



**"RE-BUILDING THE CITY'S WATER SYSTEMS FOR THE 21<sup>ST</sup> CENTURY"**

# **Sewerage & Water Board OF NEW ORLEANS**

MITCHELL J. LANDRIEU, President  
WM. RAYMOND MANNING, President Pro-Tem

625 ST. JOSEPH STREET  
NEW ORLEANS, LA 70165 • 504-529-2837 OR 52W-ATER  
www.swbnola.org

January 6, 2014

## **TO THE HONORABLE PRESIDENT AND MEMBERS OF THE SEWERAGE AND WATER BOARD OF NEW ORLEANS**

Mr. Marion Bracy was voted Temporary Chair of the Operations Committee by a motion of Mrs. Florence Schornstein and seconded by Dr. Beverly Wright.

The **Operations Committee** of the Sewerage and Water Board of New Orleans met on Monday, January 6, 2014, at 9:00 A.M. in the 2<sup>nd</sup> Floor Board Room, 625 St. Joseph Street to address the following matters:

### **ACTION ITEMS**

#### **APPROVAL OF PREVIOUS REPORT**

There was no meeting for the month of December 2013. All action items were presented to the Executive Committee at its meeting of December 6, 2013.

#### **BID RECOMMENDATIONS – DBE PARTICIPATION**

#### **Bid Protest on Contract # 30005 Restoration of Existing Gravity Sewer Mains Damaged by Hurricane Katrina by Excavation and Replacement from Manhole to Manhole, CIPP Lining from Manhole to Manhole and Point Repair at Various Sites throughout Orleans Parish**

On Friday, December 20, 2013, five (5) bids were received for subject contract. The bid totals are as follows:

Fleming Construction Company, LLC	\$ 4,129,070.00
Wallace C. Drennan, Inc.	\$ 4,333,769.00
BLD Services, LLC	\$ 4,354,848.00
Boh Bros. Construction Co., LLC	\$ 4,847,791.00
Hard Rock Constructions, LLC	\$ 5,293,527.00

The estimated budget is \$ 5,000,000.00.

Thirty-six percent (36%) SLDBE participation was requested on this contract.

### **Background**

The recent history of subject contract indicates that a mandatory pre-bid conference was held on Friday, December 6, 2013, at which SLDBE policies and procedures were explained to potential bidders. Fleming Construction Company, LLC; Wallace C. Drennan, Inc.; BLD Services, LLC; Boh Bros. Construction Co., LLC; and Hard Rock Constructions, LLC, were in attendance.

The apparent lowest bidder, Fleming Construction Company, LLC, submitted the following subcontractors:

**Hebert Trucking & Equipment Service** (eligible certified SLDBE)  
\$400,000.00 — 9.7%

**Cooper Contracting** (eligible certified SLDBE)  
\$500,000.00 — 12.1%

**Cabildo Staffing, LLC** (ineligible non-certified subcontractor)  
\$10,000.00 — 0.2%

**Dieudonne Enterprises, Inc.** (eligible certified SLDBE)  
\$250,000.00 — 6.1%

**C & M Construction Group, Inc.** (eligible certified SLDBE)  
\$20,000.00 — 0.5%

**Auguillard Construction Co., LLC** (eligible certified SLDBE)  
\$227,980.00 — 5.5%

Listed Subcontractors Participation totals:	<b>\$1,417,980.00 — 34.3%</b>
SLDBE Participation totals:	<b>\$1,407,980.00 — 34.1%</b>

Fleming Construction Company, LLC, failed to meet the 36% SLDBE Participation goal, or submit a documented Good Faith Effort with a notarized affidavit.

