

General Engineering Contractor

June 23, 2017

City of Costa Mesa Public Works
77 Fair Dr.
Costa Mesa, CA 92626
714-754-5323

Attention: Arash Rahimian

**RE: ARLINGTON DRIVE BIOSWALE & DRY WEATHER DIVERSION PROJECT CITY PROJECT NO.
17-09 – BID PROTEST**

Mr. Rahimian,

Los Angeles Engineering (LAE) respectfully submits the following letter in protest of the subject bid, read publicly on June 20th, 2017 at 2:00 PM. LAE believes the apparent low bidder (Sully-Miller Contracting Co.) is in breach of California Public Contractor Code and received an unfair advantage pre- and post-bid.

After the bid was publicly read, those present had the opportunity to view and take pictures of the Subcontractor List. Upon review of the list (Attachment A), it is apparent that Sully Miller listed two Electrical contractors: California Professional Engineering, Inc. (listed as CPE) and Traffic Loops & Crackfilling (listed as TLCF). Additionally, both contractors are listed for identical Portion of Work and Bid Items number: Electrical; 62,67,69,70 and 78. Finally, in neither case is the portion of work said to be "Partial" or otherwise indicates that the listed contractor is not listed to perform the full scope of work per the bid items listed.

California Public Contract Code (PCC) section 4106 discusses the above situation where a prime contractor specifies more than one subcontractor for the same portion of work:

"If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself." (Emphasis added)

As such, according to PCC 4106, Sully-Miller must be both, certified to perform the portion themselves and must perform that scope themselves. However, per a search of Contractor's License (Exhibit B) current to June 20th, 2016 at 3:16 PM, Sully-Miller's business License Classification are: A – GENERAL ENGINEERING CONTRACTOR and C31 – CONSTRUCTION ZONE TRAFFIC CONTROL only. This

means that Sully-Miller is not qualified to perform the portions of work defined by bid items 62,67,69,70 and 78 as they do not have a C-10 ELECTRICAL license, which is the only license which would deem them "fully qualified" to perform said work. Therefore, Sully-Miller cannot perform the Electrical scope of work and cannot subcontract the work (as noted above) and as such is not capable of performing the complete scope of work for the contract and should be deemed not responsive.

In addition to being unable to perform the Electrical scope of work, were Sully-Miller to be awarded the contract per their bid documents, they could effectively "shop" the electrical scope, by leveraging the two listed electrical contractors against each other to negotiate a better price than would have been available to the other bidders pre-bid, which they could have accounted for and adjusted their bid price accordingly.

In conclusion, LAE is protesting Sully-Miller's Bid Proposal for the subject bid due to their listing two Electrical subcontractors for the same scope of work, in breach of PCC. By listing two Electrical subcontractors for the same scope of work Sully-Miller must perform the work themselves, which as shown above, they cannot do as they are not "fully qualified to do so per PCC. Additionally, Sully-Miller had an unfair advantage pre-bid as a direct result of listing two Electrical subcontractors as they could have estimated a lower total Electrical price knowing they would "shop" the price post-bid. Therefore, LAE respectfully believes that Sully-Miller's bid proposal should be deemed not responsive and the contract awarded to LAE.

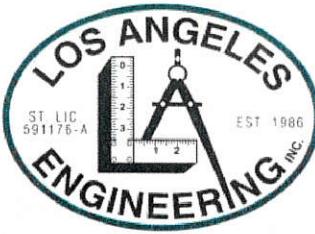
Sincerely,



Aaron O'Brien.

CC:

City of Costa Mesa City Clerk



General Engineering Contractor

July 11th, 2017

City of Costa Mesa Public Works
77 Fair Dr.
Costa Mesa, CA 92626
714-754-5323

Attention: Arash Rahimian

**RE: ARLINGTON DRIVE BIOSWALE & DRY WEATHER DIVERSION PROJECT CITY PROJECT NO.
17-09 – BID PROTEST - Rebuttal**

Mr. Rahimian,

We are in receipt of your letter dated July 10th in regards to our Arlington Drive Bioswale & Dry Weather Diversion Project Formal Bid Protest. In your response, you reference that the listing of two subs for the same portion of work was a minor irregularity and that it did not provide an unfair advantage. This is incorrect and does not follow the California Public Contract Code.

If this was in fact a clerical error and is covered by section 4107.5 of the public contract code, Sully Miller Contracting Co. would have had to assert a claim of inadvertent Clerical error in the listing of subcontractors within two working days after the time of bid opening which they did not.

