

WEST COAST
ASPHALT MAINTENANCE
INC.

CA License #794105 | NV License #50397A

PO Box 19102, Reno, Nevada 89511-0878
Phone (775) 852-3101 Fax (775) 852-3131

12/02/2011

Attn: Janel Gifford
County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95677

Re: Bid Award Protest- Sawmill 2A Bike Path and Erosion Control Project (Contract No. PW 10-30557, CIP No. 95165) Response to Ruling

Dear Ms. Gifford,

West Coast Asphalt Maintenance, Inc. (WCAM) is in receipt of correspondence titled "Sawmill 2A Bike Path and Erosion Control Project (Contract No. PW 10-30557, CIP No. 95165) Response to West Coast Asphalt Maintenance, Inc. Bid Protest dated 11/28/2011". Your prompt response to our bid protest is appreciated and your evaluation of our bid protest has been respectfully reviewed. It is the intent of West Coast Asphalt Maintenance, Inc. to continue our protest as additional information has been presented by El Dorado County as a premise for its decision that was not part of the "All Bidders Letter". Specifically, the "All Bidders Letter" found WCAM non-responsive for failure to submit a Subcontractors Listing. The "All Bidders Letter" lists no other premise for its finding and accordingly, our bid protest is responsive to this information only.

It is now presented by El Dorado County, that there is an issue with the UDBE Commitment form submitted by WCAM and that the UDBE Commitment form is relevant to information submitted at the date of bid. Furthermore, it is presented that there is insufficient evidence presented by WCAM on the amount it intends to subcontract and that information provided within the UDBE commitment form is relevant to this premise. If the UDBE commitment form presented cause for finding the bid of WCAM non-responsive; we have not been informed of this fact until today nor have we been afforded the opportunity to address this premise within our bid protest.

West Coast Asphalt Maintenance formally requests the opportunity to submit a second protest in this matter based on the fact that El Dorado County has presented new cause for finding the bid of WCAM non-responsive and that El Dorado County has presented non-factual information in its determination that insufficient evidence was presented by WCAM on the amount it intends to contract. The findings of El Dorado County are disputed as follows:

1. El Dorado County states: "The Subcontractor Listing spreadsheet submitted by WCAM on November 17 indicates the Kelley Erosion Control will perform 29% of item of work 5, 22% of item of work 7, and 100% of item of work 9 which amounts to a total participation of \$ 10,756.13". This statement is non-factual; at no time did WCAM submit a monetary value within its Subcontractor Listing. El Dorado County has independently determined this monetary value and furthermore has used it as a premise for finding the bid of WCAM non-responsive.
2. El Dorado County States: "The UDBE commitment form submitted by WCAM via email on November 21,2011 shows a UDBE commitment for Kelley Erosion Control totaling \$ 11,110.00 and includes items of work 5 through 9". Additional facts are presented as related to the UDBE commitment form as follows:

10-1146.2E.1

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- a. The UDBE commitment form was submitted on the fifth day following the bid. There exists a timeline in this matter that is relevant to interpretation of information. Specifically, El Dorado County states: "Allowing WCAM to change its subcontracting percentages at this point would violate the intent of the Subletting and Subcontracting Fair Practices Act to prevent a prime contractor from taking work away from a subcontractor, once the prime submitted evidence that the subcontractor would perform work". Information as presented by WCAM shows that the subcontractors work was increased from the bid date to the UDBE submittal date; not decreased. That is; at the date of bid, information has been presented that a Subcontractor Listing was not required. At the date of UDBE submittal, the subcontract participation increased from the date of bid. How is this explained?
 - i. The proposal of Kelley Erosion Control has been provided as supporting documentation
 - ii. The proposal of Kelley Erosion Control specifies a "Grand Total- To Be Determined"
 - iii. Kelley Erosion Control was unable to provide a hard number on Bid Item #6 and #8 at the time of bid and therefore "plug" priced these items and reserved the right to change its price by specifying a "Grand Total- To Be Determined"
 - iv. In the interest of submitting a competitive bid and following discussion w/ Kelley Erosion Control, WCAM chose to self-perform Bid Items #6 and #8 as is evidenced by the Bid Proposal pricing.
3. WCAM asks the question "What information at what time takes precedence in this matter?"
 - a. WCAM has shown responsiveness at the time of bid as the Subcontract Listing total is less than 0.5% or \$ 10,000.00
 - b. WCAM shows an increase in the subcontract amount between the date of bid and the date of UDBE submittal as a result of firming up subcontract price and scope.
 - c. WCAM shows a good faith effort in increasing the DBE participation as is a major goal of the solicitation.
 - d. The Subletting and Subcontracting Fair Practices Act speaks to bid shopping and bid peddling and says nothing about firming up or actualizing a subcontract quote and/or increasing the participation of a sub that has been listed in good faith. El Dorado County has determined that a violation of this act is shown in the information submitted by WCAM which is not factual.

In summary, it is reiterated:

1. At the time of bid, the proposal of WCAM, as submitted was responsive and responsible. This is supported by factual information presented
2. At the time of UDBE submittal, the bid of WCAM was responsive and responsible. This is supported by factual information submitted
3. There exists no violation of the Subletting and Subcontracting Fair Practices Act which El Dorado County has presented as cause for finding the bid of WCAM non-responsive.

Again, your careful consideration in this matter is requested. In light of factual information presented, I trust you will find the bid of WCAM responsive.

Sincerely,
Peter Griffin

Estimator/ Project Manager
West Coast Asphalt Maintenance, Inc



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December 2, 2011

**Fax Transmittal 4 pages No Hard Copy to Follow
(775) 852-3131**

Mr. Peter Griffin
West Coast Asphalt Maintenance, Inc.
P.O. Box 19102
Reno, Nevada 89511-0878

**Subject: Sawmill 2A Bike Path and Erosion Control Project
Contract No. PW 10-30557, CIP No. 95165)
Response to West Coast Asphalt Maintenance, Inc. Bid Protest dated
December 2, 2011**

Dear Mr. Griffin:

This letter serves to respond to your December 2, 2011 letter received via email on December 2, 2011 protesting El Dorado County Department of Transportation's (Department's) response to your bid protest letter dated November 28, 2011.

The additional information provided in your letter reinforces the Department's conclusion that West Coast Asphalt Maintenance, Inc.'s (WCAM's) failed to comply with the Subletting and Subcontracting Fair Practices Act.

As required by the County's protest procedures, we will include the details of this protest in our report to the Board of Supervisors. The Board of Supervisors will take comment from the bidder, staff, and members of the public who wish to speak on the item on December 13, 2011, at 9:00 a.m., at 330 Fair Lane, Placerville, CA 95667.

Sincerely,

A handwritten signature in cursive script that reads "Janel Gifford".

Janel Gifford, P.E.
Senior Civil Engineer
Office Engineer/Contract Services Unit

Distribution : V&C Construction, Inc. (775) 267-1968
Don Garcia Excavating and Paving, Inc. (530) 577-0221
Burdick Excavating Company, Inc. (775) 297-0974
Herback General Engineering (775) 267-6801
White Rock Construction, Inc. (775) 265-6811
KG Walters Construction Co. Inc. (707) 527-0244
Lorang Brothers Construction, Inc. (530) 346-6120
Aspen Developers Corp. (530) 587-1579

c: Donaldo Palaroan
Steve Kooyman