

**Main Office**

P.O. BOX 620 / 6413 32nd Street / North Highlands / CA 95660  
(916) 334-1221      Estimating / Engineering FAX (916) 334-0562  
Accounting FAX (916) 334-8355

**Southern California Regional Office**

P.O. BOX 867 / 19010 Slover Ave. / Bloomington / CA 92316  
(909) 875-0533      Engineering / Accounting FAX (909) 875-2243

April 17, 2014

Via Facsimile (916) 227-6282 &amp; Certified Mail

State Of California  
Department Of Transportation  
1727 30<sup>th</sup> Street  
P. O. Box 168041 Bidder Exchange, MS 43  
Sacramento CA 95816-8041

Attn: John C. McMillan, Deputy Division Chief, Office Engineer

Re: Contract No. 04-0A7104  
Route 880;  
Bid Protest

Gentlemen:

By letter of April 3, 2014, MCM Construction, Inc. ("MCM") submitted a formal protest of the bid of RGW Construction, Inc. ("RGW"), the apparent low bidder in connection with Contract No. 04-0A7104.

MCM Construction, Inc. is currently the second lowest bidder.

MCM has reviewed the RGW response to the protest, dated April 11, 2014, and submits these comments to further support the validity of our protest.

**RGW Failed to Provide Location of subcontractor business or provided improper location information on the Subcontract List form.**

Public Contract Code section 4104 and the Caltrans Subcontractor Listing require that a prime contractor include the business name and location of a listed subcontractor with its bid. (Public Contract Code § 4104(a)(1); Subcontractor List form DES-OE-0102.2(Rev. 3/2011)). The bid Subcontractor List submitted by RGW with its bid fails to list the business location of K&G Concrete, Inc. and also improperly indicates the wrong city locations for four (4) of the listed subcontractors.

Page 2

John McMillan, Deputy Division Chief  
State Of California, Department Of Transportation  
April 17, 2014  
Re: Bid Protest  
Contract NO. 04-0A7104

---

While RGW asserts that the failure to include the business location of a listed subcontractor does not violate the requirements of the Subcontractor Listing law because the agency could ascertain the business location of the listed subcontractor by searching the Contractors State License Board data base. RGW cites an Attorney General Opinion to support its position. However, RGW fails to disclose that the Attorney General Opinion No. 02-2012 is based on a different set of facts than exist in the present bid protest and specifications.

1. The Attorney General Opinion is based on the fact that the bid in the case reviewed included the Contractor's License No. of the listed subcontractor. This information can be used to specifically identify the intended subcontractor. In the case of the GRW bid, that information was not provided with the bid and the lack of the information would prevent Caltrans from identifying the intended subcontractor from the Licensing Board's data base.
2. The specification of the public agency that was involved in the case involved in the Attorney General Opinion did not include the express requirements that are included in the Caltrans bid specifications for Contract No. 04-0A7104. The bid specifications clearly state on the Subcontractor List form: "Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 with in the time specified will result in a non-responsive bid." (Emphasis Added)

It is clear that the bid specifications require that the bidder submit the information in column 1 of the Subcontractor List with the bid. It is also clear that RGW did not include the business location of its listed subcontractor, K&G Concrete, Inc. Finally, the bid specifications are also clear that a bid will be non-responsive if the complete information in column 1 is not provided at the time of the bid.

Caltrans has found low bids to be non-responsive where the bidder failed to provide the business location of a listed subcontractor. On contract 01-474414, the Department found the bid of Hayes & Son's, Inc. to be non-responsive because it failed to provide the business location of Jensen Drilling, Inc. and Apply A Line Striping, as required in column 1 of the Subcontractor List.

Further the listing of the wrong location for the subcontractors listed by RGW on the day of the bid also violates the Subcontract List requirement of the bid specifications. While RGW asserts that its estimator "mistakenly juxtaposed" the business location with the location of another subcontractor from RGW's master subcontractor list, there is no way of knowing from the information provided whether the intended subcontractor was Central Striping or Centerline Striping. The RGW estimator may have "juxtaposed" the wrong subcontractor from the "master list."