The apparent second lowest bidder, Wallace C. Drennan, Inc., submitted the following subcontractors:

**Auguillard Construction Co., LLC** (eligible certified SLDBE)  
\$500,000.00 — 11.5%

**C & M Construction Group, Inc.** (eligible certified SLDBE)  
\$290,000.00 — 6.7%

**Choice Supply Solutions, LLC** (eligible certified SLDBE)  
\$100,000.00 — 2.31%

**Cooper Contracting** (eligible certified SLDBE)  
\$290,000.00 — 6.7%

**Prince Dump Truck Service** (eligible certified SLDBE)  
\$450,000.00 — 10.4%

Participation totals: **\$1,565,000.00 — 36.1%**

Based upon analysis of SLDBE participation, the Economically Disadvantaged Business Program recommended that the SLDBE participation submitted by Fleming Construction Company, LLC, be rejected because the company failed to meet the DBE participation goal, did not provide documentation of Good Faith Effort by way of signed affidavit affixed with official seal and that the SLDBE participation submitted by Wallace C. Drennan, Inc., be approved.

On January 3, 2014 Fleming Construction Company, LLC, submitted a bid protest.

#### **Analysis of Bid Protest**

- 1) Protestor indicates that a typographical error occurred, “The actual dollar amount for the Sewerage & Water Board Contract 30005 should have read \$299,980, in lieu of incorrect amount of \$277,980.”
- 2) Protestor indicates that “Several months ago Cabildo Staffing, LLC, a DOTD and City of New Orleans certified DMBE business, approached (Fleming Construction) as a certified State-Local Disadvantaged Business Enterprise. We incorrectly believed that they were also certified as DMBE by the Sewerage & Water Board and for that reason counted their participation toward the DBE goal.”

In response, the SLDBE procedures and protocols, as outlined in the projects bid specification Section -09 SETTING MINIMUM PARTICIPATION GOALS states, “The stated minimum percentage DBE participation goal recommended by CRC and approved by the Board applies to the work of this contract....Should the Bidder fail to comply with this request, the bid shall be considered unresponsive, unless:

- A. An affidavit is furnished by the bidder with its bid showing that the DBE goals cannot be met for the following reasons... (2) The DBE offers made and accepted for subcontract and/or material supplies do not total the stated goal for participation, but total a lesser percentage, and (3) the bidder was unable to obtain DBE further participation, despite his or her demonstrated good faith efforts (as defined in Part III, D, 2 of the Board’s DBE Plan) to obtain additional participation by DBE firms.
- B. Each of the assertions made by the bidder must be supported by documentary evidence.

In addition, the SLDBE procedures and protocols, as outlined in the projects bid specification Section -05 UTILIZATION OF DBE VENDOR LISTINGS states, “All bidders are required to utilize the most recent Sewerage & Water Board State-Local Disadvantaged Business Enterprise Program Approved Vendor Listings for Construction, Goods & Services/Professional Services, in their selection of DBE entities to meet DBE participation goals”

#### **Findings**

The initial analysis of the SLDBE participation submitted by Fleming Construction Company, LLC, found that Fleming Construction failed to meet the SLDBE participation goal, and did not provide documentation of Good Faith Effort by way of signed affidavit affixed with official seal. Within the protest

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filed by Fleming Construction, they state, "Even with this rejection of Cabildo Staffing, Fleming's proposed DBE participation is still 35.8%"

After review and analysis of the DBE issues raised by Fleming Construction Co., LLC which form the basis of the bid protest, there are no compelling reasons which merit its support.

### Recommendations

The Economically Disadvantaged Business Program recommends that the bid protest be denied. As such, the recommendation to reject the participation submitted by Fleming Construction Company, LLC, and accept the DBE participation submitted by Wallace C. Drennan, Inc., is reaffirmed.

Dr. Wright indicated she believed it was a good faith effort; however the proper paperwork to indicate the good faith effort was not submitted.

Mrs. Schornstein indicated that we need to follow the law because we could face litigation. The decision does not end with the Operations Committee it still has to go before the Board.

The recommendations on subject contract were accepted and approved by a motion of Mrs. Schornstein and seconded by Dr. Wright. The motion carried.

