

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 20<sup>th</sup>, 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 20<sup>th</sup>, 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,

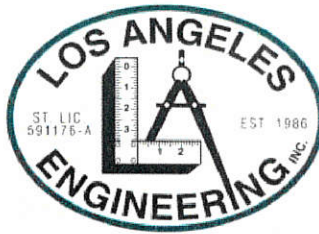


Aaron O'Brien.

CC:

City of Costa Mesa City Clerk





General Engineering Contractor

July 11<sup>th</sup>, 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 10<sup>th</sup> 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 26<sup>th</sup>, 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 27<sup>th</sup>, 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 of the owner,

*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	314	RRS 10200 San Simeon Hwy. Temple Valley	869352
mill	50-51, 52, 53	RRS 10200 San Simeon Hwy. Temple Valley	1000003363
Land Scope	54, 55, 56, 57, 58	RRS 10200 San Simeon Hwy. Temple Valley	8000000000
	59, 60, 61, 62	RRS 10200 San Simeon Hwy. Temple Valley	1000000000
Electrical	62, 63, 64, 65	CPE 929 Otterlin Ave. Lafayette	791107
Auto Facilities	9, 10	EBS 1300 E 6th St. 100 Corona	932798
Structure	29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49	Calaveras Bros 80-74 Deepwood Dr. Murietta	1000004286
Clear/Comp	2	JV Land Clearing 207 E Arrow Hwy San Dimas	759306
Stripping	33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49	DC Truitt 638 W. Southern Ave. Orange	1000012258
Fence	19	Alcorn Fence Co. 1200 W. 12th Ave. Orange	877086
Survey	19, 25	Case Land Survey 614 N. Euclid St. Orange	1000005502
Land Scope	50-60, 61	Marina Land Scope 2207 W. Greenway Rd. Orange	122954
Electrical	62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100	THCP 946 S. Emerald St. Anaheim St	1000001786

Dg Bidder's Initials





# CONTRACTORS STATE LICENSE BOARD



## 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

Other

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