

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

11/28/2011

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)

To Whom It May Concern,

West Coast Asphalt Maintenance, Inc. (WCAM) is in receipt of correspondence titled "All Bidders Letter for the Sawmill 2A Bike Path and Erosion Control Project (Contract No. PW 10-30557, CIP No. 95165) dated 11/22/2011; in which the Bid of WCAM was found to be non-responsive. It is further understood that the sole premise for the determination of El Dorado County in this matter was a failure by WCAM to submit the "Subcontractors Listing form with its proposal. The determination of El Dorado County in this matter is protested as follows:

1. Notice to Bidders Page N-2 and/ or Special Provisions section 2-1.05 state the following:

REQUIRED LISTING OF PROPOSED SUBCONTRACTORS

Each Proposal shall have listed therein the name, contractor's license number and address of **each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of 0.5% of the total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code.** The Bidder shall also describe in the Subcontractor Listing the work to be performed by each subcontractor listed. The work to be performed by the subcontractor shall be shown by listing the bid item number, bid item description, and portion of the work to be performed by the subcontractor in the form of a percentage calculated by dividing the work to be performed by the subcontractor by the respective bid item amount(s) (not by the total bid price). The percentage of each bid item subcontracted may be submitted with the Bidder's bid or sent via email or fax to Janel Gifford, County of El Dorado Department of Transportation, email-Janel.Gifford@edcgov.us, Fax-(530) 626-0387 by 4:00 p.m. on the first business day after the bid opening. The email or fax shall contain the name of each subcontractor submitted with the Bidder's bid along with the bid item number, bid item description, and the percentage of each bid item subcontracted, as described above. At the time the contract is awarded, all listed subcontractors shall be properly licensed to perform their designated portion of the work. The bidder's attention is directed to other provisions of the Act \related to the imposition of penalties for failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

2. It is presented that the proposal of WCAM contained no subcontract in excess of 0.5% of the total bid or in excess of \$ 10,000.00 and therefore; was not required to list any subcontractors.
3. It is further presented that the Subcontract Listing submitted the day following the bid date, contained a percentage calculation that was not representative of the actual percentage of participation due to

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inclusion of overhead and markup. This method of calculation effectively created subcontract participation in excess of the 0.5%/ \$10,000.00 threshold. An accurate version on the Subcontractor Listing form is as follows:


Subcontractor	Bid Item	Bid item Description	% Subcontract	\$ Value
Kelley Erosion Control	5	Humus & Humus Application	16%	\$ 740.00
	7	Mulch & Mulch Application	20%	\$ 4140.00
	9	Tackifier & Tackifier Application	88%	\$ 4508.95
			Total Participation	\$ 9388.95

It is re-iterated, that the subcontractor participation falls under the threshold requiring listing of the subcontractor with the Bid Proposal. The attached subcontractor quotation is provided to support the facts as stated.

4. It is presented that WCAM should be afforded the same consideration given the the third low bidder in it's submission of the Subcontractors listing; that is, any remedies and/ or directives as allowed by the California Public Contract Code be enacted in finding a "responsive" bid. Specifically, no portion of the California Public Contract Code required WCAM to submit a Subcontract Listing in this situation. Furthermore, the fact that a Subcontract Listing was submitted does not necessarily present cause for finding a bidder non-responsive.

In Summary, your careful consideration in this matter is requested; WCAM is hopeful that a finding of "responsive" will be issued by El Dorado County.

Sincerely,
Peter Griffin


Estimator/ Project Manager
West Coast Asphalt Maintenance, Inc

KELLEY EROSION CONTROL, INC.

