

**TEICHERT CONSTRUCTION**

Established 1887

November 3, 2014

VIA FACSIMILE (916) 227-6282 AND U.S. MAIL

John C. McMillan  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services  
State of California  
Department of Transportation (Caltrans)  
1727 30<sup>th</sup>, Bidder Exchange, MS 43  
Sacramento, CA 95816-8041

Subject: Contract No. 03-2F2904  
03-Pla-267-0.0/6.8  
Bids Opened: September 17, 2014  
Protest of Not Meeting DBE Goal Letter

Dear Mr. McMillan:

Teichert Construction ("Teichert") is in receipt of Caltrans' letter dated October 27, 2014. In the letter, Caltrans notified Teichert that it had not met the DBE goal, due in large part because Caltrans had recalculated the DBE commitment on Black Diamond Asphalt, Inc., ("BDA"). Teichert objects to Caltrans' finding that the trucking portion of BDA quote should be reduced to 60%. Teichert is submitting this letter to present further substantiation that Teichert met the DBE goal and should be awarded the project.

**Teichert is eligible to claim 100% of trucking per 49 CFR Part 26.55(d)(3)**

The portion of work BDA is performing under this contract is to furnish and deliver the Asphalt Binder, PG 64-28, to the Teichert Aggregates – Martis Valley Plant for the manufacturing of Hot Mix Asphalt. BDA has quoted a material buy price of \$619.00/TN + tax and a delivery price of \$54/TN of asphalt binder to the Martis Valley Plant. (See attached quote.)

The following is the process for utilizing BDA on this project:

The Martis Plant - plant orders asphalt binder through Teichert Aggregates' dispatcher like normal. Teichert Aggregates' dispatcher places the order for asphalt binder with BDA. BDA then takes responsibility for contacting the binder manufacturer(s) and managing the fulfillment of the order with their own labor and equipment. BDA manages and supervises the transportation of the asphalt binder to the Martis Valley Plant using BDA company owned trucks and trailers. (See attached registration and OMV documents) BDA deals directly, and uses which ever asphalt binder

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manufacturer they have negotiated with. BDA invoices Teichert Aggregates for the asphalt binder quantity BDA supplied to this contract.

The Martis Valley Plant will receive approximately 5 loads from BDA on any given day, 1 of their owned trucks will be utilized to transport the asphalt binder. This truck will provide 1 load per day. In total BDA will provide approximately 5 loads (approximately 25 tons per load) of asphalt binder to this project.

Teichert has committed utilizing BDA for 110 tons of asphalt binder of the total tonnage of asphalt binder required for this project.

Teichert's DBE paperwork correctly shows 60% for the certified supplier and 100% for the trucking. Teichert is contending this is an accurate method of computation the DBE commitment *per 49 CFR 26.55(d)*. The State is incorrectly contending the company owned trucks cannot be used as 100% and needs to be counted as 60%. We clearly dispute this method of computation. Since BDA has (4) four trucks and (6) tanker-trailers at their disposal and are performing a commercially useful function their participation for trucking the binder to Martis Valley should be the "total value" of the trucking counted (100%) towards the goal.

*Per 49 CFR 26.55(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:*

- (1) 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.*
- (2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.*
- (3) 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. (emphasis added)*

Teichert Construction committed DBE is \$232,579.14 which exceeds the State's 7% DBE goal.

**Caltrans has awarded numerous past projects with 100% of trucking for BDA**

Caltrans must be consistent in their determination of DBE commitments. Attached are a few awarded projects to contractors other than Teichert that have used 100% of the trucking value from BDA on their DBE commitment form. Please see contract 03-1F7404 awarded to George Reed, Inc. and contract 03-2A9204 awarded to Road and Highway Builders of California, Inc. and contract 10-0A8404 awarded to Desilva Gates Construction. All three examples correctly used the "total value" of the trucking in their DBE commitment computations.

For the reasons stated above and Caltrans' past precedence Teichert respectfully asks that Caltrans finds that Teichert indeed met the DBE goal and is eligible for award. Teichert is the lowest responsive and responsible bidder on Contract No. 03-2F2904, and Caltrans should proceed with award of this contract to Teichert. Should you need any additional information, I can be reached at 916-645-4855.

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Deputy Division Chief  
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Sincerely,



Eric Stannard  
Director of Public Procurement

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Attachment

cc: Monica Pogemiller – Contract Evaluation Branch – Office of Business and Economic Opportunity  
Earl Seaberg – Office of Contracts Awards and Services – Division of Engineering Services



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## FAX COVER SHEET

TO: John McMillan  
COMPANY: Deputy Division Chief  
Office Engineer  
Caltrans  
FAX NUMBER: (916) 227-6282  
PHONE NUMBER: (916) 227-6300  
FROM: Eric Stannard  
DATE: November 4, 2014  
PAGES: 57 including Cover Sheet

**RE: Caltrans Contract No. 03-2F2904**