



HAZARD CONSTRUCTION COMPANY | Lic. #750542 A/C31
HAZARD CM ENGR LLC | Lic. #1039495 A/C31
HAZARD CONSTRUCTION ENGR LLC | Lic. #1038899 A/C31

10529 Vine Street
Lakeside, CA 92040
Phone (858) 587-3600
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hazardconstruction.com

December 19, 2024

California Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
Sacramento, CA 95816
Attn: April Perez-Hollins, Office Chief

Re: Bid Protest of Apparent Low Bidder
Contract No. 11-430364

Dear Ms. Perez-Hollins:

Hazard Construction Engr LLC ("Hazard") has reviewed the bid forms and after-bid forms as submitted for Contract No. 11-430364, with a bid date of December 4, 2024, by the apparent low bidder, RAL Investment Corporation ("RAL") and ask that Caltrans find RAL non-responsive requesting the Non-Small Business Subcontractor Preference (NSBP) and failing to meet that commitment.

For this contract, the Notice to Bidders and Special Provisions established a responsiveness requirement of 5 percent Small Business Enterprise(s) (SBE) participation goal. At bid time, RAL elected to pursue the optional Non-Small Business Subcontractor Preference (NSBP) which gives preference to non-small businesses who commit to 25 percent certified small business participation.

Based on the above, RAL was required to submit post-bid documentation establishing a commitment of 30 percent small business participation (5% contract goal + 25% NSBP). RAL's after-bid submittals consisted of a 12.3% commitment on the *Small Business Enterprise – Commitment* and "None" (Attached) on the *Certified Small Business Listing for the Non-Small Business Preference*, which does not meet the 30 percent minimum they were required to commit to based on their bid time election to pursue the NSBP.

Caltrans has set precedence on this very issue and rendered Hazard (Ref. Contract No. 11-2N1774, attached) and many other bidders non-responsive for failing to meet the NSBP commitment when requesting this preference at bid time. RAL's bid must be deemed as non-responsive for failing to meet their small business participation commitment and award the contract to Hazard, the true apparent low bidder, having met all of the requirements.

If you have any questions regarding any of these matters or need further clarification, please do not hesitate to call myself at the main office. Thank you for your attention to this matter.

Sincerely,
HAZARD CONSTRUCTION ENGR LLC

A handwritten signature in blue ink, appearing to read 'Bryan Seeger', with a long horizontal flourish extending to the right.

Bryan Seeger
Vice President - Estimating

Attachments
cc: Bid File

Low Bidder

12-09-24P12:00 RCVD

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

CERTIFIED SMALL BUSINESS LISTING FOR THE NON-SMALL BUSINESS PREFERENCE

DOT OCR-0011 (REV 01/2024)

BIDDER NAME RAL Investment Corporation dba Silverstand Construction

CONTRACT NO. 11_430364

List the description of work, name, telephone number, certification number, and dollar amount of each certified small business who will be used for non-small business preference on this project. Failure to submit a completed Certified Small Business Listing for the Non-Small Business Preference form by 4 p.m. on the 4th business day after bid opening will result in a nonresponsive bid. Attach additional sheets if necessary.

Submit to:
MS 43
OFFICE ENGINEER
DEPARTMENT OF TRANSPORTATION 1727 30TH STREET
SACRAMENTO, CA 95816-7005

Bid Item Number	Description of Work, Service, or Materials	Certified Small Business (Name, Telephone No., and Certification No.)	\$ Amount NONE
Total Claimed Participation for Non-Small Business Preference \$			NONE
Total Claimed Participation for Non-Small Business Preference %			NONE
Non-Small Business Preference-Certification			
As an authorized representative of the bidder, if the bidder is awarded the contract, the bidder is committed to use the small businesses shown on this form to meet the non-small business preference. The work to be performed in fulfillment of the contract requirements will be Commercially Useful Function (CUF) complaint in accordance with the requirements in Government Code section 14837, subdivision(d)(4). I certify under penalty of the perjury that the foregoing is true and correct.			

Keith Adamek, President
Bidder's Authorized Representative (Please Type or Print)
Name
keith@sscbuild.com
Email Address


Bidder's Authorized Representative Signature
12/5/24
DATE

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DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

1727 30th Street, MS-43

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6299

FAX (916) 227-6282

www.dot.ca.gov/hq/esc/

Making Conservation
a California Way of Life.