Page 3

John McMillan, Deputy Division Chief  
State Of California, Department Of Transportation  
April 17, 2014  
Re: Bid Protest  
Contract NO. 04-0A7104

---

**RGW Subcontractor List 24 hours submission changed the information provided on the subcontractor list submitted on the day of the bid.**

RGW described the work of AC Dike in column 4 on the day of the bid as "Place Hot Mix Asphalt Dike" No other description was provided. In its 24 hour subcontractor list submission, RGW did not list bid item No. 99, PLACE HOT MIX ASPHALT DIKE (TYPE A MODIFIED). AC Dike's bid submitted to RGW includes the work for all of the PLACE HOT MIX ASPHALT DIKE bid items. The quantity quoted by AC Dike is 944 LF. The total quantity of bid items Nos. 99 through 104 is 944 LF. The omission of bid item No. 99 is confirmed by the information included in the CALTRANS BIDDER DBE COMMITMENT, submitted by RGW. The A.C. Dike quote was for 944 LF at the price of \$10.65 per lineal foot and a total of \$10,054 and the DBE COMMITMENT states the value of the work to be performed by A.C. Dike Co. equals \$10,054. Attachment 2 is a true and correct copy of the A.C. Dike quote to RGW that was included in the DBE Commitment information submitted by RGW.

It should be noted that the value of bid item 99 at the unit price rate of \$1,491.00, the amount that RGW asserts that its DBE Commitment "overstated" the value of A.C. Dike's work. The Subcontractor List submitted by RGW on the day of the bid describes the work of AC Dike as "Place Hot Mix Asphalt Dike." That is the nature of the work involved in bid item 99 and the value of bid item 99 is precisely \$1,491.00 at the unit price quoted by A.C. Dike. Now RGW asserts that it overstated the value of the A.C. Dike work in its DBE Commitment submitted 4 days after the bid. It is clear that the Subcontractor List work description for A.C. Dike included with RGW's bid differs from the bid items that are listed by RGW on its 24 hour submission. Caltrans has consistently found bids non-responsive where the Subcontractor list submitted with the bid is not consistent with the Subcontractor List submitted 24 hours after the bid.

It would be improper for Caltrans to allow RGW to revise its DBE Commitment submission in order to cure the inconsistency in its bid that would render the bid non-responsive to the bid specification requirements related to inconsistencies in the DBE Commitment and the Subcontractor List.

In order to avoid any appearance of favoritism or bias in the awarding of public works contracts, Caltrans must be consistent in its determinations of responsiveness in the bids.

RGW described the work of Imperial Shotcrete in column 4 on the day of the bid as "Minor Concrete and Related, Minor Concrete (Vegetation Control)" In its 24 hour subcontractor list submission, RGW did not list bid items 127 MINOR CONCRETE (MINOR STRUCTURE) and 128 MINOR CONCRETE (BACKFILL). Clearly, "Minor Concrete and Related" includes the work of bid items 127 and 128. Accordingly, RGW bid must be found to be nonresponsive for improperly omitting item of work in column 2 that is part of the work description submitted by RGW on the day of the bid.

RGW states that it listed Imperial Shotcrete for minor concrete – bid items 188, 189 and 201. Yet what RGW fails to admit is that it described the work to be performed by Imperial Shotcrete as "Minor Concrete and Related." That scope of work description includes bid item 127 MINOR

Page 4

John McMillan, Deputy Division Chief  
State Of California, Department Of Transportation  
April 17, 2014  
Re: Bid Protest  
Contract NO. 04-0A7104

---

CONCRETE (MINOR STRUCTURE) and bid item 128 MINOR CONCRETE (BACKFILL). Again, RGW's Subcontractor List submitted with its bid is not consistent with the Subcontractor List submitted 24 hours after the bid.

Since Caltrans did not include all the Attachments referenced in RGW's letter on its website documentation, it is not possible to comment further on RGW's assertions, however if Caltrans is to be consistent with its previous determination in this regard, it must reject to bad of RGW as non-responsive as a result of failure to provide complete and consistent information on its Subcontractor List submissions and it DBE Commitment.

**RGW listed subcontractors for items of work for which the listed subcontractor did not provide a quote at the time of bid.**

In two instances, RGW listed items of work that the listed subcontractor did not bid on the day of the bid. This practice invites the post bid communications of negotiating prices and scope of work with the subcontractor. This is a practice that potentially leads to the bid shopping and bid peddling that the Act prohibits.

