



RGW CONSTRUCTION, INC.

April 11, 2014

Via Hand-Delivery

John C. McMillan, Deputy Division Chief
Department of Transportation
Division of Engineering Services
Office Engineer MS 43
1727 30th Street
Sacramento, CA 95816-8041

4-11-14 PM 1:22

RE: Contract 04-0A7104 – Response to MCM's Bid Protest

Dear Mr. McMillan,

RGW Construction Inc. is the lowest responsive and responsible bidder on Cal Trans' Contract No. 04-0A7104. Per your request dated April 9, 2014, we are responding to MCM Construction Inc.'s bid protest letter dated April 3, 2014.

MCM's bid protest letter identifies five alleged issues with RGW's bid. All of these issues are minor and immaterial, or are based on MCM's misunderstanding of RGW's bid record. None of these issues rise to the level of giving RGW any sort of competitive advantage over the other bidders.

Under California law, Cal Trans has broad discretion to reject MCM's bid protest and to award this contract to RGW because the issues raised by MCM are immaterial and inconsequential. In Valley Crest Landscaping, Inc. v. City Council, 41 Cal.App.4th 1432, 1140-41 (1996), the California Court of Appeals stated: "[I]t is further well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted *if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders*, or in other words, if the variance is inconsequential." (Italics in original)

RGW will address each of the five bid issues raised by MCM:

MCM Issue No. 1

RGW Failed to Provide Location of Subcontracting Business or Provided Improper Location Information of the Subcontract List Form

RGW listed K & G Concrete, Inc. to perform "Furnish, Pump and Place Concrete" on bid day expressly to secure and exceed the 7% DBE goal that Cal Trans included on this contract. RGW exceeded the 7% DBE goal by 50%. RGW listed K & G Concrete, Inc. to perform "Furnish, Pump and Place Concrete" on its 24

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04-11-14 MCM

hour subcontractor listing. RGW listed K & G Concrete, Inc. to perform "Furnish, Pump and Place Concrete" on its Cal Trans Bidder DBE Commitment form. There is only one K & G Concrete, Inc. in the State of California, as evidenced by researching the Contractors State License Board website (See Attachment A), with its main office in Roseville.

Page | 2

As this is the case, there is no potential for RGW to bid shop or bid peddle in relation to K & G Concrete, Inc. There is no uncertainty regarding the identity of this listed subcontractor. RGW will subcontract with K & G Concrete, Inc. The fact that RGW did not add "Roseville" next to K & G Concrete Inc.'s name on the subcontractor list has no effect at all on the scope of work to be performed.

The California Attorney General has confirmed that a bidder's omission of a listed subcontractor's business location is immaterial in a very analogous situation. In Opinion No. 02-1012, (See Attachment B), the Attorney General stated that where a bidder omitted a subcontractor's business location on its subcontractor list, but included the subcontractor's license number, the requirements of Public Contract Code §4104 (a)(1) were satisfied. The Attorney General reasoned that this omission was immaterial because the public entity could determine the subcontractor's business location by simply checking the Contractor's State License Board database. Here, Cal Trans can also check the Contractor's State License Board database to confirm the specific K & G Concrete, Inc. entity that RGW was referring to in its subcontractor list. Again, there is only one entity with this name in the entire state.

RGW attaches the following contract information where by Cal Trans allowed modifications to the subcontractor listing form in awarding contracts (See Attachment C: 01-0A2304, 08-0P7304, 02-1E0604, 07-3P7204, 07-4T3204, 08-0M4904, 08-0P5604 08-0P6804, 02-0E8404, 06-0M7604, 06-0N1704, 07-1W6004, 04-3E1004, 04-3E2104, 04-3S5804, 04-4C3514, 03-4M4204, 10-0S1104, 03-1F6004, 04-153304, 07-285004)

MCM wrongly suggests that RGW included incorrect business locations for the following listed subcontractors: ACL, Decker Landscaping and Cleveland Wrecking. According to the documentation attached (See Attachment D), the business locations that RGW listed for each are correct.

As for Central Striping Service Inc., RGW's estimator mistakenly juxtaposed its business location with the business location of Centerline Striping. The two entities are listed right next to each other in RGW's master subcontractor sheet (See Attachment E). RGW did not receive a bid from Centerline Striping on bid day. There is only one Central Striping Service Inc. with an active contractor's license in the State of California. Therefore, as with K & G Concrete, Inc. (discussed above), there can be no confusion regarding the identity of Central Striping Service Inc. and Cal Trans can easily confirm Central Striping's business location on the Contractors State License Board database. (See Attachment E)

MCM Issue No. 2

RGW Subcontractor List 24 Hours Submission Changed the Information Provided on the Subcontractor List Submitted on the Day of the Bid.

