



BAY CITIES PAVING & GRADING INC.

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February 27, 2017

City of San Pablo
Public Works and Engineering Services
13831 San Pablo Avenue, Building 3
San Pablo, CA 94806

Attn: Kevin McCourt, Engineering Aide

RE: Plaza San Pablo Roadway Improvements Phase 3 & 4 Project

Dear Mr. McCourt,

Bay Cities was the apparent low bidder on the Project and received your letter of February 23, 2017 which states that Bay Cities bid is nonresponsive for exceeding the maximum allowable bid amount for "Mobilization" and "Traffic Control and Construction Area Signs." The Project's specifications includes identical language for these two items of work which provides that:

"Maximum compensation allowed for this item on this project will be..."

The City will be issuing payment for these items of work so the phrase "allowed for this work" refers to the maximum amount of money that the City will pay for this work. For Mobilization, the City will pay a maximum amount of \$25,000 and, for Traffic Control, the City will pay a maximum amount of \$30,000. The City's inclusion of the term "maximum compensation" provides a limit over which the City will not pay. Although the City's findings seems to imply that bidders are prohibited from listing amounts over the maximum amounts of payment, there is no such language in the bid documents.

Bay Cities listed an amount of \$75,000 for mobilization and \$50,000 for Traffic Control. Since the City specified maximum for these two items of work, the most that Bay Cities can be paid for mobilization is \$25,000 while the most that Bay Cities can be paid for Traffic Control is \$30,000. In neither case, has the listing of amounts above the maximum rendered Bay Cities' bid as nonresponsive or made it unenforceable because there is no ambiguity in the Contract language. In a similar situation, the California State Department of Transportation (Caltrans) held that the apparent low bidder's bid was nonresponsive because the bidder had listed a subcontractor for over 100% for one item of work. In reconsidering its decision (see attached letter dated June 5, 2014), Caltrans stated:

"Caltrans reviewed the Subcontractor List form and the work to be performed cannot exceed 100, as listed. Therefore, the percentages listed above 100 percent are interpreted as the subcontractor performing 100 percent of the work associated with the bid item."

Caltrans then awarded the bid to the apparent low bidder.

Bay Cities' estimator input the actual costs of Bay Cities work for mobilization and for Traffic Control. But based on the City's specifications, the amount that the City will reimburse Bay Cities is less than these costs. This is the price that Bay Cities accepted in submitting a bid to the City. Caltrans reconsidered its original finding of nonresponsiveness and interpreted the low bidders' bid to conform to the maximum amount allowed. This decision was in the public's interest and reasonable. The second-low bidder's bid is more than a \$100,000 higher than Bay Cities. At most, the variance in Bay Cities' bid is insignificant and we ask that the City reconsider its finding that Bay Cities' bid was nonresponsive and award the Contract to Bay Cities. Should you have any questions regarding this matter, do not hesitate to contact me.

Sincerely,



Marlo Manqueros
Vice-President & General Counsel

cc: File

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES**OFFICE ENGINEER**

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Mr. Walt Weishaar, Chief Estimator
Griffith Company
1128 Carrier Parkway Avenue
Bakersfield, CA, 93308

06-0Q8104
06-Ker-155, 204-R6.5/R11.0; R0.0/3.7
B.O. 03/26/2014

Dear Mr. Weishaar:

The Department of Transportation (Caltrans) is rescinding its letter, dated April 28, 2014, finding the bid submitted by Griffith Company on contract 06-0Q8104 non-responsive because it failed to properly complete the Subcontractor List form.

Caltrans reviewed the Subcontractor List form and the work to be performed cannot exceed 100 percent, as listed. Therefore, the percentages listed above 100 percent are interpreted as the subcontractor performing 100 percent of the work associated with the bid item.

Based on the above, Caltrans will proceed to award the contract to the lowest responsible bidder, provided all requirements are met.

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

Sincerely,

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

Attachments