The subcontractor list submitted by RGW describes the work to be performed by Central Striping in column 4 to include bid item 6 TRAFFIC CONTROL SYSTEM , yet Central Striping did not quote work for bid item 6. Also the 24 submission of the subcontract list from RGW indicates that Central Striping will perform only 1% of the work of bid item No. 6. The quote of Central Striping expressly excludes any traffic control. Furthermore, it is completely illogical for the striping subcontractor to perform such a small part of the traffic control item of work when the striping work on this project requires significant traffic control for all of the stages involved in the project.

In addition, Central Striping did not quote items 196, 197, and 199 which were listed for Central Striping in the subcontractor list submitted by RGW. There are other similar discrepancies in the subcontractor list submitted by RGW where the listed subcontractors are indicated to perform contract work that was not included in the subcontractor's quote of this project. Also, Decker Landscaping did not bid on bid item No. 77 ROCK BLANKET, yet they are listed by RGW to perform 100% of bid item No. 77. Attachment 4 is true and correct copies of the bid day quotes from Central Striping and Decker Landscaping.

RGW's response, particularly regarding the scope of work of Central Striping is absurd. Central Striping's quote expressly excludes Traffic Control. For RGW to now assert that traffic control constitutes a "scope gap" is completely wrong. A striping subcontractor is not equipped to provide traffic control. If Central Striping intended to perform any traffic control it would not have stated "Traffic control is NOT included for our items of work, unless otherwise noted." Nowhere in Central Striping's quote is there any notation regarding providing traffic control work. RGW's description of the bid process is preposterous, particularly when applied to the bid of the striping subcontractor. RGW's assertion that it identified a "scope gap" in the quote of the striping subcontractor for 1% of the TRAFFIC CONTROL SYSTEM work is not at all believable.

Page 5

John McMillan, Deputy Division Chief  
State Of California, Department Of Transportation  
April 17, 2014  
Re: Bid Protest  
Contract NO. 04-0A7104

---

**RGW's DBE commitment submittal is not consistent with the subcontractor list submitted with the bid and the subcontractor list 24 hour submission.**

The CALTRANS BIDDER DBE COMMITMENT form submitted 4 days after the bid day requires:

“Names of the first tier DBE subcontractors and their respective items of work listed above must be consistent, where applicable, with the names and items of work in the ‘Subcontractor List’ submitted with your bid.”

In numerous instances, RGW's DBE COMMITMENT information is not consistent with the subcontractor list.

The situation regarding RGW failing to list Tri Valley Water Truck on its Subcontractor List is no different than the project where Caltrans has found low bids non-responsive for facility to list traffic control hourly or shift services subcontractors. We again recite three of those instances where the low bid was rejected by Caltrans.

1. The apparent low bid on Contract 05-0R9104 involving a Traffic Control subcontractor who bid its work on an hourly supply labor and equipment basis who was listed on the DBE COMMITMENT but not listed on the Subcontractor List by the prime bidder.
2. The second instance involved Contract No. 04-4A5104 where the low bid was rejected on the same basis.
3. Contract No. 04-4S6204, again involved the DBE COMMITMENT that included a subcontractor that was performing work strictly on an hourly basis and that was not listed on the Subcontractor List and the low bid was rejected as nonresponsive because of the subcontract listing on the DBE Commitment was not consistent with the Subcontractor List.

In order for the Department decisions in these situations, Caltrans must reject the bid of RGW as being nonresponsive.

Based on the information provided in MCM's letter of April 3, 2014, in this letter, the bid documents submitted by RGW, the bidding requirements provided by law and the Department's bid specification and the previous determinations made by the Department regarding responsive bids, the bid of RGW must be determined to be nonresponsive and Contract No. 04-0A7104 should be awarded to the lowest responsive and responsible bidder, MCM Construction, Inc.

Page 6  
John McMillan, Deputy Division Chief  
State Of California, Department Of Transportation  
April 17, 2014  
Re: Bid Protest  
Contract NO. 04-0A7104

---

If, you require any further information in regard to this matter, please contact the undersigned at (916) 334-1221, ext. 229 or by email at [epuchi@mcmconstructioninc.com](mailto:epuchi@mcmconstructioninc.com).

Sincerely,

**MCM CONSTRUCTION, INC.**



Edmundo A. Puchi  
Treasurer and General Counsel

/cap

Attachments

cc: JAC, HDM, R. McCall, R. Burch  
Bid File