



December 4, 2014

State of California
Department of Transportation
Division of Engineering Services
1727 30th Street, MS 43
Sacramento, CA 95816

Facsimile: (916) 227-6282

Attn: Mr. John C. McMillan, Deputy Division Chief

RE: Hwy 101 near Laytonville
Contract 01-4154U4 (Contract)
Bid Date 11/5/2014
Bid Protest

Dear Mr. McMillan:

On Wednesday, November 5th, 2014, Granite Construction Company (GCC) timely submitted a bid for the above referenced project. Mercer-Fraser Company (MFC) is the apparent low monetary bidder and GCC is the second low bidder. GCC hereby protests the potential award of the Contract to MFC because its bid contains a material defect: MFC failed to list all subcontractors who will perform work in an amount in excess of one-half of 1 percent of MFC's bid or \$10,000 (whichever is greater) in violation of the Subletting and Subcontracting Fair Practices Act of the Public Contract Code.

MFC Violated the Subletting and Subcontractor Fair Practices Act and Caltrans' Bid Specifications

The Subletting and Subcontracting Fair Practices Act, California Public Contract Code 4100 et seq. (Subcontractor Listing Law) requires bidders for public contracts to list the name, the location of place of business, and the California contractor license number of each subcontractor who will perform work in an amount in excess of one-half of one percent of the prime contractor's total bid or \$10,000, whichever is greater. Cal. Pub. Contract Code, § 4104(a). The bidder must also set forth the portion of the work that will be done by each subcontractor. Cal. Pub. Contract Code, § 4104(b).

The Subcontractor Listing Law also requires all officers, departments, boards or commissions taking bids for public work or improvements to include the above requirements in the bid specifications. Cal. Pub. Contract Code § 4104.

Accordingly, Caltrans' specifications and Subcontractor List form call for the information required by the Subcontractor Listing Law. Specifically, Caltrans' specifications and Subcontractor List form instructs bidders to submit the following information with the bid: (a) the name, (b) the location of the place of business, (c) the California contractor license number, and (d) the portion of work of each subcontractor who is required to be listed under the Subcontractor Listing Law.

The purpose of the Subcontractor Listing Law is to prevent the practices of bid shopping and bid peddling that take place after award of the contract. Pub. Cont. Code §4101. The California

legislature has determined that such practices often result in poor quality of material and workmanship to the detriment of the public. To help eradicate the practices, the statute requires prime contractors to list their intended subcontractors for designated portions of the work, and also prohibits the use of any other subcontractor for the designated work without first meeting certain legal requirements and obtaining the consent of the awarding authority. Cal. Pub. Contract. Code §4107.

Under the Subcontractor Listing Law, when a contractor fails to properly specify a subcontractor for a particular portion of work, the contractor thereby agrees that it is fully qualified to perform that portion itself, and that the contractor shall perform that portion with its own forces. The contractor is prohibited from thereafter subcontracting that portion of work. Cal. Pub. Contract. Code §4106.

Here, MFC did not comply with these mandates. MFC's total bid amount was \$8,387,138.00. Therefore, MFC was required to list all subcontractors performing work in excess of \$41,935.69. Based on a review of MFC's bid documents submitted subsequent to the bid opening, it is clear that MFC failed to list a subcontractor that was performing work in excess of \$41,935.69 as required under the Subcontractor Listing Law and bid specifications. Moreover, the work for which MFC failed to list the subject subcontract is work that MFC is not capable of self-performing.

In particular, MFC did not list any subcontractor to perform the portion of Bid Item 36 (Rubberized Hot Mix Asphalt-Open Graded), requiring the Bonded Wearing Course application using the Bonded Wearing Course Spray Paver (BWCSP). Performance of this work requires a contractor's license. In addition, Bid Item 36 requires the use of specialized equipment, specifically the BWCSP. While MFC possesses a California contractor's license, it does not own the specialized equipment necessary to perform the subject work.

On its Subcontractor List form, GCC properly listed Apanda Engineering, Inc. to perform this work. GCC received quotes from Apadana Engineering, Inc. and Teifer Highway Technologies which are attached for your review. The BWCSP is quoted as a daily rental and is supplied with a Paving Foreman, two Screedmen, a Paving Operator and a Mechanic and Truck. GCC estimates that this scope of work is worth approximately \$150,000 which is well in excess of the ½ of 1 percent subcontractor listing requirement.

