



BAY CITIES PAVING & GRADING, INC.

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October 11, 2024

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

Via Email & Overnight Mail
 april.perez-hollins@dot.ca.gov

Attn: April Perez-Hollins, Office Chief

Project: 03-3H8304
 Bid Opening: 09/26/2024
 Re: Protest of the bid by Pacific Infrastructure Construction, LLC

Dear Ms. Perez-Hollins,

Bay Cities was the second-lowest bidder for the Project. Bay Cities protests the bid of the apparent low bidder, Pacific Infrastructure Construction, LLC, ("PIC") as nonresponsive because PIC failed to attain the DBE goal or make any good-faith efforts to do so.

PIC'S BID IS NOT RESPONSIVE BECAUSE PIC FAILED TO ATTAIN THE DBE GOAL OR SUBMIT ANY GOOD-FAITH EFFORTS TO DO

PIC's bid must be rejected because PIC failed to reach the DBE goals and failed to make any good-faith efforts to do so.

A. PIC FAILED TO REACH THE DBE GOAL FOR THE BASE BID PLUS THE ADDITIVE

The Bid included Item No. 150, an Additive Item, for which PIC provided a price of \$1,100,000. PIC further listed North State General Engineering, Tyrell Resources, DNB Infrastructure, and Zuwalt Associates each as performing 100% of this item for a total of 400%. Section 2, Bidding, of the Special Provisions specifically addresses the requirements for Additive Bid Item No. 1 and states:

"Submit a Subcontractor List for the total base bid with additive item 1. Show the percentage and description of the subcontracted work for additive item 1."

Eight bidders (PIC, Bay Cities, Dutch Contracting, Martin Bros., Granite Construction, Ghilotti Construction, A. Teichert, and DeSilva Gates) submitted bids for this project and PIC was the sole bidder who listed its subcontractors as performing 100% of Bid Item No. 150.

Since PIC listed 4 subcontractors as each performing 100% of Bid Item No. 150, PIC must self-perform all of Bid Item No. 150. As stated in Public Contract Code §4106,

"If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself."

Caltrans has consistently enforced the requirements of Public Contract Code §4106 when contractors have listed more than 1 subcontractor for a bid item and the percentages listed total more than 100%. Therefore, none of the 4 subcontractors that PIC listed for Bid Item No. 150 can perform work on Bid Item No. 150.

If PIC's self-performs Bid Item No. 150, then PIC cannot reach the DBE goal. PIC listed the value of Northstate's DBE participation for Bid Item No. 150 as \$232,440 and Tyrell's participation as \$6,000. When Northstate and Tyrell's participation is deducted from PIC's commitment, PIC's participation drops below the Project's 22% DBE goal. Since PIC submitted no good-faith efforts, PIC's bid is nonresponsive per 49 CFR §26.53 and must be rejected.

B. EVEN IF PIC'S BID WAS STILL SUBJECT TO REVIEW ON THE BASE BID, PIC'S BID WAS STILL NONRESPONSIVE

PIC'S bid is nonresponsive for failing to meet the DBE participation goals for the Base Bid and Additive No. 1. Section 3-1.02A of the Special Provisions provides that:

“The Department compares bids based on the sum of the item totals including additive item 1 when the sum is less than or equal to the funds available. Otherwise, the Department will compare bids on the item totals without the additive item.”

The sum of PIC's base bid plus additive was less than the \$10,100,000 of the funds Caltrans had available. Therefore PIC's bid was to be compared on this basis alone, and since, PIC's bid is nonresponsive on this basis, all of PIC's bid should be rejected, otherwise PIC is getting two bites of the apple. If, however, Caltrans chooses to evaluate PIC's bid solely on whether it is responsive to the Base Bid, PIC's bid is still nonresponsive.

As stated above, the Project's DBE goal is 22%. On its DBE Commitment Form, PIC listed Roll 'N Rock Construction, Inc. ("RNR") as performing \$665,124 worth of work. RNR's work participation falls into two categories: work as a subcontractor and as work as an equipment rental company (see Exhibit A, copy of PIC's DBE Commitment Form). On its DBE Commitment Form, PIC listed RNR for

<u>Bid Item</u>	<u>Items of Work Description</u>	<u>Amount</u>
7, 8(p)	Construction Area Signs Traffic Control (p)	\$591,325.00
8(p), 10(p), (11p) 145(p)	Rental Equipment (partial)	\$73,800

With regard to the subcontract work, RNR is a certified DBE qualified to perform both Construction Area Signs (WCC C1200) and Traffic Control Systems (WCC C1201). For the Rental Equipment, PIC listed RNR's work code as "CA WCC C1201" which is the work code for Traffic Control systems. As stated in Caltrans 2022 Work Code Guide, the work involved in Traffic Control Systems requires either a Class A General Engineering license or a C31, Construction Zone Traffic Control license. Caltrans Guide describes Traffic Control Systems as:

“This involves **placing and removing** lane closures including: orange traffic cones, plastic traffic drums, barricades or other temporary devices to delineate traffic through work area. **Places traffic equipment at construction site** such as arrow boards, PCMS,

speed radar enforcement.”

The labor involved in placing and removing traffic closures in construction sites requires licensing as a Class A General Engineer or a C31 license.

In contrast to the Work Code for Traffic Control Systems, the Work Codes for Equipment Rental such as C9907 (Construction Equipment Rental) or C9908 (Heavy Equipment Rental) have no licensing requirements because they involve the rental or leasing of equipment rather than the placement or removal of lane closures. Similarly, for NAICS 532490, the work code classification involves the rental or lease of equipment (such as Traffic Control Equipment) and requires no licensing. On its DBE Commitment, PIC listed RNR for Bid Items 8 and 9 whereas on its DBE Commitment Form, RNR was listed for Equipment Rental for 8, 10, 11, and 145. The variance is acceptable because equipment rental is not contractor work, involves no labor, no licensing, and no requirement for listing on the Subcontractor List.

No agency enrolled in the CUCP system, however, has certified RNR as an equipment rental company under either codes WCC C9907 or C9908 or NAICS 532490. RNR lacks any DBE certification to act an equipment rental company, therefore, RNR's \$73,800 participation as a Rental Equipment company must be discounted from PIC's DBE Commitment, and once RNR's participation is removed, PIC fails to meet the DBE's goal of 22%. Since PIC failed to submit any DBE good-faith measures, PIC's bid is non responsive and must be rejected. Bay Cities requests that Caltrans determine that PIC's bid is nonresponsive and award the Contract to Bay Cities as the lowest responsible bidder.

Sincerely,



Marlo Manqueros
Vice-President & General Counsel

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RECEPTION DESK
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SHIP DATE: 11OCT24
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CAD: 252609327/INET4535

BILL SENDER

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