

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER
1727 30th STREET, MS-43
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!*

January 30, 2014

Facsimile: (714) 538-5157

Kristi Stelle, Vice President
Highland Construction, Inc.
133 N. Pixley Street
Orange, CA 92868

07-3X3904
07-LA-1-8.7
B.O. 11/07/2013

Dear Ms. Stelle:

The Department of Transportation (Caltrans) received the attached letter dated December 2, 2013, from Highland Construction, Inc. (Highland), protesting the bids submitted by John S. Meek (Meek) and Peterson-Chase General Engineering Construction, Inc. (Peterson-Chase). The protest alleges that Meek's bid did not contain the required Society for Protective Coatings, Qualification Procedure (SSPC-QP3). The protest further alleges that Peterson-Chase's Subcontractor List form did not include a certified painter to perform bid item 51 and that Peterson-Chase does not possess a SSPC-QP1 to self perform this item of work. In addition, Peterson-Chase listed Rupert to clean and paint steel and furnish concrete lagging. However, Rupert a certified DBE does not possess the correct certification to provide the stated work.

Caltrans did not review the protest as it pertains to Meek, since the bid submitted by Meeks was found nonresponsive.

Peterson-Chase did provide a copy of the SSPC-QP3 Certification from R&B Coatings, as required by the Addendum issued for the project. R&B Coatings is not under contract to Peterson-Chase, and therefore does not need to list this company as a subcontractor.

The Caltrans Good Faith Effort Reconsideration Committee met with Peterson-Chase on January 22, 2014, and as result of that meeting, disallowed the DBE participation for the clean/paint, and the placement of studs for the steel soldier pile. After the disallowance, Peterson-Chase was certified with a DBE participation of 10.02 percent for the project.

As this protest pertains to the DBE issue, Rupert is a certified DBE, with a work code for the supply of Timber Laggings. The Reconsideration Committee found the material associated with the supply of lagging to be immaterial and as such, the participation will be allowed for this project.

Ms. K. Stelle
January 30, 2014
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Based on the above, 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 Manager, at (916) 227-6228.

Sincerely,



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

Attachment



Lic. #743775

December 2, 2013

John McMillan
Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
Sacramento, CA 95816-8041

FAXED

Re: Contract Number 07-3X3904
Bid Opening Date: November 7, 2013
Bid Protest – Peterson Chase (Apparent 1st Bidder)
Bid Protest – John S. Meek (Apparent 2nd Bidder)

Dear Mr. McMillan:

We hereby protest the award of the above-mentioned contract to the Apparent 1st low bidder, Peterson Chase and the Apparent 2nd bidder, John S. Meek for the following reasons:

JOHN S. MEEK (Meek) – Non-Responsive:

Addendum No. 2 was issued on October 22, 2013 that replaced "Reserved" in Section 59-2.01C(2) and required the contractor to submit the SSPC-QP 3 (Enclosed Shop) by 4:00 p.m. on the second business day after bid opening, in accordance with Section 2-1.35 of the 2010 Standard Specifications.

Meek did not submit the required Enclosed Shop SSPC-QP 3 within the specified time frame. As such, Caltrans must find Meek "non-responsive" and award the contract to the next lowest responsible bidder.

PETERSON CHASE:

1) ***Failure to List Subcontractor***

The contract bid item #51 requires the steel soldier pile to be undercoated with zinc prior to the installation. Once the piles have been placed, the steel piles must receive two finish coats of paint in the field. The specifications that govern this work are covered in Section 59 of the 2010 Standard Specifications. The (finish coat) field painting requires the SSPC-QP 1 certifications and is commonly subcontracted to a certified painter. Peterson Chase did not list a subcontractor to perform this work and to our knowledge does not possess the SSPC-QP 1 qualifications to self-perform this item of work.

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2) ***DBE Goal Overstated / No GFE***

The stated DBE Goal for this project is eight percent (8%). Peterson Chase claims to have exceeded the goal by utilizing Rupert Construction Supply (Rupert) to supply Steel Soldier Piles (Items 38-45), Clean & Paint Steel (Item #51) and Furnish Concrete Lagging (Item #49). Chase's total DBE Commitment is \$248,738.00, which is sixty-percent of Rupert's total quotation of \$414,563.25. However, Rupert does not hold the proper certifications to "clean and paint steel" (Item #51) nor is Rupert certified to supply precast concrete lagging (Item #49), which is discussed in detail below.

