



November 16, 2015

John C. McMillan, Deputy Division Chief
California Department of Transportation
Division of Engineering Services
Office Engineer MS 43
1727 30th St.
Sacramento, CA 95816
Fax: 916-227-6282

Contract: 03-0G0304
Re: Bid Protest of Low Bidder
Bid Opening: October 29, 2015

Dear Mr. McMillan,

Please consider this letter from American Civil Constructors West Coast (ACCWC) a formal protest of the bid submitted by the first monetary low bidder, Viking Construction (Viking). Viking's DBE Commitment form is inconsistent with their Subcontractor List, and fails to comply with subcontractor listing laws and DBE Commitment form instructions.

The DBE Commitment form states in part "... names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontractor List (Pub Cont Code § 4100 et seq.)".

Viking listed IRB Construction (IRB) on its DBE Commitment form to furnish equipment and crew services involving the placement of polyester concrete, but failed to list IRB on the Subcontractor List form. Viking's DBE Commitment form attempts to circumvent Subcontractor Listing laws by describing IRB as a company that provides volumetric mixing truck rental services, without an operator (**EXHIBIT 'A'**).

However, as evidenced by Viking's calculations on IRB's quotation submitted with the DBE Commitment form (**EXHIBIT 'B'**), IRB is in fact providing operated equipment rental and crew services. Operated equipment rental with crew services certainly fits the description of subcontracted work. As IRB's commitment amount (\$31,800) exceeds ½ of 1% of the total bid, Viking was required to list IRB on the Subcontractor List submitted at the time of bid.



Additionally, IRB is listed on the DBE Commitment form to perform this work under CUCP Work Category Code C1000, "WHOLESALE BROKER OF CONSTRUCTION MATERIALS". It is peculiar to see this work category code, or any of IRB's work category codes for that matter (**EXHIBIT 'C'**), even remotely applying to polyester concrete volumetric mixer rental, with or without an operator.

Caltrans requires a company that is providing equipment rental with operator services to be listed on the Subcontractor List (**EXHIBIT 'D'**). IRB was not listed on the Subcontractor List, and improperly listed on the DBE Commitment form. Caltrans' rejection of Viking's bid would be consistent with past practice (**EXHIBIT 'E'**). The inclusion of IRB on the DBE Commitment form is a violation of the Subletting and Subcontracting Fair Practices Act, and should render Viking's bid non-responsive.

Thank you for your time and consideration of this bid protest.

Signed,

A handwritten signature in black ink, appearing to read "A. Keough".

Andrew Keough
Estimator
American Civil Constructors West Coast, Inc.
707-742-6422

11-04-15P02:29 RCVD

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
DBE - COMMITMENT
 DES-DE-P102.100 (REV 12/2014)

CONTRACT NO: **03-0G0304**

BID AMOUNT: \$ **2,587,589.90**

BID OPENING DATE: **October 29th, 2015**

BIDDER'S NAME: **Viking Construction Company, Inc.**

DBE GOAL FROM CONTRACT #: **11**

DBE PRIME CONTRACTOR CERTIFICATION*	TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE)	TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE)
	10	\$876,953.00

BID ITEM NO.	ITEMS OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED*	WORK CATEGORY CODES*	NAME OF DBE <small>Must be certified on the state bid-aw process. Include Caltrans' certification no., DBE address, and phone number. Show bid and track for subcontractors.</small>	AMOUNT \$
9	Transport Krail	C9605	West Coast Water & Tr. 3941 Park Dr. Ste 20-231 El Dorado Hills, CA 95762 (916)358-8697	\$27,360.00
34	Place Poly. Concrete (Volumetric Truck Rental)	C1000	IRB Construction 725 6th St. Marysville, CA 95901 (916)612-6406	\$31,800.00

Show all DBE firms being claimed for credit, regardless of tier. Attach written confirmation from each DBE stating that it will be participating in the contract to perform the specific work shown for the specific amount agreed to.

The names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontractor List (Pub Cost Code § 2100 et seq.).

*Each DBE prime contractor must enter its certification number and show all work to be performed by DBEs, including work performed by its own forces.

**If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be performed or furnished.

*Use Work Category Codes from the California Unified Certification Program database.