### **Contract # 30006 Restoration of Existing Gravity Sewer Mains Damaged by Hurricane Katrina by Excavation and Replacement from Manhole to Manhole, CIPP Lining from Manhole to Manhole and Point Repair at Various Sites throughout Orleans Parish**

#### **Bid Protest on Contract # 30006 Restoration of Existing Gravity Sewer Mains Damaged by Hurricane Katrina by Excavation and Replacement from Manhole to Manhole, CIPP Lining from Manhole to Manhole and Point Repair at Various Sites throughout Orleans Parish**

On Friday, December 20, 2013, five (5) bids were received for subject contract. The bid totals are as follows:

Fleming Construction Company, LLC	\$ 4,355,500.00
Boh Bros. Construction Co., LLC	\$ 4,759,309.00
Wallace C. Drennan, Inc.	\$ 4,994,937.00
BLD Services, LLC	\$ 5,398,000.00
Hard Rock Constructions, LLC	\$ 5,733,375.00

The estimated budget is \$ 5,000,000.00.

Thirty-six percent (36%) SLDBE participation was requested on this contract.

### Background

The recent history of subject contract indicates that a mandatory pre-bid conference was held on Friday, December 6, 2013, at which SLDBE policies and procedures were explained to potential

bidders. Fleming Construction Company, LLC; Wallace C. Drennan, Inc.; BLD Services, LLC; Boh Bros. Construction Co., LLC; and Hard Rock Constructions, LLC, were in attendance.

The apparent lowest bidder, Fleming Construction Company, LLC, submitted the following subcontractors:

**Hebert Trucking & Equipment Service** (eligible certified SLDBE)  
\$230,000.00 — 5.3%

**Standard Cement Materials, Inc.,** (eligible certified SLDBE)  
\$780,000.00 — 17.9%

**Cooper Contracting** (eligible certified SLDBE)  
\$270,000.00 — 6.2%

**Cabildo Staffing, LLC** (ineligible non-certified subcontractor)  
\$20,000.00 — 0.5%

**C & M Construction Group, Inc.** (eligible certified SLDBE)  
\$20,000.00 — 0.5%

**W&W Trucking & Equipment Service** (eligible certified SLDBE)  
\$20,000.00 — 0.5%

**Auguillard Construction Co., LLC** (eligible certified SLDBE)  
\$227,980.00 — 5.2%

Listed Subcontractors Participation totals:	<b>\$1,567,980.00 — 36.0%</b>
SLDBE Participation totals:	<b>\$1,547,980.00 — 35.5%</b>

Fleming Construction Company, LLC, failed to meet the 36% SLDBE Participation goal, or submit a documented Good Faith Effort with a notarized affidavit.

The apparent second lowest bidder, Boh Bros. Construction Co., LLC, submitted the following subcontractors:

**Auguillard Construction Co., LLC** (eligible certified SLDBE)  
\$879,035.00 — 18.5%

**Standard Cement Materials, Inc.,** (eligible certified SLDBE)  
\$607,400.00 — 12.8%

**Prince Dump Truck Service** (eligible certified SLDBE)  
\$300,000.00 — 6.3%

Participation totals:      **\$1,786,435.00 — 37.5%**

Based upon analysis of SLDBE participation, the Economically Disadvantaged Business Program recommended that the SLDBE participation submitted by Fleming Construction Company, LLC, be rejected because the company failed to meet the DBE participation goal, did not provide documentation

of Good Faith Effort by way of signed affidavit affixed with official seal and that the SLDBE participation submitted by Boh Bros. Construction Co., LLC, be approved.

On January 3, 2014 Fleming Construction Company, LLC, submitted a bid protest.

### **Analysis of Bid Protest**

- 3) Protestor indicates that "Several months ago Cabildo Staffing, LLC, a DOTD and City of New Orleans certified DMBE business, approached (Fleming Construction) as a certified State-Local Disadvantaged Business Enterprise. We incorrectly believed that they were also certified as DMBE by the Sewerage & Water Board and for that reason counted their participation toward the DBE goal."

In response, the SLDBE procedures and protocols, as outlined in the projects bid specification Section -09 SETTING MINIMUM PARTICIPATION GOALS states, "The stated minimum percentage DBE participation goal recommended by CRC and approved by the Board applies to the work of this contract....Should the Bidder fail to comply with this request, the bid shall be considered unresponsive, unless:

- C. An affidavit is furnished by the bidder with its bid showing that the DBE goals cannot be met for the following reasons... (2) The DBE offers made and accepted for subcontract and/or material supplies do not total the stated goal for participation, but total a lesser percentage, and (3) the bidder was unable to obtain DBE further participation, despite his or her demonstrated good faith efforts (as defined in Part III, D, 2 of the Board's DBE Plan) to obtain additional participation by DBE firms.
- D. Each of the assertions made by the bidder must be supported by documentary evidence.