3) ***Bid Item #51 - Clean & Paint Steel***

Bid Item #51 zinc undercoated in accordance with Section 59 of 2010 Standard Specifications. The required coating must be performed by a SSPC- QP 3 certified enclosed shop. The bidder is required to submit the SSPC-QP 3 certification with the bidder proposal. Peterson Chase claimed participation by Rupert for this item in their DBE Commitment. However, the SSPC-QP 3 certification that was provided by Peterson Chase at bid time is by R& B Coatings in Linden, California.

It appears that R&B Coatings (R&B) is the actual entity performing the work required for Bid Item #51 (Clean & Paint Steel), including the surface prep blast cleaning, zinc undercoating, welding of the studs and providing transportation from their shop in Linden, California to the jobsite. Rupert quoted \$51,200.00 to "clean and undercoat new steel piles." However, this work will be performed by R&B. R&B will also be welding of the studs to the steel beams that were quoted by Rupert, along with transportation of the painted steel beams from their enclosed shop in Linden, California to jobsite.

As Caltrans is aware, under the California Unified Certification Program, Rupert is only certified for the following work codes: C0698 Building Material Supplier; C0900 Bridge Deck Materials Supplier; C5190 Joint Seal-Water Stop. Rupert is not certified to clean and paint steel and Peterson Chase's should not be allowed to claim the DBE participation of \$30,720.00 (\$35,600.00+\$4500.00+\$11,100.00 - \$51,200.00 x 0.60).

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- 4) ***Bid Item #49 – Furnish Precast Concrete Lagging***
Rupert is not a regular dealer of precast concrete lagging. The manufacturing of the precast laggings (PCL) require detailed designs and cast per the project specifications. These specifications are job specific and are not a “one size fits all” type of product. Professional design and calculations for the PCLs must conform to Caltrans Standard Specifications, Sections 11-2, 49 and 51.

PCLs must be manufactured and/or cast in a concrete plant that is on Caltrans' Authorized Facility Audit List. A quality control inspector must witness all PCL activities and at the very least be a registered civil engineer. A quality control plan, design calculations and reinforcement placements must be submitted and approved by Caltrans prior to casting the laggings.

Rupert is not qualified to perform any of these functions. In addition, it also appears that Rupert does not own the necessary distribution equipment to deliver the large quantity of 1256 each precast laggings.

As stated previously, under the California Unified Certification Program, Rupert is only certified for the following work codes: C0698 Building Material Supplier; C0900 Bridge Deck Materials Supplier; C5190 Joint Seal-Water Stop, none of which qualifies Rupert for participation to furnish precast concrete laggings. As such, Peterson Chase should not be allowed to claim the DBE participation of **\$103,020.00** ($\$153,700.00 + \$18,000.00 = \$171,700.00 \times 0.60$).

By ***disallowing*** the total DBE participation of \$133,740.00 ($\$30,720.00 + \$103,020.00$) for Item #51 and Item #49, Peterson Chase's participation falls short of the 8% stated contract DBE goal. Additionally, Peterson Chase did not bother to make work available to other DBEs as demonstrated by their uncompleted GFE submitted to Caltrans.

We are aware that Caltrans is well versed in 49 CFR § 26.55(f), which defines a regular dealer, as well as 49 CFR § 26.55(c)(1) and (c)(2), which also defines a commercially useful function (CUF) for DBE participation on State Transportation contracts. At this time, we feel that we do not need to supplement this protest with governing case law and/or statutes for which Caltrans is already well-informed. However, upon request, we can and will provide the relevant Public Contract Codes, Federal Codes and case law that govern these issues of non-responsiveness, failure to list a subcontractor and allowable DBE participation credits.

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Ultimately Peterson Chase's commitment of 11% in DBE participation has the appearance of duplicity. At the very least, the claimed DBE participation is distorted and overstated. Peterson Chase is claiming DBE credit for work that Rupert is not certified to perform and for work that is not normal for Rupert's standard business services and/or functions. In this case, it appears that Rupert is merely an extra participant in the transaction for the sole purpose in achieving a DBE goal and Rupert is not providing a CUF as defined in 49 CFR.

In summary, Peterson Chase's DBE commitment is overly exaggerated and they made no outreach efforts to other DBE subcontractors, and/or suppliers as required by the contract's specifications. Therefore, Peterson Chase should not be eligible for award of this contract. John S. Meek did not submit a responsive bid for the failure to provide the SSPC-QP 3 certification. Because HighLand Construction, Inc. submitted the lowest responsive and responsible bid, it should be awarded the contract.

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

Respectfully,



Kristi Stelle
VP of Operations

KS:
VIA: FAX & GSO

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

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

Jan 30 2014 04:14pm

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

EDMUND G. BROWN Jr., Governor

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