to perform any portion of the work described as, Lead Compliance Plan, Job Site Management, Prepare Storm Water Pollution Prevention Plan, Storm Water Annual Report.

Unbalanced bid amounts for Item 23, 24 and 33, in comparison to the averages to submitted bids. The average for bid Item No. 23, is \$252, Item No. 24, is \$258, and Item No. 33, is \$2033. In comparison to STL submitted bid amounts for Item No. 23, 24 and 33, the numbers are unbalanced, inconsistent and well above averages.

STL bid Item No. 23, is \$1,000 which is 400% more than the average. Item No. 24, is \$1,100 which is 425% more than the average. Item No. 33, is \$25,000 which is 1200% more than the average.

Based on the above, Caltrans shall find STL Landscape, bid nonresponsive, due to failure to submit the DBE Commitment Form within specified time, inconsistencies in listed subcontractors, and unbalance bid. We hereby protest STL Landscape Bid, in all fairness to bidding contractors.

If you have any further questions, please do not hesitate to contact our office.

Respectfully,



Makana Amer



August 16, 2013

Via Facsimile & U.S. Mail
Atten: John Mc Millan
Department of Transportation
Division of Engineering Services
Office Engineer MS 43
1727 30th Street
Sacramento, CA 95816-804

Re: Contract Number: 07-276BU4
Bid Opening Date: 08-08-13
Bid Protest: Marina Landscape Inc. (Apparent 1st Low Bidder)

Dear Mr. McMillian,

YAKAR has reviewed the bid forms and DBE Commitment Form as submitted by the apparent low bidder, Marina Landscape Inc. ("Marina") and is requesting that Caltrans find Marina non-responsive due to the following reasons:

DBE Goal:

Marina has failed to meet the required DBE Goal of 5%. Due to failure to comply with Section 2-1.02 DISAVANTAGED BUSINESS ENTERPRISES, sixth paragraph which states "Meet the DBE goal shown in the Notice to Bidders or demonstrate that you make adequate good faith efforts to meet this goal." They also failed to completely fill out a section of the DBE Commitment Form which states "include Caltrans Certification #, DBE address and phone number" for KRC Safety. On the DBE Commitment Form, the third sentence of the first paragraph states "Failure to submit the required DBE information will be grounds for finding the proposal non-responsive."

DBE Good Faith Effort:

Marina's Good Faith Effort (GFE) did not comply with Contract Special Provisions, Section 2-1.12B(2) Disadvantaged Business Enterprises, which states in part: "Submit written confirmation from each DBE shown on the form stating that it will be participating in the Contract. Include information with the DBE Commitment form. A copy of the DBE's quote will serve as written confirmation that the DBE will be participating in the Contract."

YAKAR has been recently considered non-responsive, due to non-compliance of Special Provisions, Section 2-1.12(B)2.

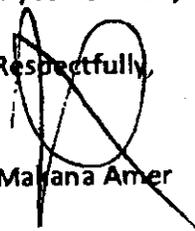


Marina failed to submit in their bid package the written confirmation from KRC Safety as required and described in Section 2-1.12B(2)

Based on the above, Caltrans shall find Marina Landscape Inc., bid nonresponsive. We hereby request award of Contract # 07-2768U4 to the next lowest most responsive and responsible bidder, YAKAR.

If you have any further questions, please do not hesitate to contact our office.

Respectfully,



Marjana Amer

LOW BIDDER

Low Bidder

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
CALTRANS BIDDER - DBE - COMMITMENT
DES-05-0102 10C (NEW 02/2012)

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the contract awarded low bidder, it must be submitted and received or specified in section 7 of the specifications. Failure to submit the required DBE information will be grounds for finding the bid unresponsive.

