

**DESILVA GATES**  
CONSTRUCTION

11555 Dublin Boulevard  
P.O. Box 2909  
Dublin, California 94568-2909  
925/829-9220  
www.desilvagates.com

CONTRACTORS LICENSE NO. 704195 A

February 23, 2016

State of California, Department of Transportation  
Division of Engineering Services  
Office Engineer  
1727 30<sup>th</sup> Street, MS-43  
P.O. Box 168041  
Sacramento, CA 95816

Attention: John C. McMillan  
Deputy Division Chief

Re: Caltrans Contract No. 03-1F4004  
Project: Construction on State Highway in Placer County Near Colfax  
From Long Ravine Underpass To 0.4 Mile East Of Magra Road  
Overcrossing

Dear Mr. McMillan:

DeSilva Gates Construction, LP ("DGC"), was the third monetary bidder for the above referenced contract. By way of this letter, DGC is hereby formally protesting the bid submitted by A. Teichert & Sons ("Teichert") for the above-referenced contract, for the reasons set forth below.

Bidders were required to submit a subcontractor list with their bids identifying each subcontractor performing work in excess of one-half of one percent of the prime contractor's total bid, Public Contract Code section 4104; Revised Standard Specification Section 2-1.10 (Attachment 1). Furthermore, bidders were required to provide a "Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent". Teichert listed a subcontractor Coral Construction Company for bid item No. 186 for 0.40% and failed to provide any description for the subcontracted work (Attachment 2). Teichert's bid should be non-responsive for not providing the required information.

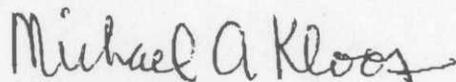
02-23-16A08:47 RCVD

Teichert was required by Section 2-1.12B(2) DBE Commitment Submittal of the Special Provisions (Attachment 3) to "Submit a copy of the quote from each DBE shown on the DBE Commitment form that describes the type and dollar amount of work shown on the form. Submit a DBE Confirmation form for each DBE shown on the DBE Commitment form to establish that it will be participating in the Contract in the type and dollar amount of work shown on the form." However, Teichert failed to provide the required DBE Confirmation form with its bid submittal for Double M Trucking, Inc (DMT). This failure by Teichert should render their bid nonresponsive for failing to provide the required information as required by the Special Provisions. At a minimum, the DBE Participation claimed by Teichert for DMT in the amount of \$3,031,462.00 should be disallowed, which would change their DBE Commitment to \$620,504.52 ( $\$3,651,966.52 - \$3,031,462.00 = \$620,504.52$ ) for a Total Claimed Participation of only 1.925% ( $\$620,504.52 / \$32,216,145.60 = 1.925\%$ ). There is no confirmation from DMT that it will perform any work on the project.

Furthermore, the quote provided by Teichert for DMT (Attachment 4) states that "...Quoted rates are not prevailing wage". All of the trucking for dirt offhaul, AB trucking, HMA trucking and Rubber HMA trucking are required to be certified payroll work and prevailing wage on this project, which makes DMT's quote invalid and cannot count towards any DBE participation.

Teichert failed to provide the required information as stated above and their bid should be nonresponsive. Furthermore, Teichert failed to make the DBE Goal and failed to make a Good Faith Effort to make the goal. Accordingly, Caltrans is legally required to reject Teichert's bid, and DeSilva Gates Construction L.P. respectfully requests that Caltrans do so.

Sincerely,



Michael A. Kloos

Vice President

De Silva Gates Construction, LP

Attachment 1 – Revised Standard Specification Section 2-1.10

Attachment 2 – Teichert's sublisting for Coral Construction Company

Attachment 3 – Section 2-1.12B(2) DBE Commitment Submittal

Attachment 4 – DMT's quote provided in Teichert's DBE Submittal

## Attachment 1

02-27-15

### 2-1.10 SUBCONTRACTOR LIST

On the Subcontractor List form, list each subcontractor to perform work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.).

For each subcontractor listed, the Subcontractor List form must show:

1. Business name and the location of its place of business.
2. California contractor license number for a non-federal-aid contract.
3. Public works contractor registration number
4. Portion of work it will perform. Show the portion of the work by:
  - 4.1. Bid item numbers for the subcontracted work
  - 4.2. Percentage of the subcontracted work for each bid item listed
  - 4.3. Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent

02-21-14

### 2-1.11 RESERVED

01-23-15

### 2-1.12 DISADVANTAGED BUSINESS ENTERPRISES

#### 2-1.12A General

Section 2-1.12 applies to a federal-aid contract.

Under 49 CFR 26.13(b):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

Include this assurance in each subcontract you sign with a subcontractor.

#### 2-1.12B Disadvantaged Business Enterprise Goal

##### 2-1.12B(1) General

Section 2-1.12B applies if a DBE goal is shown on the *Notice to Bidders*.

The Department shows a goal for DBEs to comply with the DBE program objectives provided in 49 CFR 26.1.