Bid Date: 11/16/11

Page: 1 of 1

FROM:

Claudia J. Chambers CPESC, CISEC, QSP
 Kelley Erosion Control, Inc.
 2395 B Tampa Street
 Reno, NV 89512
 Fax (775) 322-6606
 Phone (775) 322-7755
 Cell: (775) 741-8875

TO:

Name: Peter Griffin
 Company: West Coast Paving
 Address:
 City:
 State:
 Fax:
 Phone: 852-3101
pgriffin@westcoastpaving.net

JOB NAME: Sawmill 2A Bike Path & Erosion Control Project

Bid Item	Unit	Estimated Quantity	Unit Price	Total Estimated Price
5. Humus Application (only)	CY	37	\$20.00	\$740.00
6. Mob and De-mob for Mulch Blowing	EACH	1	\$1,000.00	\$1,000.00
7. Mulch Application (only)	CY	201	\$20.00	\$4,140.00
8. Mob and De-mob for Tackifier Application	EACH	1	\$1,000.00	\$1,000.00
9. Tackifier and Tackifier Application	SF	72,725	.062	\$4,508.95
Grand Total				To Be Determined

SPECIAL INSTRUCTIONS: Non-Union Firm, DBE/WBE, SBA (WOSB) Small Woman Owned Business. NV No. NV00061UCPN, Caltrans DBE UCP Number 39756. Excludes: Site or soil prep prior to revegetation, topsoil work, clearing/grubbing, traffic control, protection of areas after seeding, permits, BMP's, SWPPP, bonding, irrigation, maintenance or guarantees. Water to be supplied on site and paid for by general contractor. This quotation is valid for 2 weeks without confirmation. Standby time will be charged if KEC is authorized to mobilize but site is not ready at the time of KEC's arrival @ \$ 350.00 per hour. KEC is quoting application of mulch/humus only. General to supply mulch and humus to job site and load blowing truck.

Claudia@kelleyerosioncontrol.com

NV Contractors License # 0027423B and # 0039951

CA Contractors License# 703012



MAINTENANCE DIVISION
2441 Headington Road
Placerville CA 95667
Phone: (530) 642-4909
Fax: (530) 642-9238

JAMES W. WARE, P.E.
Director of Transportation

Internet Web Site:
<http://edcgov.us/dot>

MAIN OFFICE:
2850 Fairlane Court
Placerville CA 95667
Phone: (530) 621-5900
Fax: (530) 626-0387



December 2, 2011

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

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
November 28, 2011**

Dear Mr. Griffin:

This letter serves to respond to your November 28, 2011 letter received via email and fax on December 1, 2011 protesting El Dorado County Department of Transportation's (Department's) recommendation in its All Bidders letter dated November 22, 2011 that the El Dorado County Board of Supervisors find West Coast Asphalt Maintenance, Inc.'s (WCAM's) bid non-responsive for failure to submit its Subcontractor Listing form with its bid. Your letter contends that the spreadsheet submitted by WCAM to the Department on the day following the bid opening was not representative of the actual percentage of participation due to the inclusion of overhead and markup. Your letter states that the accurate version would have resulted in the subcontractor's total participation amounting to \$9,388.95, which is less than the \$10,000 threshold required for reporting on the Subcontractor's Listing form.

The Department's recommendation to the Board of Supervisors remains unchanged. There is not sufficient evidence presented in the documentation submitted to the Department by WMAC to support the WMAC's position on the amount it intends to subcontract. The Subcontractor Listing spreadsheet submitted by WCAM on November 17 indicates that Kelly 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. The UDBE commitment form submitted by WCAM via email on November 21, 2011 shows a UDBE commitment for Kelly Erosion Control totaling \$11,110.00 and includes items of work 5 through 9.

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 this work. You note that WCAM should be afforded the same

subcontractor would perform this work. You note that WCAM should be afforded the same consideration given the third low bidder. The third low bidder listed two subcontractors to perform 100% of item of work 56. Public Contract Code Section (PCC) 4106 outlines the steps that a prime contractor must take when it shows in its Subcontractor listing form that two subcontractors will perform the same work. PCC 4104 requires submittal of the subcontractor listing form with the bidder's bid proposal for all work that will be subcontracted in excess of 0.5% of the total bid or \$10,000 whichever is greater. The information on the form submitted with the bidder's bid proposal must include the name and location of business of each subcontractor and the portion of work that will be done by each subcontractor. WCAM did not comply with these requirements.

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,



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