In addition, the SLDBE procedures and protocols, as outlined in the projects bid specification Section -05 UTILIZATION OF DBE VENDOR LISTINGS states, "All bidders are required to utilize the most recent Sewerage & Water Board State-Local Disadvantaged Business Enterprise Program Approved Vendor Listings for Construction, Goods & Services/Professional Services, in their selection of DBE entities to meet DBE participation goals"

### **Findings**

The initial analysis of the SLDBE participation submitted by Fleming Construction Company, LLC, found that Fleming Construction failed to meet the SLDBE participation goal, and did not provide documentation of Good Faith Effort by way of signed affidavit affixed with official seal. Within the protest filed by Fleming Construction, they state, "Even with this rejection of Cabildo Staffing, Fleming's proposed DBE participation is still 35.5%"

After review and analysis of the DBE issues raised by Fleming Construction Co., LLC which form the basis of the bid protest, there are no compelling reasons which merit its support.

### **Recommendations**

The Economically Disadvantaged Business Program recommends that the bid protest be denied. As such, the recommendation to reject the participation submitted by Fleming Construction

Company, LLC, and accept the DBE participation submitted by Boh Bros. Construction Co., LLC, is reaffirmed.

Mr. Marchand, SWB Legal provided clarification of a non-responsive bid.

The recommendations on subject contract were accepted and approved by a motion of Mrs. Schornstein and seconded by Dr. Wright. The motion carried.

### **CONSTRUCTION REVIEW COMMITTEE**

The Construction Review Committee met December 11, 2013 and made the following recommendations.

#### **Open Market Contracts**

##### **Open Market, 36% DBE Participation, no renewal options**

- |                         |   |
|-------------------------|---|
| 1. Contract #3664       | <b>404 HMGP Replacement of Sewage Pumping Station #8</b>  |
| Estimated Cost:         | \$4,032,176.00  |
| Suggested Goal:         | 36%   |
| Areas of Participation: | Demolition, Electrical, HVAC, Earthwork, Building, Site Work, Structural, and Piling  |
|                         | Source of funding is FEMA Reimbursable  |
| 2. Contract #3669       | <b>404 HMGP Replacement of Sewage Pumping Station #6</b>  |
| Estimated Cost:         | \$2,900,000.00  |
| Suggested Goal:         | 36%   |
| Areas of Participation: | Demolition, Electrical, HVAC, Earthwork, Building, Site Work, Structural, and Piling  |
|                         | Source of funding is FEMA Reimbursable  |
| 3. Contract #3786       | <b>Central Wetlands Assimilation Project A-2 Region</b>   |
| Estimated Cost:         | \$3,131,042.00  |
| Suggested Goal:         | 36%   |
| Areas of Participation: | Piping, Flow Meter, Tee/tap, Vegetative Planting  |
|                         | Source of funding is Coastal Impact Assistance Program  |
| 4. Contract #30009      | <b>Sewer Main Replacements from Manhole to Manhole Contract</b>   |
| Estimated Cost:         | \$2,500,000.00  |
| Suggested Goal:         | 36%   |
| Areas of Participation: | Earthwork, hauling and restoration of roadways, driveways and sidewalks.  |
|                         | Source of funding: Sewer System Fund  |
| 5. Contract #30010      | <b>Rehabilitation of Existing Sewer Manholes Damaged by Hurricane Katrina by Replacement and/or adjustment of Existing Frames and Covers, Full and Partial Internal Cementitious Lining and Associated Restoration at Various Sites throughout Orleans Parish</b> |

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Estimated Cost:	\$4,000,000.00
Suggested Goal:	36%
Areas of Participation:	Replacement of frame and cover; installation of cementitious liner; installation of isolation pad; installation of inflow pan; pump setup; pavement, driveway, sod and curb restoration

Source of funding is FEMA Reimbursable

### **Open Market, 0% DBE Participation, no renewal options**

6. Contract #6250	<b>HMGP Generator Load Bank at Carrollton Water Plant</b>
Estimated Cost:	\$5,000,000.00
Suggested Goal:	0%
Justification:	Specialized nature of work

Source of funding is FEMA Reimbursable

Mr. Bracy indicated he would like to encourage us to get a diversity statement from companies we are doing business with.