The bidder acknowledges that it is committed to use the DBEs shown on this form to meet the contract goal (49 CFR 26.53).

Brett McColloch
 Signature of Bidder

11/3/15 Date (Area Code) Tel. No. (916) 852-5530

BRETT MCCOLLOCH
 Person to Contact (Please Type or Print)

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, TTY 711, or visit the Records and Forms Management, 1120 N Street, M-5-09, Sacramento, CA 95834

Contract No. 03-0G0304

*** EXHIBIT 'A'**

IRB Construction, Inc.

DBE Firm #42290
CSLB Lic. 095040

Polyester Volumeric Mixer Truck Rental

725 6th Street
Marysville, CA 95901
DBE Cert #42290
Contractor's License 095040

Contacts:
Rodney Spencer
Cell Phone: (916) 612-6406
irbconstructioninc@gmail.com

Contract Information

Submitted: Rodney

Contract
Attn: Estimator
Description: Polyester Truck Rental
Project 03-0GD304

Equipment/Cost				
Item	Description	Estimated Qty	Unit Rates	Estimated Ext
	Polyester Mobile Mixer (Maximum Shift 8 Hours) Daily Rate		6,800.00	
	Polyester Mobile Mixer (Overtime - After 8 Hours/Per Hour)		565.00	-
	Polyester Mobile Mixer (Overtime - After 10 Hours/Per Hour)		850.00	-
	Polyester Mobile Mixer (Saturdays 1 1/2 Times Daily Rate)		850.00	-
	Polyester Mobile Mixer (Sundays Double Added to Daily Rate)		1,200.00	-
	Polyester Mobile Mixer (Mobilization) Each Way		12,000.00	-
	Total Equipment Cost			\$ -
Crew/Cost				
	Polyester Mobile Mixer (Minimum Shift 8 Hours) Hourly Rate		475.00	
	Polyester Mobile Mixer (Overtime - After 8 Hours/Per Hour)		550.00	\$ -
	Polyester Mobile Mixer (Overtime - After 10 Hours/Per Hour)		550.00	\$ -
	Polyester Mobile Mixer (Saturdays 1 1/2 Time)		550.00	\$ -
	Polyester Mobile Mixer (Sundays Double Time)		750.00	\$ -
	Polyester Mobile Mixer Crew (Mobilize/Demobilize)		500.00	\$ -
	Total Crew Cost			\$ -
Above prices based on approx 2 loads per shift				See Below

Actual Production rates by Prime crew are unknown

12'x6' PCC base used for Polyester Trial Slab by others if required by Department
Removal of Trial Slab and PCC base by others

PER SHIFT COST of
EQUIPMENT + CREW

$\$6,800 + (475 \times 8) = \$10,600 / \text{SHIFT}$

$\$10,600 / \text{SHIFT} \times 3 \text{ SHIFTS} = \$31,800 -$

CREW COST DAILY RATE.

EQUIPMENT COST DAILY RATE.

EXCEEDS 1/2 of 1%,

IRB SHOULD BE A

LISTED SUBCONTRACTOR.

* EXHIBIT 'B' 1/3

IRB Construction, Inc.

DBE Firm #42290
CSLB Lic. 995040

Polyester Volumeric Mixer Truck Rental

725 6th Street
Marysville, CA 95901
DBE Cert #42290
Contractor's License 995040

Contacts:
Rodney Spencer
Cell Phone: (916) 612-6406
irbconstructioninc@gmail.com

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	Polyester Mobile Mixer Crew (Mobilize/Demobilize)		500.00	\$ -
	Total Crew Cost			\$ -
Above prices based on approx 2 loads per shift				See Below

Actual Production rates by Prime crew are unknown

12'x6' PCC base used for Polyester Trial Slab by others if required by Department
Removal of Trial Slab and PCC base by others

$$\$6800 + (475 \times 8) = \$10,600 / \text{SHIFT}$$

$$\$10,600 / \text{SHIFT} \times 3 \text{ SHIFTS} = \$31,800 -$$

* IRB CONSTRUCTION QUOTATION - AS SUBMITTED BY VIKING.

EX. 'B' 2/3

IRB Construction, Inc.

