

**SKANSKA**

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March 24, 2016

Via Facsimile and Federal Express

MS 43  
Office Engineer  
Department of Transportation  
Division of Engineering Services  
Office Engineer  
1727 30<sup>th</sup> Street  
Sacramento, Ca. 95816-8041

Attention: Mr. Jeff Fefevere, Office Chief, Office Engineer, Construction Contract Awards

Reference: For Construction on State Highway in San Bernardino County near Hesperia from 1.9 Miles East of Route 15 to 0.1 Mile West of Summit Post Office Road  
Contract No.: 08-0Q3004, Federal Aid No.: ACHSNHP-P138(055)E

Subject: Response to MCM Construction, Inc. Bid Protest

Skanska USA Civil West California District Inc. was the apparent low bidder on State Route 138 in San Bernardino County, Contract No. 08-0Q3004 on March 3, 2016. As second low bidder, MCM Construction, Inc. protested on two grounds. First, MCM complains that Skanska's DBE - Commitment Form (DES-OE-0102.10D [REV 12/2014]) failed to include a quote from Tahlequah Steel, a second-tiered DBE subcontractor to Gerdau Reinforcing Steel. Second, MCM contends that Skanska inadequately described Tahlequah Steel's scope of work in the DBE - Commitment Form. As discussed below, both arguments fail.

After submitting its bid, Skanska prepared its DBE Good Faith Effort documentation to disclose all of the DBE firms that it would use to meet the Project's DBE goals. The DBE - Commitment Form requires Contractor to "Show all DBE firms being claimed for credit regardless of tier. Attach written confirmation from each DBE shown stating that it will be participating in the contract to perform the specific work shown for the specific amount agreed to."

For bid item 84(F), Skanska disclosed that Tahlequah Steel Inc. would perform "Bar Reinforcing Steel Furnish & Install (partial bridge item)" for \$283,442 as a lower-tiered subcontractor to

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Gerda. Skanska's DBE Good Faith Effort documentation also included a copy of Gerda's quote, and confirmation of Tahlequah Steel's DBE certification. Gerda also submitted its own DBE - Commitment Form, confirming that Tahlequah Steel would perform "Bar Reinforcing Steel (Bridge) Partial Furnish and Install" valued at \$283,442. These specific descriptions make it clear that Tahlequah Steel's scope of work was limited to partial furnish and install of the steel reinforcement work for bid item 84(F), as opposed to steel reinforcing work on other bid items. A more specific description is impracticable, given the intent of the requirement and the limited space on the DBE - Commitment Form. Bidders are not obligated to submit plans that reflect each footing, column, bridge span etc. that each DBE reinforcing steel subcontractor will place.

Skanska's DBE Good Faith Efforts documentation satisfies its obligation to submit a quote that describes the type and dollar amount of the work reflected on the form. While this quote was from Gerda, Tahlequah Steel will perform its work as a lower-tiered subcontractor to Gerda. And both Skanska and Gerda submitted DBE - Commitment Forms that specifically identify not only Tahlequah Steel's scope of work but also how much compensation it will receive.

Even if Caltrans were to disregard Tahlequah Steel's planned DBE contributions on the project, Skanska's bid still satisfies Caltrans' Good Faith Submittal requirements. Skanska advertised and actively solicited bids from DBE firms. Skanska packaged the scope of work it intended to award to subcontractors to encourage DBE participation and maximize its ability to achieve DBE goals. Its efforts were rewarded with nine DBE firms participating on Skanska's team.

Because this Project is receiving federal assistance, 49 CFR part 26 applies to the award and administration of this contract. Appendix A to Part 26 offers guidelines concerning Good Faith Efforts. Section V states: "In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. . . . If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts." Eliminating Tahlequah Steel's DBE contributions altogether, Skanska's DBE participation would be 7.81 percent, which is still well above the 7.06 average DBE participation from the other bidders. Skanska has made a good faith effort towards meeting the project's DBE goals.

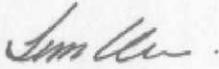
In closing, Skanska has documented its good faith efforts to meet the Project's DBE goals. Its DBE - Commitment Form disclosed that Tahlequah Steel would partially furnish and install bar reinforcing steel (bridge) for Item 84 as a lower-tiered subcontractor to Gerda Reinforcing Steel. Included with Skanska's DBE - Commitment Form was Gerda's quote and Gerda's

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own DBE – Commitment Form. Even if Caltrans were to disregard Tahlequah Steel's contributions, Skanska's DBE participation still exceeds that average participation proposed by the other bidders. Skanska has satisfied all of its bidding obligations and it is the lowest responsible bidder. MCM's protest should be denied and the contract should be awarded to Skanska without further delay.

If you have any questions or need additional information, please contact me at the number below.

Sincerely,



Tim Wilson  
Senior Vice President

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