CONTRACT NO:
07-2768U4

BID AMOUNT:
\$ 1,381,908.85

BID OPENING DATE:
8/8/13

BIDDER'S NAME:
Marina Landscape, Inc

DBE GOAL FROM CONTRACT: %

DBE PRIME CONTRACTOR CERTIFICATION:

5%
N/A

BID ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED?	FOR CALTRANS USE ONLY	NAME OF DBE: (Must be certified on this date bid was opened - include Caltrans certification #, DBE address and phone number) (Indicate 2nd and lower tier subcontractors)	DOLLAR AMOUNT DBE*
2	CONSTRUCTION SIGNS		KRL SAFETY	\$9,462.00

IMPORTANT: Identity of DBE firms being selected for credit purposes of the Bureau of the First Tier DBE Subcontractors and their respective tier(s) of work based should be submitted, where applicable, with the names and items of work in the "Subcontractor List" attached to this proposal. Copies of the DBE questionnaires are required.

- DBE prime contractor must enter their certification number and indicate all work to be performed by DBEs including work performed by its own forces.
- If 100% of work is not to be performed or furnished by DBE, describe exact portion of work to be performed or furnished.
- See section 2-1.12 of the specifications to determine the credit allowed for DBE firms.

Submit to:

MSC 43
OFFICE ENGINEER
DEPARTMENT OF TRANSPORTATION
1727 39TH STREET
SACRAMENTO, CA 95816-7888

THIS BIDDER PARTICIPATES

\$9,462.00

1.006 %

[Signature]
Name of Bidder

8/8/13
Date

(714) 939-6600
(Area Code) Tel. No.

John Gutierrez
Person in Contact

(Please Type or Print)

ADA Notice For individuals with sensory disabilities, this document is available in alternate format. For information call (916) 664-6610 or TDD (916) 664-3889 or write Research and Future Management, 1727 N Street, MS-88, Sacramento, CA 95814.

Contract No. 07-2768U4

9

06-13-13A11:53 RCVB

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).

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.



YAKAR
GENERAL CONTRACTORS

113 E ARROW HWY
SAN DIMAS, CA 91773
Tel : 909-599-1612
Fax: 800-750- 9094

To:	Department of Transportation	From:	Lucy N.
Fax:	916-227-6282	Pages:	6
Phone:		Date:	08/16/13
Re:	Bid Protest- 07-2768U4	CC:	

Urgent For Review Please Comment Please Reply Please Recycle

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

P. 1

Sep 23 2013 04:33pm

CALTRANS CONTR AWARDS Fax 916-227-6282

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
918007509094	Normal	23:04:29pm	3' 49"	11	O K	

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER
1727 30th STREET, MS-43
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6195
FAX (916) 227-6282
www.dot.ca.gov/hq/esc/oe



*Flex your power!
Be energy efficient!*

September 23, 2013

Facsimile: (800) 750-9094

Makana Amer, President
YAKAR
113 E. Arrow Hwy
San Dimas, CA 91773

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

Dear Mr. Amer:

The Department of Transportation (Caltrans) received the attached letters submitted by YAKAR dated August 16 and August 29, 2013, protesting the Disadvantaged Business Enterprise (DBE) commitment form submitted by Marina Landscape (Marina) and STL Landscape, Inc. (STL). The protests allege that the DBE commitment form submitted by Marina did not properly identify the DBE subcontractor nor did Marina submit written confirmation from the DBE, KRC Safety. In addition, the DBE commitment form submitted by STL was received after the 4th business day, following the bid opening.

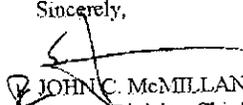
Caltrans reviewed the bid documents for Marina, as well as the protest and determined that the bid submitted by Marina was found nonresponsive. Regarding the DBE submittal for STL, as you are aware, the Contract Special Provision Section 2-1.12B (2) Disadvantaged Business Enterprises, states in part: ... "Other bidders are not required to submit the DBE commitment form unless the Department requests it. If the Department requests the DBE commitment form from you, submit the completed form within 4 business days of the request."

Since STL was not the low, second or third bidder, the DBE commitment form and written confirmation(s) were not required to be submitted unless, it was requested. In this case, Caltrans requested the DBE documentation on August 16, 2013, with a due date of August 22, 2013. Caltrans received that documentation on August 21, 2013, within 4 business days of the request.

Based on the above, the protest submitted by YAKAR lack merit and Caltrans will proceed to award this contract to the lowest responsive and responsible bidder provided that all requirements are met.

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