A recent ruling by your office on Contract No. 03-4F3404 for a similar situation, in which a bid was found non-responsive due to a failure to properly list a subcontractor for work requiring rented operated equipment and a contractor's license, is pertinent to this situation. Please see the attached letter dated November 21, 2014 from the Department of Transportation (Caltrans) to A. Teichert & Sons (Teichert). Teichert listed ABSL on its DBE commitment form to perform roadway excavation work, but failed to list ABSL on the Subcontractor List form. In its November 21st letter, Caltrans explained: "*Caltrans reviewed all of the documents submitted by Teichert, and based on the description of work provided in the quote submitted by ABSL, determined that ABSL provides the equipment, as well as the operator to perform the scope of work. In addition, the work being performed by ABSL requires a contractor's license. It is therefore, Caltrans's determination that ABSL is a subcontractor performing more than ½ of 1 percent of the work and not merely an equipment supplier and must be listed on the subcontractor list form". Accordingly, Teichert's bid was rejected as non-responsive.*

The situation with Teichert and ABSL is similar to the situation presented here with MFC and the BWCSP subcontractor. The BWCSP subcontractor provides the equipment as well as the

operator to perform the scope of work and the work also requires a contractor's license to perform. The amount of the subject work exceeds the listing threshold of ½ of 1 percent or \$10,000. Accordingly, MFC should have listed a subcontractor for the BWCSW work.

The Defects In MFC's Bid Were Material

A bid containing a material deviation must be rejected as non-responsive. A deviation in a bid is material if the variation would give the low bidder an unfair advantage over other bidders.

Here, MFC's violations of the Subcontractor Listing Law and Caltrans' bid specifications created an advantage for MFC not available to other bidders. The defects in its bid violated minimum State mandates and afforded MFC with the opportunity to bid shop a significant element the Project and potentially obtain lower pricing to perform the BWCSW work after bid opening.

Because GCC provided the low, responsive and responsible bid, it should be awarded the Contract. GCC is fully prepared to perform this job in its customary dependable and high quality manner.

Thank you for your time and consideration of this matter. Please feel free to contact me at (707) 467-4107 if you require additional information.

Sincerely,

GRANITE CONSTRUCTION COMPANY



John G. Boies
Construction Operations Manager

Attachments: Apadana and Telfer Quotes
DOT Letter Dated 11.21.14

Apadana Engineering, Inc.

WPG/DBE:37716 SBE: 1010577 CSLB License: 920046 LBE: 77210 SF Vendor: 77210
Apadana is a Woman Owned Business

Daily Quote for HMA Paver & Paving Crew (Operated)

Project:	01-415404	TO:	Prime Contractor
Location:	Mendocino county	From:	STEVE BLESS 520-858-5520
Contract Number:			
Bid Date:	11/05/14		

Bid Item #	Description	QTY	Unit	Unit Price	Total
	Mobilization / Demobilize	1.00	LS	12,000.00	12,000.00
	Bonded Wearing Course Spray Paver (Roadtec SP 200) And Shuttle Buggy (Roadtec 2500)	1.00	Day	11,500.00	11,500.00

Notes:

Prime contractor to fuel the paver, shuttle buggy (APROX 150 GAL DAILY) 12,000
 Prime contractor is responsible for all mobilizations and demobilizations within the project limits.
 Price is based on 8 hour shifts. Overtime to be billed at \$1,500.00 per hour.
 Additional mobilization to be billed at \$12,000.00 each.
 Standby will be at \$6,000.00 per day.
 No bond is included.
 Quotation is based on mutually agreed schedule. Any modification to a mutually agreed schedule must be accepted by parties.
 Quotation is valid for 30 days.
 Payments are due within 30 days.
 No back up paver/buggy is quoted. (Price available upon request)
 No Retention
 Signitary to Operating Engineers and Labor Union

12 days @ \$11,500 = \$138,000
 no 12,000
 \$150,000

Inclusions:

Pavement rental: integrated spray paver with shuttle buggy
 2 operators
 2 Screedmen
 1 mechanic and truck

Exclusions:

Permits	Trucking	Work behind Sreod	Sweeping
Traffic control	Emulsion	Mechanical Breakdown Losses	Testing
Surface prep.	A/C Mix	Oil	Striping

From: Western Oil & Spreading Co

916 383 4084

11/05/2014 13:42

#441 P.001/001



4522 Parker Avenue
Building 700, Suite 350
McClellan, CA. 95652
Ph: (916) 383-1756
Fax: (916) 383-4084
CA State License # 984141

To: Granite Construction - Ukiah	Contact: Terry Richards
Address: 1324 S.State St. Ukiah, CA 95482 USA	Phone: (707) 467-4100
	Fax: (707) 467-4142
Project Name: 01-Men-101 64.7/69.3, 74.8/81.4	Bid Number:
Project Location: Highway 101 PM.64.7/69.3, 74.8/81.4, Near Laytonville, CA	Bid Date: 11/5/2014

Line #	Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
Base Bid						
015	015	Bonded Wearing Course Paver Rental	1.00	DY	\$15,000.00	\$15,000.00
Option 1						
015	015	Shuttle Buggy Rental	1.00	DY	\$3,500.00	\$3,500.00
Option 2						
		Mobilization (Paver)	1.00	EACH	\$5,000.00	\$5,000.00
Option 3						
		Mobilization (Shuttle Buggy)	1.00	EACH	\$5,000.00	\$5,000.00

Notes:

- Base Bid:
Includes: Paver Rental: (1) Intergrated Spray Paver with (1) Paver Operator, (2) Screed Men, (1) Mechanic and Service Truck, (1) Paving Foreman
Price based on 8 hour shifts. Overtime for paver will be billed at \$ 850.00 per hour
Daily rate is for 8 hour shift Monday thru Friday. Weekend work will be at will billed at an additional \$3,500.00 per shift
Excludes: A/C Mix, Trucking, Labor behind screed, Rolling, Traffic Control and Surface Prep, Emulsion or anything not mentioned as included.
- Option 1:
Includes: Operated Shuttle Buggy for an 8 hour shift.
After 8 hours Shuttle Buggy will be billed at \$ 375.00 per hour
- Option 2:
Mobilization for Paver delivered on and off job site.
Contractor shall transport the equipment on and off the grade daily if nessasary.
- Option 3:
Mobilization for Shuttle Buggy delivered on and off job site.
Contractor shall transport the equipment on and off the grade daily if nessasary.
- Contractor shall provide Telfer Highway Technologies a secure area store its equipment.
- Customer is to fuel Paver & Shuttle Buggy daily (aprox 100 gallons per shift for each piece of equipment)
- Quotation is subject to a mutually agreeable schedule.
- Telfer Highway Technologies will not accept any back charges associated with equipment breakdowns.
- Bonded Wearing Course is a thin wearing course and any surface corrections need to be made prior to installation. Windsor Fuel Company will not be held responsible for smoothness characteristics in the finished pavement.
- Prices quoted are valid for 10 business days after project opening, contractor must notify Windsor Fuel Company within 10 days after bid opening in writing of acceptance of quote or quote will be considered null and void.

Payment Terms:

Payments are due net 30. No retention is to be withheld.

<p>ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted.</p> <p>Buyer: _____</p> <p>Signature: _____</p> <p>Date of Acceptance: _____</p>	<p>CONFIRMED: Telfer Highway Technologies</p> <p>Authorized Signature: _____</p> <p>Estimator: Mike Fain (916) 383-1756 mikesfain@telferoll.com</p>
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STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER

P.O. BOX 168041, MS-43
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6299
FAX (916) 227-6282
TTY 711
www.dot.ca.gov



*Serious drought.
Help save water!*

November 21, 2014

Facsimile: (530) 273-4396

Eric Stannard, Director of Public Relations
A. Teichert & Sons, Inc. dba Teichert Construction
4401 Duluth Avenue
Rocklin, CA 95765

03-4F3404
03-Pla, Nev-80-69.3/69.8, 0.0/R2.3
B.O. 10/15/14

Dear Mr. Stannard:

The Department of Transportation (Caltrans) received a bid from A. Teichert & Sons, Inc. dba Teichert Construction (Teichert) for contract 03-4F3404 on October 15, 2014. By this letter, Caltrans notifies Teichert that its bid is nonresponsive because the Disadvantaged Business Enterprise (DBE) form submitted is inconsistent with the Subcontractor List form in violation of the bidding instructions.

The DBE Commitment Form expressly states that "Names of the First Tier DBE Subcontractors and their respective item(s) of work listed must be consistent, where applicable, with the names and items of work in the Subcontractor List." Teichert listed the subcontractor ABSL on its DBE Commitment form to perform Bid Item 16 (Roadway Excavation), but failed to list ABSL on the Subcontractor List form. ABSL is listed for performing work in the amount of \$16,300 which, on a bid of \$3,161,385, meets the listing threshold of 1/2 of 1 percent or \$10,000.

Caltrans reviewed all of the documents submitted by Teichert, and based on the description of work provided in the quote submitted by ABSL, determined that ABSL provides the equipment, as well as the operator to perform the scope of work. In addition, the work being performed by ABSL requires a contractor's license. It is therefore, Caltrans' determination that ABSL is a subcontractor performing more than 1/2 of 1 percent of the work and not merely an equipment supplier and must be listed on the subcontractor list form.

Based on the above findings, Caltrans will proceed to award this contract to the lowest responsive and responsible bidder provided that all requirements have been met.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,

JOHN C. McMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services



FAX

1324 S. State Street
Ukiah, CA 95482
Phone: 707-467-4100
Fax: 707-467-4141
BID FAX 707-467-4143

<u>To: JOHN C. MCMILLAN</u>	<u>From: JOHN G. BOIES</u>
<u>Company: CALTRANS</u>	<u>Date: 12/05/2014</u>
<u>Fax: 916-227-6282</u>	<u>Total Pages (including cover page): 7</u>
<u>Phone:</u>	<u>Sender's Reference Number: 04-4154U4</u>
<u>RE: BID PROTEST</u>	<u>Granite Job Number:</u>

- Urgent
 For Review
 Please Comment
 Confirm Receipt

Please see the following Bid Protest for 01-4154U4, which bid on 11/05/2014.

Original to follow via FedEx overnight service.

Thank you.