

April 7, 2025

VIA OVERNIGHT MAIL & EMAIL

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Laurence Esguerra, PE
Senior Engineer
Orange County Water District
18700 Ward Street
Fountain Valley, CA 92708

Subject: Response to Bid Protest by Empire Equipment Service, Inc.

Re: **Bond Basin Slope Repair - Contract No. SB-2025-1 ("Project")**

Dear Mr. Esguerra:

We represent the low apparent responsive, responsible bidder for the above referenced Project, Innovative Construction Solutions, ("ICS"). The second low bidder, Empire Equipment Service, Inc. ("Empire"), submitted a letter protesting ICS's bid on the ground that it "failed to submit proof of its subcontractors' Department of Industrial Relations ("DIR") registrations with their sealed bid as explicitly required by the Bid Documents." ICS respectfully disagrees and as explained below, submits that its low bid is fully responsive and it and its listed subcontractors are qualified to bid and to perform work on the Project.

ICS'S BID WAS RESPONSIVE

As required by Public Contract Code §4104 and the List of Subcontractors' form, ICS listed two subcontractors: R. Dugan Construction and D. J. Scheffler, their division of work, address, contractor's license number and DIR Registration Number.

Empire' asserts that in addition to the information required to be inserted into the List of Subcontractors, ICS was required to provide documentary proof of the two listed subcontractor's current registration to perform work pursuant to Section 1725.5 of the Labor Code with its bid.

The List of Subcontractors Form's instruction paragraph states the following:

The Bidder is required to furnish the following information (in accordance with the provisions of Section 4100 et seq., of the Public Contract Code of the State of California and any amendments thereto) for each Subcontractor performing more than 0.5% of the Total Base

Bid. Do not list alternative subcontractors for the same work. The Bidder shall provide proof of each listed Subcontractor's current registration to perform public work pursuant to Section 1725.5 of the Labor Code of the State of California.

ICS's List of Subcontractors Form set forth all the information required by Public Contract Code §4104 (a) (1) that needed to be inserted. There should be no dispute that the information, including DIR Registration, for each of the two subcontractors was inserted into the form.

(a) (1) The name, the location of the place of business, the California contractor license number, and public works contractor registration number issued pursuant to Section 1725.5 of the Labor Code of each subcontractor who will perform work or labor or render service to the prime contractor... in an amount in excess of one-half of 1 percent of the prime contractor's total bid...

The List of Subcontractors Form's instructions also required the bidder to provide proof of each listed Subcontractor's current registration to perform public work pursuant to Section 1725.5 of the Labor Code of the State of California but it does not say to whom or when that proof must be provided. The Bid Form, on page P-8, paragraph 10 provides that mandatory direction.

10. Prior to and as a condition of entering into an Agreement for the Work scheduled herein on which it submits a bid, the Bidder shall provide the District with proof of the Bidder's and all subcontractors' current registration to perform public work pursuant to Labor Code Section 1725.5. (emphasis added)

The Notice Inviting Bids notified each bidder of the following Labor Code requirements:

CONTRACTOR'S REGISTRATION: In accordance with Labor Code Section 1771.1.a, contractor or subcontractor shall not be qualified to bid on or be listed in a bid proposal or engage in the performance of this Work unless currently registered and qualified to perform the Work pursuant to Labor Code Section 1725.5.

The Information for Bidders repeated those two Labor Code requirements:

CONTRACTOR'S REGISTRATION: In accordance with Labor Code Section 1771.1.a, contractor or subcontractor shall not be qualified to bid on or be listed in a bid proposal or engage in the performance of this Work

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unless currently registered and qualified to perform the Work pursuant to Labor Code Section 1725.5.

Like the List of Subcontractors, neither the Notice Inviting Bids nor the Information for Bidders contained a mandatory direction or instruction when or to whom documentary proof of registration with DIR was to be provided. It is only in the Bid Form itself, which is the paramount form that provides the mandatory direction when (prior to entering into the contract) and to whom (the District). There is no requirement to provide documentary proof of registration with the Bidder's bid.

CONCLUSION

In conclusion, we submit that the protest by Empire lacks merit. There is no requirement in the bidding documents that ICS must provide with its bid documentary proof that it and its two listed subcontractors were registered with DIR prior to the submission of ICS' bid. Accordingly, we ask that the protest be denied and that the District proceed to award the contract to ICS as the lowest responsive, responsible bidder, as required by law.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions regarding the above.

Very truly yours,

McINERNEY & DILLON, P.C.



William H. McInerney, Jr.

cc: Empire Equipment Service, Inc.
c/o SMTD Law, LLP via email

Innovative Construction Solutions via email