



Intelligent Traffic Systems

City of Stockton
Attn: Dennis Yep
22 East Weber Ave., 3rd Floor
Stockton, CA 95202

Marcus Welz, ITS CEO

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Austin, TX 78733
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Date: April 16, 2018

Mr. Yep:

I am writing to respond to the protest filed by Pacific Excavation, Inc. concerning Siemens' bid package for Public Works Bid PW-1312, March Lane Adaptive Traffic Control System.

The letter from Pacific Excavation referenced the following points:

- Bid package allegedly missing pages 1, 2, 19, and 21 through 39
- Failure to supply warranty for emergency priority control system
- EEO-1B incomplete
- Exhibits 15-G and 12-B inconsistent
- Conflict of interest for Siemens as we are the sole provider of the SCOOT system specified in the contract documents

We would like to respond to each point raised by Pacific Excavation as follows:

1. Bid package allegedly missing pages 1, 2, 19, and 21 through 39

The City's RFP expressly states on page 1 that the checklist (page 1 and 2), which Pacific Excavation, Inc. notes as missing, is "Not Required to be Submitted". Furthermore, the other pages noted as missing (19 and 21 through 39) are instruction pages. Consequently, these pages were also not required to be submitted as part of the bid package.

2. Failure to supply warranty for emergency priority control system

The RFP only states that "A copy of the manufacturer's written warranty outlining the conditions stated above shall be supplied with the bid. Coverage and coverage limitations are to be administered as detailed in the manufacturer's Warranty Maintenance document." However, it does not state that a bid will be deemed non-responsive if the warranty is not provided as part of the bid package. Moreover, the manufacturer was designated by the City and its standard warranty is simply a pass through warranty. We have included a copy of this warranty with this letter.

3. EEO-1B incomplete

Pacific Excavation, Inc.'s claim that the EEO-1B was incomplete is not correct as Siemens' submitted the complete EEO-1B as required under the RFP. We have attached a new EEO-1B to be thorough.

4. Exhibits 15-G and 12-B inconsistent

While there has been a discrepancy between the two Exhibits, this calculation error has been corrected by Siemens after submittal and at the request of the city. Siemens will well meet the DBE requirements as set out in the RFP and thus comply with the intent of the DBE requirements.

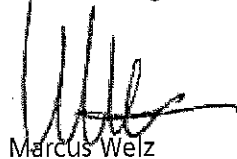
5. Conflict of interest for Siemens as we are the sole provider of the SCOOT system specified in the contract documents

There is no conflict of interest with Siemens in this case. Siemens was also specified by the City of Stockton as the sole provider of the SCOOT system for the Pershing Avenue bid package, which we also bid, but Pacific Excavation won. Furthermore, the claim made by Pacific Excavation Inc. that other cities, such as Salinas, did not allow Siemens to be a specified supplier and Prime bidder for such projects is incorrect. It was Siemens' decision to not bid in the case of Salinas.

Additionally, SCOOT was the chosen adaptive system based on a detailed evaluation by a third party consultant, and thus even the fact that SCOOT was specified did not give Siemens an unfair advantage as all interested bidders, including Pacific Excavation were able to bid on this as well.

For the reasons set forth above, Siemens' bid was responsive and in full compliance with the City of Stockton's bid package. However, should the City find any variations, any such variations are immaterial and inconsequential and should be waived by the City because any such variations: (i) did not make the bidding process unfair in any way, (ii) did not affect the amount of any bids, (iii) did not give Siemens an unfair advantage, and (iv) does not affect Siemens' commitment to properly perform the work in full compliance with the contract specifications. See, e.g., Ghilotti Construction Co. v. City of Richmond, 45 Cal.App.4th 897 (1996) ("[I]t is further well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential.")

With kind regards,



Marcus Welz
ITS CEO

Siemens Industry, Inc., Intelligent Traffic Systems



*Building critical
traffic connectionssm*

Warranty Overview—Opticom™

To protect the purchases made by its valued customers and as demonstration of the superb quality of its Opticom products, Global Traffic Technologies, LLC ("GTT") offers a robust warranty program with its Opticom product line, pursuant to the terms and conditions herein. This warranty is made for the exclusive benefit of the original end-user customer and shall not accrue to the benefit of any other user, third party or dealer, unless otherwise required by law.

The Opticom warranty includes all Opticom hardware products sold to an end-user customer, with coverages as follows:

Years 1-5

Should an Opticom component fail within the first five years after purchase, GTT will repair or replace (at GTT's discretion) the product at no charge to the end-user customer.

Years 6-10

Should an Opticom component fail within years 6-10 after purchase, GTT will repair or replace (at GTT's discretion) the product for a fee of 25% of the then current list price. All repairs carry a one-year warranty.

Extended Warranty

For an up-front fee of 15% of the original purchase price, any end-user customer may elect to extend the "Years 1-5" warranty to a ten year warranty, meaning should an Opticom component fail within the first ten years after purchase, GTT will repair or replace (at GTT's discretion) the product at no charge to the end-user customer.

