

FEERICK LAW & REALTY, INC.

April 3, 2024

Ms. April Perez-Hollins
Office Chief
State of California
Department of Transportation
1727 30th Street
Sacramento, California 95816

Re: Caltrans Contract No. 08-1J8504 – Bid Protest
Low Bidder: Alfaro Communications Construction, Inc.
Bid Date: March 19, 2024

Dear Ms. Perez-Hollins:

1. Introduction

We represent Alfaro Communications Construction, Inc. (“ACCI”), the lowest responsive and responsible bidder on the above project (“Project”). This is ACCI’s response to Powell Constructors, Inc.’s (“Powell”) protest dated March 28, 2024, and ACCI’s protest of Powell’s bid. As detailed below, Powell’s protest is without merit because: (1) ACCI used the correct NAICS codes for its listed DBE suppliers—Powell’s protest is based on a misunderstanding of code classification; and (2) ACCI listed proper DBE participating percentages for its listed subcontractor Diversified Landscape Co. (“Diversified”) because ACCI’s bid price for Item 55 includes ACCI’s markup and profit on top of Diversified’s listed price in the DBE form.

As detailed further below, Powell’s bid is nonresponsive because: (1) Powell did not list any NAICS codes on its DBE form; (2) Powell did not list any descriptions of work in its DBE form for its DBE that is performing less than 100 percent of a bid item; and (3) Powell’s listed DBE appears not to be certified as a DBE rendering all of Powell’s DBE participation inapplicable and its bid nonresponsive. ACCI requests Caltrans reject the meritless protest of Powell, reject Powell’s bid, and proceed to award the Project to the lowest responsive and responsible bidder: ACCI.

2. Brief Factual Summary

A. ACCI Submits The Low Bid

Caltrans received bids for the Project on March 19, 2024. ACCI submitted the lowest responsive and responsible bid as detailed in the following table of the top three bids:

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<u>Bidder</u>	<u>Bid</u>	<u>Spread from ACCI's Low Bid</u>
ACCI	\$13,792,186.48	--
Powell	\$14,057,592.00	\$265,405.52
FEC	\$14,440,051.20	\$647,864.72

B. ACCI's Listed DBEs

In its DBE form, ACCI listed TEK Services, LLC ("TEK") as supplying materials under bid items 45, 47, and 55. TEK holds NAICS codes of 423840 and 423610 to supply these items. As detailed below, Powell incorrectly concludes these items do not apply to electrical materials. That contention is without merit and Caltrans should reject the protest.

3. Powell's Protest Is Without Merit Must Be Dismissed

A. TEK Holds Proper NAICS Codes To Supply The Materials At Issue

TEK will be supplying the steel for Items 45 and 47. Powell erroneously claims that TEK's listed NAICS code of 423840 does not apply to such materials. That contention is without merit. As detailed in Powell's own Exhibit B to its protest, every single firm listed as holding NAICS code of 423840 supplies the same steel at issue here, including "Alro Steel Corporation," listed on the face of Exhibit B. That is because NAICS code 423840 specifically covers these items of work. Powell does not cite any other evidence in support because there is none. Doubtless, TEK may supply these materials under its NAICS code 423840 as confirmed by Powell's own exhibit. TEK also holds work codes of C0686 "Electrical and Signals Supplier" and C0600 "Misc. Supplier," confirming that TEK may supply the steel under these codes. Accordingly, Powell's protest is without merit. ACCI requests Caltrans reject Powell's protest and proceed to award the Project to the lowest responsive and responsible bidder: ACCI.

B. ACCI Listed Proper DBE Percentages For Diversified

ACCI listed Diversified as performing 100 percent of Bid Item 55. ACCI bid a total price of \$138,450.00 for Item 55. In its DBE form, ACCI identified Diversified as performing a total of \$106,500.00 for Item 55. Powell erroneously contends these listings are inconsistent. That contention is without merit. ACCI listed bid price for Item 55 includes Diversified's quote price plus ACCI's markup and overhead. The DBE commitment form is meant to only show Diversified's quoted price of the work. ACCI complied with this requirement and listed only the quoted price—ACCI did not include its overhead and markup on the DBE form. Thus, ACCI's DBE percentages are correct and Powell's protest is without merit. ACCI requests Caltrans reject Powell's protest and proceed to award the Project to the lowest responsive and responsible bidder: ACCI.

