

MGP CONSTRUCTION

P.O. BOX 355, UPLAND, CA 91785

BID/AWARD PROTEST

VIA FACSIMILE (919)227-6282

December 11, 2014

Department of transportation
Division of Engineering Services
Office Engineer, MS 43
P.O. Box 168041
Sacramento, CA 95816-8041

Project: **Contract Number 07-2W5404 07-KER-5725**

Project ID: 0713000206

Dear Sir/Madame:

After receiving your **Notice of Award Rescission dated 12/10/2014**

MGP Construction submits our written protest to contract No. 07-2W5404 being awarded to GEMS Environmental Management Services, Inc.

MGP Construction feels that it should be considered the lowest responsive and responsible bidder and that GEMS Environmental Management Services, Inc. must be considered non responsive for the following reasons:

As you stated in part in your letter dated 11/17/2014 "Caltrans did not complete an evaluation of this protest since the bid submitted by GEMS did not meet the DVBE goal" our protest dated 10/27/2014

Please review the full protest.

- As part of original protest we stated in part " , section 2-1.15A states in part "comply with Mil & Vet Code 999 et seq." and Special provisions, section 2-1.15B states in part " meet the goal shown on notice to bidders" on this contract it is 3%

Mil & Vet Code 999 states in part that a DVBE Contractor, subcontractor, or supplier performs a "commercially useful function" which it defines as a person or entity that does all of the following:

- Is responsible for the execution of a distinct element of the work of the contract.
- Carries out the obligation by actually performing, managing, or supervising the work involved.
- Performs work that is normal for its business services and functions.

- Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing if applicable, and making payment.
- Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.
- A contractor, subcontractor, or supplier will **not** be considered to perform a "commercially useful function" if the contractor, subcontractor, or supplier's role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of a disabled veteran business enterprise participation.

GEMS Environmental Management Services, Inc. has listed as their DVBE material supplier Anchor supply, Inc. which, (according to their certification) lists no physical address (only P.O. Box) When we attempted using the link found on their certification it only led us to a site trying to sell a domain name.

When Anchor Supply was contacted, they responded,

"The way our process works is, first let us know what you're looking for, and for what contract, and we will send you a price quote. Please give us specifics, such as part numbers or manufacture name and numbers. Then, if you like the pricing, you would just let us know you would like to order it, and we would place the order and have it shipped directly to you."

This describes an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation.

This does not satisfy the above criteria of the Mil & Vet code and the bid must be rejected as nonresponsive.

All material terms clearly identified in your bid package and revised standard Specifications must be uniformly enforced so that no bidder has an advantage or benefit not allowed other bidders.

Thank you for your consideration.

Sincerely,



Robert Andrade

Project coordinator

MGP Construction, office (909) 982-2364, cell (909)636-3588

E-mail robandrade@verizon.net

Attachments:

- Caltrans letter dated 11/17/2014,
- Copy of page revised standard spec. quoted,
- E-Mail response from Anchor Supply, Inc

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER
P.O. BOX 168041, MS-43
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6299
FAX (916) 227-6282
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www.dot.ca.gov



*Serious drought.
Help save water!*

November 17, 2014

Facsimile: (925) 671-7120

Michael G. Porteous, Owner
MGP Construction
Post Office Box 355
Upland, CA 91785

07-2W5404
07-Ker-5725
B.O. 10/15/14

Dear Mr. Porteous:

The Department of Transportation (Caltrans) received a letter dated October 27, 2014 from MGP Construction (MGP), protesting GEMS Environmental Management Services, Inc's (GEMS) bid. The protest alleges that GEMS Disabled Veteran Business Enterprises (DVBE) Summary form failed to describe the exact part that is being supplied by Anchor Supply, Inc. MGP requests Caltrans find GEMS bid nonresponsive.

Caltrans did not complete an evaluation of this protest since the bid submitted by GEMS did not meet the DVBE goal for this contract.

Based on the above, Caltrans will proceed to award the contract to the lowest responsible bidder, provided all the requirements are met.

If you have any questions, please contact Molly Yumikura, Contract Awards Analyst, at (916) 227-6296.

Sincerely,

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

Attachment

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 under section 2-1.33. List all DVBE participation on this form.

If a DVBE joint venture is used, submit the joint venture agreement with the Certified DVBE Summary form.

List each 1st-tier DVBE subcontractor on 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 under section 2-1.33. 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.

If a DVBE joint venture is used, submit the joint venture agreement with the Certified DVBE Summary form.

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 under section 2-1.33.

Bidders other than the apparent low bidder, the 2nd low bidder, and the 3rd low bidder may be required to submit the Certified DVBE Summary form if the bid ranking changes. If the Department requests a Certified DVBE Summary form from you, submit the completed form within 4 business days of the request.

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.

The DVBE incentive is a reduction, for bid comparison only, in the total bid submitted by the lesser of the following amounts:

Robert Andrade

From: Charles Scarrott <cscarrott@netscape.com>
Sent: Wednesday, October 29, 2014 5:10 PM
To: Robert Andrade; Mike Porteous
Subject: Fwd: Information

Guys,
This is the response from Anchor Supply!

Regards
Chuck Scarrott
High Tower Construction Services LLC
Chuck Scarrott ISA-AM
Member of SC&RA
805 501-1350
SC&RA Member

Begin forwarded message:

From: Anchor Supply Inc <anchorsupply@msn.com>
Date: October 28, 2014 at 11:44:36 AM MST
To: "cscarrott@netscape.com" <cscarrott@netscape.com>
Subject: RE: Information

Hello,

Sorry for the delay. Yes, we are a DVBE supplier. We carry various supplies. We can get industrial supplies, janitorial supplies, plumbing supplies, electrical supplies, etc.

The way our process works is, first let us know what you're looking for, and for what contract, and we will send you a price quote. Please give us specifics, such as part numbers or manufacture name and numbers. Then, if you like the pricing, you would just let us know you would like to order it, and we would place the order and have it shipped directly to you.

We do not have a line card but we can get items from various places. To give you an example of what we carry we can get any thing from MSC or Grainger, but we are not limited to only their supplies. (MSC's website is <http://www.mscdirect.com/>)

Payment can be made by credit card or we can set you up terms.

Hope this helps,

Ariel Hauger
Anchor Supply

M.G.P CONSTRUCTION
F A X T R A N S M I T T A L

DATE:	12/11/2014		
TO:	Bid award protest	FROM:	MGP CONSTRUCTION
FAX:	916 227-6282	FAX:	909-982-8663
TEL:		TEL:	909-982-2364
CC:		PAGES:	6 inc cover

COMMENTS:

PLEASE FIND ATTACHED:

BID AWARD PROTEST
CONTRACT 07-2W5404, 07-KER-5725
PROJECT ID 0713000206

THANK YOU



ROBERT ANDRADE