June 19, 2024

Email: JMordhorst@hazardconstruction.com

Jason Mordhorst, President
Hazard Construction Engr, LLC
10529 Vine Street
Lakeside, CA. 92040

11-2N1774
11-SD-15, 52-Var
B.O. 5/9/2024

Dear Mr. Jason Mordhorst:

The Department of Transportation (Caltrans) received a bid submitted by Hazard Construction Engr, LLC (Hazard), for the above contract on May 9, 2024. By this letter, Caltrans notifies Hazard that its bid is nonresponsive.

The Notice to Bidders and Special Provisions for this contract establish, as a responsiveness requirement, a 25 percent Small Business Enterprise(s) (SBE) participation goal. (See Special Notices ["See sections 2-1.18 . . . for Small Business Enterprises requirements."]; see also, Notice to Bidders ["The SBE Contract goal is **25** percent."] [emphasis original]; see also, Special Provision section 2-1.18D, Small Business Enterprises Goal ["Meet or exceed the small business enterprise goal shown on the *Notice to Bidders*. A bid that demonstrates a small business enterprise participation commitment less than the goal is nonresponsive." (Italics in original.)].)

Here, at the time of bid, Hazard also elected to pursue the optional Non-Small Business Subcontractor Preference (NSBP). (See Special Notices ["See section 2 for submittal requirements for . . . Non-Small Business Subcontractor Preference."]; see also, Notice to Bidders ["Under Govt Code § 14835 et seq. and 2 CA Code of Regs § 1896 et seq., the Department gives preference to . . . non-small businesses who commit to 25 percent certified small business participation."]; see also, 2023 Standard Specifications sections 2-1.18A – 2-1.18C; see also, Hazard's Bid Book for contract 11-2N1774 at page 18.) Since, at the time of bid, Hazard also chose to pursue the NSBP, Hazard was further required to make 25 percent of the value of its bid available to small businesses.

Based on the above, Hazard was required to submit post-bid documentation establishing a commitment to 50 percent small business participation. That is, Hazard was required to meet the 25 percent SBE participation goal as a direct requirement of responsiveness, and since Hazard also elected to pursue the NSBP at the time of bid, Hazard thus committed itself to an

Mr. Jason Mordhorst
June 19, 2024
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additional 25 percent small business participation. (See 2 CCR §1896.5; see also, 2 CCR §1896.6, subd. (b); see also, Gov. Code §14838, subd. (b).) Additionally, Special Provision 2-1.18A states in part:

"Pursuant to Govt Code § 14838, SBE participation listed on the Small Business Enterprise – Commitment form used to meet the SBE participation goal requirement should not be listed on the Certified Small Business Listing for the Non-Small Business Preference form. Listing the same SBE participation on both the Small Business Enterprise – Commitment form and on the Certified Small Business Listing for the Non-Small Business Preference form may result in disallowance of the SBE's participation toward the small business or non-small business preference."

After an independent review and evaluation and given the specific facts surrounding Hazard's bid for this contract, CEB allowed the credit for all small business participation claimed by Hazard. Yet mathematically, the claimed small business participation did not total 50 percent. (Total Claimed Participation of \$859,215.50/ \$3,333,520.00 = 25.78%.) Consequently, it was determined that while this participation was sufficient to meet the required 25 percent SBE participation, the remaining small business participation of 0.78 percent failed to fulfill Hazard's commitment to secure an additional 25 percent small business participation as required by its bid time election to pursue the bid-comparison preference made available by the NSBP. (See, e.g., 2 CCR §1896.6 (b)(1), ["(b) Non-small business bidders will be granted a five percent (5%) non-small business subcontracting preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced **responsive bid . . . , and when the non-small business bidder: (1) Has included in its bid a notification to the awarding department that it commits to subcontract with at least twenty-five percent (25%) of its net bid price with one (1) or more small business . . .**"] (Emphasis added).])

For the reasons stated above, Caltrans finds that Hazard did not submit post-bid documentation establishing a commitment to 50 percent small business participation. As such, Hazard's bid is nonresponsive. Caltrans will proceed to award this contract to the lowest responsive and responsible bidder, provided that all the requirements have been met.

If you have any questions, please contact Juan Loera, Contract Awards Branch Chief at (916) 227-5964.

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Sincerely,

April Perez-Hollins

April Perez-Hollins
Office Chief
Construction Contract Awards
Program/Project Management, Office Engineer
Division of Engineering Services
APH:el