DBE Firm #42290

CSLE Lic. 995040

Inclusions / Exclusions

Prime Contractor to Provide:

1. All necessary labor and equipment to load mobile mixers with supplied materials
2. Clean up crew with compressor and chipping hammers to clean up truck after each shift/load.
3. Actual hotel and per-diem expenses for crew (when applicable)
4. Secure Storage area for mobile mixer
5. 109 Certification paid by Prime Contractor \$4,000.00
6. Prime to provide 9,000 lb Forklift for loading of aggregates into Volumetric Mixer
7. Prime to provide 2 super sacks sand, 1 super sack of rock, 100 gallons resin for 109 testing
8. Volumetric Mixer certified in accordance with Special Provisions Section 10-1.80
9. Public Safety Plan and Hygentist Air Monitoring Reporting
10. Prime to provide all Traffic Control, Construction Area Lighting and Staging Area for Polyester Material delivery
11. Bonds Permit Fees not included in bid price

[Back To Query Form](#)**Search Returned 1 Records**

Thu Nov 12 12:59:57 PST 2015

Query Criteria

Firm/DBA Name: irb const

Firm Type: DBE

Firm ID	42290
Firm/DBA Name	IRB CONSTRUCTION, INC.
Address Line1	725 6TH STREET
Address Line2	
City	MARYSVILLE
State	CA
Zip Code1	95901
Zip Code2	
Mailing Address Line1	
Mailing Address Line2	
Mailing City	
Mailing State	
Mailing Zip Code1	
Mailing Zip Code2	
Certification Type	DBE
EMail	raspencer7@gmail.com
Contact Name	RODNEY ALLEN SPENCER
Area Code	(916)
Phone Number	612-0608
Alt Area Code	()
Alt Phone Number	
Fax Area Code	(888)
Fax Phone Number	315-7315
Agency Name	DEPARTMENT OF TRANSPORTATION
Counties	01; 04; 06; 09; 11; 18; 21; 27; 28; 29; 31; 32; 34; 38; 41; 43; 44; 45; 48; 49; 51; 52; 57; 58;
Districts	02; 03; 04; 05;
DBE NAICS	423990; 425120; 541618;

ACDBE NAICS**Work Codes**

C1000 WHOLESALE BROKER OF CONSTRUCTION MATERIALS; C8770 CONSTRUCTION MANAGEMENT; C9999 BROKER; G1000 NON-STORE WHOLESALE MERCHANT; G1001 DROP-SHIPPER; G1003 WHOLESALE TRADE AGENTS AND BROKERS;
C12 Earthwork and Paving Contractor;

Licenses**Trucks****Gender****Ethnicity****Firm Type**

M
BLACK
DBE

[Back To Query Form](#)

***EXHIBIT 'C'**

SUBLETTING AND SUBCONTRACTING FAIR PRACTICES ACT -- LISTING

Under Public Contract Code section 4104, a subcontractor who will perform work or labor or render service to the prime contractor or a subcontractor licensed by the State of California who fabricates and installs a portion of the work, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater must be listed.

Pursuant to Business and Professions Code section 7026, "Contractor," for the purposes of this chapter, is synonymous with "builder" and, within the meaning of this chapter, a contractor is any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, or the cleaning of grounds or structures in connection therewith, or the preparation and removal of roadway construction zones, lane closures, flagging, or traffic diversions, or the installation, repair, maintenance, or calibration of monitoring equipment for underground storage tanks, and whether or not the performance of work herein described involves the addition to, or fabrication into, any structure, project, development or improvement herein described of any material or article of merchandise. "Contractor" includes subcontractor and specialty contractor. "Roadway" includes, but is not limited to, public or city streets, highways, or any public conveyance.

Pursuant to Business and Professions Code section 7052, This chapter does not apply to any person who only furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of the contractor.

Caltrans interprets these sections to mean:

- 1) A company that is providing equipment rental service is not required to be listed as a subcontractor
- 2) A company that is providing equipment rental with operator services is required to be listed

* EXHIBIT D *

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/R.2.3
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,

A handwritten signature in black ink, appearing to read "John C. McMillan", written over a horizontal line.

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

*** EXHIBIT 'E'**