Note: Opticom 795 emitters are excluded from the "Years 6-10" and "Extended Warranty" sections of this warranty program.

Exclusive Limited Warranty: GTT warrants that, during the warranty period described above, its Opticom system will deliver the same level of system operability and functionality as defined in the published GTT specifications applicable to the version of components purchased. THIS WARRANTY CONSTITUTES THE SOLE AND EXCLUSIVE WARRANTY RELATING TO THE OPTICOM SYSTEM SOLD OR MANUFACTURED BY GTT. GTT MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ITS OPTICOM SYSTEM. GTT SPECIFICALLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES REGARDING ITS OPTICOM SYSTEM, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES ARISING FROM A COURSE OF DEALINGS OR USAGE OF TRADE.

Warranty Exclusions: This warranty shall not apply to (A) incandescent lamps (confirmation lamps) or (B) to any defect or impairment of operability or functionality resulting from or caused by: (1) alteration, misuse, incorrect installation, neglect of the system or damage due to an accident; (2) repair or modification of the system by persons not authorized by GTT; (3) extreme atmospheric or weather conditions; (4) events or use outside the normal or anticipated course; or (5) improper packaging or damage during shipment by the end-user customer or party other than GTT. In addition, the Opticom system integrates an array of matched components. GTT has designed, developed and tested Opticom system components as part of a matched component system. To ensure system integrity and optimal performance, the emitters, detectors, radios/GPS components, detector cables, phase selectors/discriminators and system software must all be GTT components. The use or integration of any GTT system with any non-GTT component shall void all GTT warranties with respect to such GTT system.

Sale and use of the Opticom system is expressly restricted to authorized agencies of government customers, within their specific jurisdictions. However, because the signal generated by the Opticom system is not exclusive, GTT does not warrant exclusive activation by purchaser. Authorized users desiring to use or coordinate use of the Opticom system with that of other jurisdictions must first obtain the prior written approval of each authorized user in the jurisdiction where use is sought.

Remedies and Limitation of Liability: In the event that any Opticom system sold or manufactured by GTT fails to conform to the terms of GTT's warranty as provided herein, the original end-user customer's exclusive remedy shall be limited to the return of the non-conforming goods to GTT for repair or replacement of the non-conforming components, as determined by GTT in its sole discretion. The cost of return shipping to GTT is the responsibility of the end-user customer. All claims for non-conformance or breach of warranty shall be deemed waived, unless the non-conforming components are returned to GTT within 30 days of discovery of the alleged non-conformance. IN NO EVENT SHALL GTT BE LIABLE FOR ANY OTHER INJURY OR DAMAGES, INCLUDING WITHOUT LIMITATION ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, LOST PROFITS, LOST BUSINESS OPPORTUNITY, LOSS OF GOOD WILL, ATTORNEYS' FEES, DAMAGE TO BUSINESS OR BUSINESS RELATIONSHIPS OR OTHER FORMS OF ECONOMIC LOSS ARISING FROM, CONNECTED WITH, OR RELATING TO GTT'S ACTS OR OMISSIONS, WHETHER FOR BREACH OF WARRANTY, BREACH OR REPUDIATION OF ANY CONTRACTUAL TERM OR LEGAL DUTY IN CONTRACT, TORT, STATUTE OR OTHER THEORY OF LIABILITY. In addition, because GTT systems are installed by other parties and in a variety of end-user customer-specific applications, and because GTT's products are used by trained professionals, under often extreme emergency conditions, GTT shall not be liable for any personal injury, wrongful death or property damages caused by or arising from any alleged defect, non-conformance, or failure of its systems to function, operate or perform, whether asserted in warranty, contract, tort or other theory of liability. No action, regardless of form, arising out of or alleging either a breach of any warranty or a breach of any contractual term or legal duty by GTT may be brought more than one year after the cause of action accrues.

Warranty Claim Process: Contact your authorized Opticom dealer, or contact GTT technical service at 800-258-4610 or download a warranty & services request form at www.gtt.com. Outside of the United States, please contact our headquarters in St. Paul, MN at 651-789-7333 for assistance in locating an authorized repair facility servicing your country.

Severability: Should any portion of this warranty be declared void or otherwise rendered without effect, the remaining provisions of the warranty shall continue in full force and effect.

**Certification of Attempts to
Recruit Minority and Women Employees
(FORM EEO-1B)**

To ensure compliance with City of Stockton's Equal Employment Opportunity Plan, it is the City's policy that all contractors bidding on federal-aid projects complete and return the following information:

I, Diana Johnson, representing Siemens Industry, Inc., ITS,
(Print/Type Company Official Name) (Print/Type Company Name)

am knowledgeable of the City of Stockton's Equal Employment Opportunity goals and I have thoroughly reviewed and complied with provisions of City of Stockton bid requirements and I certify that:

- ☒ Yes ☐ No When recruiting for vacancies this firm conducts mailings to specific outreach agencies and interest groups concerned with minority and women employment.
- ☒ Yes ☐ No This company has an Equal Employment Opportunity policy and all employees and applicants for employment receive equal consideration and treatment.
- ☒ Yes ☐ No This company understands the legal and moral commitment of complying with federal and state legislation promoting equal employment opportunities and is committed to promoting equal opportunity in its work force.