The Construction Review Committee's recommendations were approved on a motion by Mrs. Schornstein and seconded by Dr. Wright. The motion carried.

### **STAFF CONTRACT REVIEW COMMITTEE**

The Staff Contract Review Committee Meeting was not held in the Month of December because there were no new projects submitted, however the below listed project that was deferred at last month's meeting with approval pending submission of project description is now approved:

#### **Open Market Contracts**

#### **Previously Deferred**

#### **Open Market, 0% SLDBE Participation,**

##### **1. RFQ for Forensic Engineering Services for future SELA Projects**

Budget Amount:	\$976,705.00
Percentage Goal Justification:	Scope of work is highly specialized. Contractor(s) would have to be qualified as expert witness in both federal and state court.

Funding Source: Operating and Maintenance Budget

Dr. Wright indicated she would like the diversity statement in this area also.



Dr. Wright indicated she would like to have future removed from the name of the project because future indicates infinity.

The Staff Contract Review Committee's recommendations were approved on a motion by Mrs. Schornstein and seconded by Dr. Wright. The motion carried.

### **RENEWAL CONTRACT WITH DBE PARTICIPATION**

There were no renewal contracts with DBE participation.

### **FINAL ACCEPTANCE ON CONTRACTS WITH DBE PARTICIPATION**

#### **Contract #3738; Hurricane Related Repairs to SPS #15**

The Prime Contractor is Alfred Conhagen, Inc. of LA

The DBE participation goal is 25%. The DBE participation achieved is 31.2%.

The Economically Disadvantaged Business Program recommends that the DBE participation on subject contract be approved for final acceptance.

The above referenced final acceptance on subject contract with DBE participation was approved by a motion of Mrs. Schornstein and seconded by Dr. Wright. The motion carried.

#### **Contract #3989; Lower 9<sup>th</sup> Ward Area Sewer Rehabilitation #8**

The Prime Contractor is Fleming Construction Co., LLC

The DBE participation goal is 36%. The DBE participation achieved is 36%.

The Economically Disadvantaged Business Program recommends that the DBE participation on subject contract be approved for final acceptance.

The above referenced final acceptance on subject contract with DBE participation was approved by a motion of Dr. Wright and seconded by Mrs. Schornstein. The motion carried.

### **INFORMATION ITEMS**

#### **Customer Service Results Through November 2013**

Mr. Robert Miller, Deputy Director made a presentation.

The Committee received the report.

**DBE Participation Report**

The Committee received the report.

**(Revised) Amendments to the By-Laws**

The committee received the report.

**2014 Committee/Board Meeting Schedule**

The Committee received the report.

**Any Other Matters**

None

**ADJOURNMENT**

The meeting adjourned at 9:52 AM with a motion by Mrs. Schornstein and seconded by Dr. Wright. The motion carried.

**ATTENDANCE**

**PRESENT:** Dr. Beverly Wright  
Mr. Marion B. Bracy  
Mrs. Florence Schornstein

**ABSENT:** Mr. Mark M. Moody  
Ms. Loyce Wright

Also in attendance were the Executive Director; Deputy Director; General Superintendent; Deputy Superintendent; Attorney IV; EDBP Interim Director; EDBP Certification Supervisor; Purchasing Director; Community and Intergovernmental Relations Director; Jason Higginbotham, Jacqueline Shine, SWB; Wally Drennan, III; Wallace C. Drennan, Inc.; Ben Reichard, Fishman Haygood/Wallace Drennan; Denise Puente, Simon Peragine/Fleming Construction; Jack Fleming, Thomas Moren, Fleming Construction; Randy Smith, Royal; Carol Rocque, Damon Rocque Securities; Byron W., MSMM Engineering.

Very truly yours,

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Mr. Marion Bracy, Temporary Chair

MB/vjc