RGW did no such thing. RGW listed AC Dike for bid items 100-104 on both its subcontractor listing at the time of bid and on its 24 hour submittal. RGW overstated AC Dike's participation on its DBE submittal by \$1,491. It should total \$8,562.60 not \$10,054.

RGW listed Imperial Shotcrete for minor concrete – bid items 188, 189 and 201. Please see the attached price quote. (See Attachment F) RGW plans on self-performing bid items 127 and 128.

Page | 3

MCM Issue No. 3

The Bid of RGW is Mathematically and Materially Unbalanced

RGW's bid is not mathematically and materially unbalanced. MCM identifies a subset of bid items that are collectively under bid by \$1,184,840. RGW, on bid day, plugged unit prices for these bid items close to and above Cal Trans' State averages for similar work. On bid day, RGW did not receive and process all of its subcontractor quotes for this work until after 1:30 p.m. We selected R.E.Serrano at that time, but had closed these bid items to facilitate submitting our bid.

Contrary to MCM's allegations, RGW did not "inflate" any other item prices. RGW previously responded to Cal Trans' request for information regarding bid item 47. RGW included costs for: saw cutting; removal of CTB and structural section beneath the pavement; stockpiling, and processing the material for reuse back to the project and transportation to and from the stockpile site. Item 72 and 92 reflect RGW's means and methods and reflect our cost associated with all the work. RGW's take off of quantity reflects the engineer's estimate for these items. Items 110 and 241 are final pay and lump sum items.

MCM has not put forth any meaningful evidence to support its claim that RGW's bid is materially unbalanced and does not result in the lowest ultimate cost to the State. MCM's baseless assertions should be ignored.

MCM Issue No. 4

RGW Listed Subcontractors for Items of Work for Which Listed Subcontractor did not Provide a Quote at Time of Bid

This is false. As of the time it submitted its bid, RGW had received quotes for each item of work listed as being performed by each of its listed subcontractors. MCM's claim that RGW did not is based on a simplistic and naïve view of what really happens in a contractor's office on bid day.

MCM is obviously aware that subcontractors providing quotes on projects at bid time frequently have scope gaps; it occurs on almost every public and private works project that bids. Under bid time constraints such as public works, identifying such scope gaps in short time is resolved on the phone and items are monetarily addressed accordingly to close any scope gaps. The contractor then requests verbal changes to be documented with a complete quote. RGW is accustomed to this process and we

make written notes on quotes with adjustments that need to be made to overall subcontractor value. As part of the standard practice of closing scope gaps at bid time, such adjustments were required with reference to Central Striping Service, Inc. and Decker Landscaping, Inc. and noted on original quotes. Our subcontractor bid items and scope as listed on bid day is the same without discrepancies and remained unchanged on our 24 hour listing. (See Attachment G)

MCM Issue No. 5

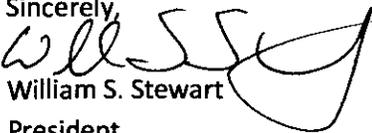
RGW's DBE Commitment Submittal is not Consistent with the Subcontractor List Submitted with the Bid and the Subcontractor List 24 Hour Submission

RGW included Tri-Valley Water Truck to supply operated water trucks on its DBE commitment form to increase our commitment for DBE participation on this project. RGW secured more than 10.5% DBE participation as a total, more than both MCM and Myer and Sons. We are not subcontracting with Tri-Valley Water Trucks; we are hiring their water trucks by the hour, as we described in our DBE commitment form. Our estimate of the work includes more water truck hours than we committed to using Tri Valley for, but we felt we could commit to this such that we would help Cal Trans succeed in attaining their goals on both this project and statewide. Tri Valley Water Trucks does not quote work as a subcontractor, it does not assume responsibility for construction of any work; it provides a vendor service only. We identified the bid items on the DBE form to indicate which work RGW will use water trucks for. We do this because Cal Trans' civil rights requirements ask for a breakdown of the commitment. RGW included Tri Valley Water Trucks to supply operated sweepers on its DBE commitment form similarly to the operated water trucks.

We include contracts 03-3E1004, 04-2A4304, 04-1G9404, 03-406604, 10-0A8724, 10-415704, 01-0A7304, 05-0Q5704, 04-0A5344, 06-0M7004, 03-0F1104 (See Attachment H) as examples whereby the low bidders included hourly water trucks and/or sweeper to support construction on the 4-day DBE or DVBE commitment form but did not include said vendors as subcontractors on their subcontractor listing forms. In each of the attached examples, the low bidders were awarded contracts by Cal Trans.

Based on the foregoing, RGW's bid is responsive to Cal Trans' solicitation in all material respects, and MCM's bid protest should be rejected. If you require any further information regarding this matter, please contact me at 925/606-2400 ext. 2402, or by email at bill@rgwconstruction.com.

Sincerely,


William S. Stewart
President

/cd
attachments