Attached to your letter, you included emails from California Professional Engineering, Traffic Loops Crackfilling, Inc., and Charlie Pessa from Sully Miller Contracting Co. On June 26th, six days after the bid opening, Diem Chu from California Professional Engineering, Inc (CPE) sent an email to Charlie Pessa deducting bid items 62 and 69 from their proposal. On June 27th, seven days after the bid opening, Mailan Nguyen from Traffic Loops Crackfilling, Inc. (TLC) sent Charlie Pessa a revised quote which Charlie Pessa accepted in the same email chain.

With the findings in the emails provided in your response, it is very clear that this was not a minor irregularity but actual bid shopping. It was not the intent of Sully Miller to use both Electrical Subcontractors for different scopes as both subcontractors bid complete scopes. Both CPE and TLC revised their proposals after the bid date which is "Bid Shopping" by Sully Miller and is against California Public Contract Code. If this was negotiated by Sully Miller and both electrical subcontracts before the actual bid date they would have not had to revised their proposals, which both electrical subs did revise their proposals.

In conclusion, LAE is rebutting your decision to find Sully Millers bid package to have a "minor irregularity" and going against California Public Contract Code, and we request you find Sully Millers bid to be non-response for the listing of two Electrical Subcontractors and "Bid Shopping" several days after the bid opening. Therefore, LAE respectfully believes that the contract shall be awarded to LAE as the lowest responsive bid. If you have any questions concerning this matter please feel free to contact me.

Sincerely,



Aaron O'Brien

CC:

City of Cost Mesa City Clerk

legislative Body or the owner.
Legislative
All information must be filled out and typed. Please use additional pages in this format if
needed.

PORTION OF WORK	BID ITEM NUMBER	SUBCONTRACTOR'S NAME AND FULL ADDRESS	STATE LICENSE NUMBER AND CLASSIFICATION
Gold m. 11 lighting	34	RRS 10205 Saas Avenue, Turp Valley 18180 Ranch St, Turp Valley	SC 9155J 1000003163 S-10 S-10
Electrical	624076929	CPE 909 Fletcher Ave, Lapeer	791507 1000003160
Plaster	910	EBS 1320 E 6th St, 100 Ceres	938798 1000004186
Fences	3912122	Californias Bros	784771 1000006652
Structures	37435323840	8279 Dequard Dr, Muscatatuck 41944549	
Clear / Curb	2 A3A 324226900	JV Land Clearing 207 E Arrow Hwy, San Dimas BC TRAPPI C-15 w Southern Ave Orange	759120 1000012258 877086 10000055501
Stripping	19	Altorn Penco Co. 12000ft 17000ft, 10000ft Orange	122954 1002201196
Fence	1025	Case Land Survey 104 N Birch St, Orange	45411 1000001533
Survey	50-40181	Marina Land Survey 37207 W Main Ave, 10000ft Orange	470862 100000279 452956 1000003294
Electrical	1016769	The CFS 78	



Contractor's License Detail for License # 747612

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

CSLB complaint disclosure is restricted by law (B&P 7124.6) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.

Per B&P 7071.17, only construction related civil judgments reported to the CSLB are disclosed.

Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.

Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

Data current as of 6/20/2017 3:16:00 PM

Business Information

SULLY - MILLER CONTRACTING COMPANY
 135 SOUTH STATE COLLEGE BLVD
 SUITE 400
 BREA, CA 92821
 Business Phone Number: (714) 578-9600

Entity Corporation
 Issue Date 03/30/1998
 Expire Date 03/31/2018

License Status

This license is current and active.

All information below should be reviewed.

Additional Status

The license may be suspended at a future date if the qualifying person is not replaced by 07/31/2017.

Classifications

A - GENERAL ENGINEERING CONTRACTOR
 C31 - CONSTRUCTION ZONE TRAFFIC CONTROL

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with LIBERTY MUTUAL INSURANCE COMPANY.

Bond Number: 014012431

Bond Amount: \$15,000

Effective Date: 01/01/2016

Contractor's Bond History

Workers' Compensation

This license has workers compensation insurance with the LIBERTY INSURANCE CORPORATION

Policy Number: WC7631004125

Effective Date: 04/01/2016

Expire Date: 04/01/2018

Workers' Compensation History

Owner

Personnel listed on this license (current or disassociated) are listed on other licenses.