The City of Stockton reserves the right to require additional information from the bidding contractor at any time.

Johnson Diana

Digitally signed by Johnson Diana
DN: serialNumber=Z0039A5X,
givenName=Diana, sn=Johnson, o=Siemens,
cn=Johnson Diana
Date: 2018.04.16 18:01:55 -05'00'

Signature of Company Official

4/12/2018

Date

Diana Johnson

Print/Type Name of Company Official

Sr. Proposal Manager

Title

Exhibit 12-B Bidder's List of subcontractor (DBE and Non-DBE)**Part 1**

As of March 1, 2015 Contractors (and sub-contractors) wishing to bid on public works contracts shall be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at: <https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRRegistrationForm>

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater). **Photocopy this form for additional firms.**

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number DIR Reg Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
Name: Dynamic Generator Services City, State: San Leandro, CA	Bid Item 1: Mobilization Bid item 21: Loops Bid item 22: Detector handle Bid item 23: Loop	\$353,300	26%	1013977 100046065	yes	43657	<input checked="" type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ___ yrs.
Name: Dynamic Generator Services City, State: San Leandro, CA	Bid item 23: Loop Detector Bid item 24: Conduit Bid item 25: Pull Box	\$353,300	26%	1013977 100046065	yes	43657	<input checked="" type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ___ yrs.
Name: City, State:							<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ___ yrs.
Name: City, State:							<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ___ yrs.
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Name: City, State:							<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ___ yrs.

Distribution: 1) Original-Local Agency File 2) Copy-DLAE w/ Award Package

Exhibit 12-B Bidder's List of subcontractor (DBE and Non-DBE)**Part 2**

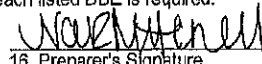
In accordance with Title 49, Section 26 of the Code of Federal Regulations, the Bidder shall list all subcontractor who provide a quote or bid but were not selected to participate as a subcontractor on this project. Photocopy this form for additional firms.

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number DIR Reg Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
Name: Cable Links Construction City, State: Fresno, CA	Bid item 21: Loops Bid item 22: Detector handle Bid item 24: Conduit Bid item 25: Pull Box	\$415,795		920774 1000000835	yes	41929	<input checked="" type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ____ yrs.
Name: Capitol Traffic City, State: Stockton, CA	Bid Item 2: Traffic Control	\$170 per 4 hours		10000138876	yes	42421	<input checked="" type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ____ yrs.
Name: Almandariz Consulting City, State: El Dorado Hills, CA	Bid Item 2: Traffic Control	\$1795 per 8 hours		979806 1000001596	yes	40463	<input checked="" type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ____ yrs.
Name: City, State:							<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ____ yrs.
Name: City, State:							<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ____ yrs.
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Name: City, State:							<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ____ yrs.

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EXHIBIT 15-G CONSTRUCTION CONTRACT DBE COMMITMENT

1. Local Agency: City of Stockton Public Works 2. Contract DBE Goal: 4%
 3. Project Description: March Lane Adaptive Traffic Control System
 4. Project Location: Stockton, CA
 5. Bidder's Name: Siemens Industry 6. Prime Certified DBE: ☐ 7. Bid Amount: \$1,349,959.00
 8. Total Dollar Amount for ALL Subcontractors: \$353,300.00 9. Total Number of ALL Subcontractors: 1

10. Bid Item Number	11. Description of Work, Service, or Materials Supplied	12. DBE Certification Number	13. DBE Contact Information (Must be certified on the date bids are opened)	14. DBE Dollar Amount
1	Mobilization	43657	Darren Mangrum (209) 650-0085	8,500
21	Furnish and Install Loop/ Traffic Control	43657	Darren Mangrum (209) 650-0085	56,400
22	Furnish and Install Detector/ Traffic Cont	43657	Darren Mangrum (209) 650-0085	72,800
23	Loop Detector Lead in Cable	43657	Darren Mangrum (209) 650-0085	74,500
24	Furnish and Install 2"Schedule 80 PVC	43657	Darren Mangrum (209) 650-0085	81,600
25	Furnish and Install Caltrans No 5 Pull Bo	43657	Darren Mangrum (209) 650-0085	59,500
Local Agency to Complete this Section				
21. Local Agency Contract Number: _____				15. TOTAL CLAIMED DBE PARTICIPATION IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable with the names and items of the work in the "Subcontractor List" submitted with your bid. Written confirmation of each listed DBE is required.  03/06/2018
22. Federal-Aid Project Number: _____				
23. Bid Opening Date: _____				
24. Contract Award Date: _____				
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.				26 %
25. Local Agency Representative's Signature		26. Date	16. Preparer's Signature	
27. Local Agency Representative's Name		28. Phone	17. Date	
29. Local Agency Representative's Title			18. Preparer's Name	
			19. Phone	
			20. Preparer's Title	

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract. Include additional copy with award package.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-8410 or TDD (916) 654-3680 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.