Make work available to DBEs and select work parts consistent with available DBEs, including subcontractors, suppliers, service providers, and truckers.

Meet the DBE goal shown on the *Notice to Bidders* or demonstrate that you made adequate good faith efforts to meet this goal.

You are responsible to verify at bid opening the DBE firm is certified as a DBE by the California Unified Certification Program and possess the work codes applicable to the type of work the firm will perform on the Contract.

Determine that selected DBEs perform a commercially useful function for the type of work the DBE will perform on the Contract as provided in 49 CFR 26.55(c)(1)-(4). Under 49 CFR 26.55(c)(1)-(4), the DBE must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing, and supervising the work.

## Attachment 2

Bidding Firm: A. Teichert & Son Inc. dba Teichert Construction

List this sub? Yes

34) Business Name Coral Construction Company  
 Location City Wilsonville State OR  
 California Contractor License Number 332441  
 Public Works Contractor Registration Number 1000005868  
 Portion of Work Subcontracted:

Item #	Description
115 100	
116 100	
117 100	
118 100	
122 100	

List this sub? Yes

35) Business Name Same As Subcontractor Listed on #34  
 Location City \* State \*  
 California Contractor License Number \*  
 Public Works Contractor Registration Number \*  
 Portion of Work Subcontracted:

Item #	Description
→ 186 0.4	

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 03-1F4004 Project ID: 0300020420

Bidder Name: A. Teichert & Son Inc. dba Teichert Cons Bidder ID: VC0000013950

ADDITIONAL SUBCONTRACTOR LIST 3

DES-OE-0102.2C (REV 03/2015)

Bidding Firm: A. Teichert & Son Inc. dba Teichert Construction

## Attachment 3

All DBE participation will count toward the Department's federally-mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from DBEs will be evaluated on a contract-by-contract basis and counts toward the goal in the following manner:

1. 100 percent if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies, if they are obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit toward the goal if you employ a DBE trucking company that is performing a commercially useful function. The Department uses the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
- The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

[49 Fed Reg 59595 (10/2/14) (to be codified at 49 CFR 26.55(d))]

04-10-15

### → 2-1.12B(2) DBE Commitment Submittal

Submit DBE information under section 2-1.33.

Submit a copy of the quote from each DBE shown on the DBE Commitment form that describes the type and dollar amount of work shown on the form. Submit a DBE Confirmation form for each DBE shown on the DBE Commitment form to establish that it will be participating in the Contract in the type and dollar amount of work shown on the form. If a DBE is participating as a joint venture partner, submit a copy of the joint venture agreement.

01-23-15

### 2-1.12B(3) DBE Good Faith Efforts Submittal

You can meet the DBE requirements by either documenting commitments to DBEs to meet the Contract goal or by documenting adequate good faith efforts to meet the Contract goal. An adequate good faith effort means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal.

If you have not met the DBE goal, complete and submit the DBE Good Faith Efforts Documentation form under section 2-1.33 showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed toward obtaining participation by DBEs are considered.

Submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Department finds that the DBE goal has not been met.

Refer to 49 CFR 26 app A for guidance regarding evaluation of good faith efforts to meet the DBE goal.

Attachment 9

# Double "M" Trucking, Inc.

710 Dutton Street  
Winters, CA 95694

(530) 795-4181 Fax (530) 795-3914

Fax # 557 6459

Quoted rates are not prevailing  
WAGC

To: TECH CONSTRUCTION

Unless otherwise noted, all quoted rates are for regular AC. Open Gravel, Rubber, and other aggregates quoted upon request. Week Days only. Valid for 30 days from date of quote. Prices PG is used.

Alt: 10311

Re: 1000 E 30000

1000 E 1500

1000 E 1500

1000 E 1500

DR 10000 @ 9.390

DR 20000 @ 9.390

Bid Date: 1/23/16

PLANT	AGGREGATE	
	DOUBLES	TRANSFERS
TECH PERLAS	12.20	
TECH COOL	10.45	
TECH LUGA	11.90	
TECH CHINA	11.50	
TECH WASHED	1.90	
OFF HADON 1/2 US	12.00	11.00

PLANT	ASPHALT	
	DOUBLES	TRANSFERS
TECH P	11.80	
TECH P	11.55	

RATES FROM 2016 - 2017  
 RATES WEEK DATES 1/2016 - 5/1/2017  
 ASPHALT RATES W/GETTING

Asphalt rates include: 10 minutes load & 15 minutes dump Doubles  
 15 minutes load & 30 minutes dump Transfers

AB 1/2 2016 - 7.25/tn - Type A HMA - 1/2 2016 - 17.80/tn  
 1/2 2017 - 8.14/tn - 1/2 2017 - 18.69/tn  
 7.945/tn \* 78250 tn = \$621,696 18.245/tn \* 16750 tn = \$305,604

Dirt Offhaul 100/hr \* 18320 hrs = \$1,832,000  
 Rubber HMA 2018 - 19.58/tn  
 19.58/tn \* 13900 tn = \$272,162