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Teichert / RNR, a Joint Venture

VIA FACSIMILE (916) 227-6282

December 27, 2013

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

Subject: Contract No. 04-0A5344
04-SOL-80-11.3/12.9
04-SOL-12-2.5/2.6
Federal-Aid Project: ACNHP-X095(025)N
Bids Opened: November 20, 2013

RE: **Email Correspondence submitted by Ghilotti Construction Company, and Bid Protest of Teichert/RNR, a Joint Venture to Award of Contract to DeSilva Gates - Viking, a Joint Venture**

Dear Mr. McMillan:

Teichert / RNR, a Joint Venture ("Teichert / RNR") has reviewed the dual email correspondence submitted by Ghilotti Construction Company ("Ghilotti"), and posted to Caltrans' Post-Bid Files for Opened Contracts internet website for Contract No. 04-0A5344. Ghilotti, as part of a joint venture, is the apparent 4th lowest bidder on Contract No. 04-0A5344 ("project").

Teichert / RNR, a Joint Venture ("Teichert / RNR") has also reviewed the dual correspondence submitted by DeSilva Gates / Viking, a JV ("DSG-V"), and posted on December 20 to Caltrans' Post-Bid Files for Opened Contracts internet website for Contract No. 04-0A5344. DSG-V is the apparent low bidder on Contract No. 04-0A5344 ("project").

John C. McMillan
Deputy Division Chief
December 20, 2013
Page 2 of 3

From the information freely disclosed by both Ghilotti and DSG-V, the final quantity of item 79 Imported Borrow will underrun. The extent of the underrun is a matter of complex quantity calculations, proprietary risk development of each bidder and risk to the State. It is necessary to note DSG-V is the only bidder which both mathematically and materially unbalanced this project item. The mathematical extent of the unbalancing is undisputable by the unit. The material unbalancing is also undisputed based on any reasonable value of the item in comparison with the differences between total bids.

The extent of the DSG-V mathematical and material unbalancing, due to a probable significant underrun, which DSG-V has settled the risk entirely and exclusively onto the State would cause uncertain financial outcome if contract is awarded to the apparent low bid.

DSG-V has submitted a bid the State cannot respond to or determine to be responsive because the State would enter into a compromised arrangement and would not pay for contract mandated fair expenses or indeed receive its fair contract governed adjustments or savings on this measured item from now anticipated underruns. The State would also be excluded from its fair and legal share of changes (which always occur on such large measured items) from actual subsistence or actual grading factors as well as any possible cost-reduction savings proposed by any party on this project's crucial item.

Referencing Ghilotti's statement alleging a "broken" contract due to quantity inaccuracies on the bidding plans, Ghilotti failed to draw the attention of the issue prior to bid as is required by Regulations and customary practice of experienced bidders. Contrary to the statements of Ghilotti, the contract is not "broken" due to a quantity variation from bid quantities. In fact and more correctly, a contract would become "broken" by the bid of the apparent low bidder, DSG-V because of the actual and extent of the mathematical and material unbalancing of DSG-V on item 79.

Teichert / RNR submitted a letter to Caltrans on December 5th, 2013 protesting award of the contract to DGC-V. Without repeating the substance of Teichert / RNR's letter, Teichert / RNR explained in detail how DGC-V failed to comply with governing regulations and Caltrans specifications when it submitted a materially unbalanced bid. Included with Teichert / RNR's December 5th letter, are copies of Caltrans letters providing appropriate recent precedence for finding non-responsive materially unbalanced bids, exactly such as DSG-V's bid.

It is important to expand and note that in its response of December 2, DSG-V represented a list of State awarded contracts where mathematically unbalanced bid items were present. All these contracts were not subject to protests of the unbalanced item. In addition, the units of the mathematically unbalanced bid items were, in greater part, similarly represented by bidders.

John C. McMillan
Deputy Division Chief
December 20, 2013
Page 3 of 3

Importantly also, in this particular case, DSG-V failed to include appropriate costs for the Import Borrow because based on the specification payment clause of this item, even with an alleged "no-cost" source of import borrow, on-site and project specific costs are still unaccounted for in the unbalanced item as bid by DSG-V. The attempt to disguise the evident mathematical and material unbalancing with a "no-cost" import source is dubious and unverifiable by the State, and probably false based on total bid amount.

Case in point is that DSG-V claimed in its DBE filing participation for "West Coast Water Truck" for this bid item which exceed the revenue on the item several folds.

Even more troubling for the State is the placement, stockpiling or relocation of borrow material due to on-site phasing of even "free" import borrow. This on-site scope for the item is mathematically and materially improperly accounted for in DSG-V's unit bid for this item.

In conclusion, based on governing regulations, specifications, and the information presented in Teichert / RNR's letter of December 5, 2013, the bid of DSG-V must be rejected as nonresponsive along with its bid being mathematically and materially unbalanced. Therefore, we respectfully and formally request that the State uphold and validate Teichert / RNR's bid protest and award the contract to our Joint Venture, which submitted the lowest most responsive and responsible bid for Contract 04-0A5344.

Should you have any questions or need additional information with respect to any aspect of Teichert / RNR's bid protest, please do not hesitate to contact me at (916) 645-4855.

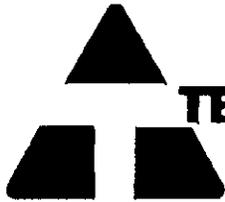
Sincerely,
Teichert / RNR, a Joint Venture



Eric Stannard
Director of Public Procurement of Teichert Construction and Representative of the Joint Venture

eb

cc: R. Garner, A. Catellier - RNR Construction
T. Griffith, J. Thomassen, R. Czuleger, J. Theriault - Teichert Construction
Bid file 13-037



TEICHERT CONSTRUCTION

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FAX COVER SHEET

TO: Office Engineer
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FAX NUMBER: (916) 227-6282
PHONE NUMBER: N/A

FROM: Eric Stannard
Director of Public Procurement

DATE: December 27, 2013
PAGES: 4 including Cover Sheet

RE: Contract No. 04-0A5344
04-Sol-80
Bids Opened: November 20, 2013