



INDUSTRIAL COATINGS INC.

A NORTH AMERICAN COATINGS COMPANY

April 8, 2015

VIA FAX & MAIL

Attention: John C. McMillan
Deputy Division Chief
Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
P.O. Box 168041
Sacramento, CA 95816-8041

Reference: Contract No. 07-1W2404
Construction on State Highway In Los Angeles County In Los Angeles At Elysian Viaduct
In District 07 On Route 5
07-LA-5-20.3
Project ID 07000231166
Federal-Aid Project ACNHPI-000-5(107)E

Subject: Bid Protest

CL Industrial Coatings, Inc. (CLIC) is protesting the award to the apparent low bidder Liberty Maintenance Inc. DBA Ohio Liberty Maintenance Inc. (Liberty) for the Caltrans Contract No. 07-1W2404 Construction on State Highway In Los Angeles County In Los Angeles At Elysian Viaduct project for the following reasons listed below.

Liberty listed the Disadvantaged Business Enterprise (DBE) Anderson Paint Store, LLC (Anderson) for "Paint Supply" under Bid Item 11 for 9.1% or \$550,000 x 60% for a total DBE participation of \$330,000 for Item 11. After review of the Special Provisions and DBE regulations, CLIC has concluded that the total amount of \$330,000 listed by Liberty for Anderson would not qualify towards the 4% DBE participation goal required per the specifications.

Special Provisions Section 2-1.12B(1) requires that "credit for materials or supplies purchased from DBE's will be evaluated on a contract-by-contract basis and count towards the goal in the following manner" which are listed as 1., 2., and 3:

- Item 1 indicates 100% credit if DBE is a manufacturer.
- Item 2 indicates 60% credit if DBE is a regular dealer.
- Item 3 indicates receiving credit for fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies, if they are obtained from neither a manufacturer nor regular dealer.



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CLIC would argue that Anderson is neither a manufacturer nor regular dealer of the specified paint products as defined in 49 CFR 26.55.

Item 1 Anderson does not manufacture the specified PWB paint materials for this project.

Item 2 Anderson does not qualify as a "regular" dealer of the specified paint materials under 49 CFR 26.55 as it does not buy, keep in stock, or regularly sell or lease the specified PWB paint materials to the public in the usual course of business.

Item 3 Liberty would only qualify for credit for fees, commissions, and charges for assistance in the procurement and delivery of materials which would be significantly less than \$330,000 listed for Bid Item 11 for Paint Supply.

Anderson is not performing a commercially useful function for this project as they are merely operating as a pass-through entity for the paint materials which is not in compliance with Caltrans DBE requirements, specifications, or under 49 CFR 26.55 and as further evident on the bottom of Page 19 of Liberty's DBE Submittal where Anderson notes they are still waiting on Sherwin Williams (S.W.) pricing for the project which shows the intent that they are just passing the material through. S.W. would qualify as regular dealer under 49 CFR 26.55 as they regularly buy, keep in stock, and sell the specified PWB material in a usual course of business. However, S.W. is not a DBE supplier.

Liberty listed the following entities for DBE claimed participation- Anderson for a total of \$330,000, Hammer-Down Transportation for a total of \$97,500, Maneri Traffic Control for a total of \$229,200, Adanta, Inc. for a total of \$1,250, and Askari Security for a total of \$75,000for a total DBE claimed participation of \$732,950.

Based on the above reasons, Liberty's listing of Anderson as a DBE under Bid Item 11 for a total of \$330,000 of claimed DBE participation would be disallowed thus rendering Liberty as a non-responsive bidder. The claimed DBE participation of \$732,950 minus the disallowed \$330,000 equals \$402,950 of claimed DBE participation. This only equates to 2.5% DBE participation which fails to meet the DBE 4% goal requirement for this project.

Since Liberty's listed DBE participation failed to meet the project requirements, Liberty's bid therefore must be considered non-responsive and the award would go to the next lowest responsible bidder CL Coatings Inc dba CL Industrial Coatings Inc.

Please call me if you have any questions concerning the above.

Sincerely,

CL INDUSTRIAL COATINGS, INC.

Rick Suttles

Project Manager

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Type C33 expires 8/31/15

Labor: Union Bondable



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FACSIMILE TRANSMITTAL

TO:

Name: John C. McMillan

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Company: Caltrans Office Engineer

Location

FROM:

Name: Rick Suttles

Company: CL Coatings, Inc dba CL Industrial Coatings, Inc

Email: rsuttles@clcoatings.us

TOTAL NUMBER OF PAGES: 3

REFERENCE: Caltrans Contract No. 07-1W2404

MESSAGE:

Please see attached Bid Protest

If facsimile failure occurs, please call (562) 285-6520