DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER
1727 30th STREET, MS-43
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6299
FAX (916) 227-6282
www.dot.ca.gov/hq/esc/oe

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December 4, 2013

Facsimile: (760) 489-4304

Ray C. Samuelson, President
Western Rim Constructors, Inc.
912 S Andreasen Dr. Ste 108
Escondido, CA 92029

11-282404
11-SD-15-0.0/4.7
B.O. 11/14/2013

Dear Mr. Samuelson:

The Department of Transportation (Caltrans) received the attached letter dated November 25, 2013, from Western Rim Constructors, Inc. (WRC). The protest alleges that Precise Construction Management (Precise) failed to list ID Environmental on the originally submitted Subcontractor List form. The protest further alleges that Precise did not properly complete the Disadvantage Business Enterprises (DBE) Commitment form submitted with its bid.

Caltrans did not complete a review of this protest since the bid submitted by Precise was found nonresponsive.

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

Attachment

WESTERN RIM CONSTRUCTORS, INC.

W·R·C

GENERAL ENGINEERING CONTRACTOR

November 25, 2013

via fax
(916) 227-6282

John McMillan
Deputy Division Chief
Division of Engineering
Office Engineer, MD 43
1727 30th Street
Sacramento, CA 95816-6922

Dear Mr. McMillan,

Western Rim Constructors, Inc. (WRC) hereby protests the bid of Precise Construction Management in connection with contract number 11-282404 for the following reasons:

1. The Department's Subcontractor List form, an integral part of the bidding documents, obligates bidders to "complete column 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to the Department within 24 hours after bid opening. Failure to provide complete information in columns 1 and 4 within the time specified will result in a nonresponsive bid."

   When Precise submitted its' Subcontractor List after the bid, Precise added an additional subcontractor to the listing. ID Environmental Infrastructure was added to perform SWPPP, Planting & Demo. By doing so Precise failed to complete columns 1 and 4 at the time it submitted its bid, thus making the bid non-responsive. Please see attached Caltrans letter dated November 13, 2013 deeming a contractor non-responsive for the same violation.

2. Precise faxed its Subcontractor List to Caltrans on November 18, 2013 at 3:53 PM. Caltrans shows the fax being received on November 18, 2013 at 3:56 PM, 2 business days after the bid. The fax activity report that Precise faxed on November 20, 2013 at 10:30 AM does not meet the requirement that the Subcontractor List was sent and received by Caltrans prior to 2:00 PM the day after the bid, because there is not record of Caltrans receiving the fax.

3. Precise submitted its DBE Commitment form with its bid on bid day. They did not follow-up within 4 business days with an updated form. Item 1 on the lower section of the form states DBE prime contractors must enter their certification number (which is incorrect) and indicate all work to be performed by DBEs including work performed by its own forces. Precise did not enter work to be performed by its listed DBE Subcontractors, nor did they enter work to be performed by its own forces. Please note attached page 20 of the bid submitted by Precise in which Precise states "We are a sole proprietorship with no employees." Based on the amount of work subcontracted Precise will have to perform approximately 1.5 million dollar's worth of work with their own forces, which they did not show.

912 S. Andreasen Drive, Suite 108 • Escondido, CA 92029 • (760) 489-4328 • Fax (760) 489-4304

Base on the above reasons, all of which would stand on their own, WRC requests that Precise Construction Management's bid be deemed non-responsive and that Caltrans award to the lowest responsible bidder.

WRC requests that the award of the contract be extended until the above protest is resolved and that the Department keep it informed of its decision in this matter. If you have any questions or comments, please contact me at (760) 489-4328.

Sincerely,

Ray C Samuelson
President

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November 13, 2013

Facsimile: (760) 471-4860

Troy Neuenswander, Vice President
Flatiron West Construction Corp.
1770 La Costa Meadows Drive
San Marcos, CA 92078

12-0F96E4
12-Ora-5-6.2/8.7
B.O. 10/31/2013

Dear Mr. Neuenswander:

The Department of Transportation (Caltrans) received a bid submitted by Flatiron West Construction Corp. (Flatiron) for Contract No. 12-0F96E4 on October 31, 2013. By this letter Caltrans notifies Flatiron that its bid is nonresponsive.

The Subcontractor List form states in part, "...Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid."

On the 24 hour Subcontractors list submitted on November 1, 2013, Flatiron added two subcontractors to the Subcontractor List that did not appear on the list submitted with the bid. Sierra Landscape was added to perform work described as Landscape and related (partial) and RJ Noble was added to perform work described as AC paving and related (partial). The addition of these two subcontractors constitutes an improper change to the Subcontractor List form which is in violation of the bidding instructions, as well as the Public Contract Code.

Caltrans is in receipt of the letters dated November 4, 2013, from Flatiron and November 5, 2013, from Smith, Currie & Hancock LLP on behalf of Flatiron alleging that Flatiron's bid is responsive. Caltrans disagrees with this position. Flatiron did not simply fail to list a subcontractor for certain work thereby agreeing to perform that work by its own forces, rather Flatiron changed its subcontractor list and added subcontractors to its 24-hour submission that were not listed on its original submission. By its own admission Flatiron made a mistake in filling out its bid forms; specifically the 24-hour submission of the subcontractor list. It is the opinion of Caltrans that this mistake was material and therefore renders Flatiron's bid non-responsive.

Based on the actions described above Caltrans will proceed to award this contract to the lowest responsive and responsible bidder, provided that all requirements have been met.

Your attention is directed to Section 3-1.04 of the Amendments to the 2010 Standard Specifications. Caltrans is not obligated to offer an extension of the award period for a nonresponsive bid. Should you wish to extend your bid while resolving a nonresponsive finding, you must send your request to the Office Engineer no later than 4:00 p.m., two business days prior to the expiration of your bid.

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

Sincerely,

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

Attachments

EQUAL EMPLOYMENT OPPORTUNITY REGULATION CERTIFICATION

Bidder ___X___, proposed subcontractor _____, certifies that he ☐ has ☒ has not participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, if required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the filing requirements.

Notes: We are a sole-proprietorship with no employees.

- The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of $10,000 or under are exempt.)
- Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.
- Prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless the Contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29, DEBARMENT AND SUSPENSION CERTIFICATION

Bidder, under penalty of perjury, certifies that, except as noted below, it or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgement rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

WESTERN RIM CONSTRUCTORS, INC.

W·R·C

GENERAL ENGINEERING CONTRACTOR

To:	John McMillan	From:	Sandra Roth
Co.	Caltrans	Date:	November 25, 2013
Phone:		Pages:	5
Fax:	916-227-6282	Re:	11-282404

_____For Review _____Please Comment _____Please Reply _____Original in Mail

We forgot to attach page 20 to the letter that was sent earlier this afternoon. We are re-sending our letter with this page included. If you have any questions, please contact us.

Thank you,

Sandra Roth

912 S. Andreasen Dr. Ste. 108 Escondido, CA 92029 (760) 489-4328 Fax (760) 489-4304

** Transmit Conf.Report **

P.1 Dec 4 2013 03:41pm
CALTRANS CONTR AWARDS Fax 916-227-6282

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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