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C. Conclusion on Powell's Protest

As detailed above, Powell's protest is without merit because TEK holds the proper NAICS codes to supply the material at issue and ACCI's DBE percentages are correct. Accordingly, ACCI requests Caltrans reject Powell's protest and proceed to award the Project to the lowest responsive and responsible bidder: ACCI.

4. Powell's Bid Is Nonresponsive

A. Powell Did Not List Any NAICS Codes

Powell's DBE form lists G&G Electric, Inc. as performing all of Powell's DBE participation. However, Powell did not list any NAICS or work category codes for its DBE in violation of the bid documents as detailed in the following screenshot from Powell's DBE form:

22%		TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE)		TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE)	
DBE PRIME CONTRACTOR CERTIFICATION*		4		\$4,659,017.00	
N/A					
BID ITEM NO	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED*	NAICS AND/OR WORK CATEGORY CODES*	NAME OF DBEs (Must be certified on the date bids are opened. Include Caltrans' certification no., DBE address, and phone number. Show 2nd and lower tier subcontractors.)	AMOUNT (\$)	
65, 66, 67, 68	Maintain TMS, CMS, Camera System, Fiber Optics System		G & G Electric Inc - #41700 1525 Quadrille Ct. Riverside, CA 92503 (951) 776-8099	\$4,341,910.00	

As detailed above, Powell failed to list the required NAICS Codes for its listed DBE rendering it impossible to confirm if they are even certified to supply the material at issue. It is noteworthy that Powell protested ACCI on the basis that ACCI listed an inapplicable NAICS code. By Powell's own logic, its own bid is nonresponsive for failing to list any NAICS codes for its DBE. Accordingly, ACCI requests Caltrans reject the nonresponsive bid of Powell and proceed to award the Project to the lowest responsive and responsible bidder: ACCI.

B. Powell Did Not Describe The Portions of Work Its Listed DBE Would Perform

Powell listed C&G Electric, Inc. as performing 64 percent of Bid Item 66 and 61 percent of Bid Item 68. However, on its DBE form, Powell did not describe the portions of work C&G would perform for these items. The DBE form itself specifically requires, "if 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be

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performed or furnished.” Here, Powell failed to comply with this requirement by omitting the required descriptions. Accordingly, its bid is nonresponsive. ACCI requests Caltrans reject the nonresponsive bid of Powell and proceed to award the Project to the lowest responsive and responsible bidder: ACCI.

C. C&G Electric Appears Not To Be Certified

A search of Caltrans’ CUCP database reveals that C&G Electric appears not be to a certified DBE, as detailed in the following screenshot from the database:

The screenshot shows a search interface with the following details:

- Search Parameters:**
 - CERTIFICATIONS:** Airport Concessionaire Disadvantaged Business Enterprise (ACDBE), Disadvantaged Business Enterprise (DBE), Disadvantaged Business Enterprise (FAA Only) (DBE (FAA Only))
 - BUSINESS NAME/DBA:** C&G ELECTRIC, INC.
- Search Results:** 0 firms with 0 certifications found.
- Message:** Your search parameters did not return any matches. Click **Edit Parameters**, modify the information in the fields above and click **Search Again**.

Again, without a listed NAICS code its impossible to confirm whether C&G Electric is an actual DBE. The above search confirms they are not. Thus, Caltrans must discount all of Powell’s DBE participation rendering its bid nonresponsive.

5. Conclusion

As detailed above, Powell’s protest is without merit and must be dismissed. ACCI’s listed DBE holds the applicable NAICS code to perform the work and ACCI properly listed its DBE percentages. Further, Powell’s bid is nonresponsive for failure to list its NAICS codes for its listed DBE and for failing to describe the portion of work its listed DBE would perform. Accordingly, ACCI requests Caltrans reject both Powell’s protest and its nonresponsive, and proceed to award the Project to the lowest responsive and responsible bidder: ACCI.

Very truly yours,

Thomas F. Feerick Jr., Esq.

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