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April 24, 2014

Via Facsimile (916) 227-6282 & Certified Mail

State Of California
Department Of Transportation
1727 30th 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 2nd response to the protest, dated April 21, 2014, and the documents submitted by RGW with its 1st response to this bid protest, MCM 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.

RGW's response of April 21, 2014 can be broken down into two issues:

First, RGW's admission that they violated the Subcontractor Listing Law and their request that Caltrans waive this violation because they are RGW. Public Contract Code Subcontract Listing law only requires that bidders list three bits of information on the Subcontractor List: 1) the

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name, 2) the business location and 3) the description of work, nothing more. RGW admits that it failed to provide one of these 3 items.

The Attorney General was asked what actions a public entity might take when a bidder violates the Public Contract Code by not providing the business location of the listed subcontractor. When RGW cites the Attorney General's Opinion, it is admitting that the Opinion has relevance because RGW violated the Subcontractor Listing Laws. For a violation of the Subcontractor Listing Laws, a public entity can cancel a bidder's contract, award the contract and assess penalties or cancel the award and assess penalties. RGW would have no grounds to argue if Caltrans decided to cancel the award and assess penalties against RGW. What RGW argues is that because Caltrans has choices, it should make a decision that would most benefit RGW. RGW, however, provides no reason why such a decision would benefit Caltrans or the bidding process.

Caltrans has literally issued hundreds of letters to bidders rejecting bids for violation of the Subcontractor Listing Laws: either failure to provide a correct description of subcontractor work or failure to provide of the subcontractor name or a subcontractor's location. If Caltrans accepted RGW's argument that all of these failures are "immaterial" and should be waived, then Caltrans can expect other bidders to make the same argument when they neglect to list a subcontractor's name or description of work. If Caltrans elects to waive RGW's violation, why shouldn't Caltrans also waive violations for other bidders? Caltrans should not be forced into a position where it must decide which violations of the Act it should waive as "immaterial" and which violations it will not waive.

Rather than take a "pick and choose" method of trying to determine which violations of the Subcontractor Listing law to waive and which to not [which could lead to claims of favoritism], Caltrans has taken a common-sense approach and decided that it will not waive any violation. Caltrans' position is explicitly stated on the Subcontractor Listing Form which states:

"Failure to provide information in columns 1 through 4 within the time specified will result in a non-responsive bid."

If indeed Caltrans has discretion and it has notified all bidders prior to the bid opening that it will use its discretion to find that bids that violate the Subcontractor Listing Laws are non-responsive.

In defense of its violation, RGW has cited some projects in which Caltrans awarded contracts to bidders who had failed to list subcontractor's business locations. RGW's defense is essentially the "yes, I was speeding but other guys were speeding as well, you should let me go" defense. It is not a viable defense. More importantly, RGW's request that Caltrans waive its violation goes against Caltrans's bid requirements that these violations "will result in a non-responsive bid."

As noted in John McMillan's e-mail of February 24, 2014 to Lillian Simon of Flatiron with respect to Contract 04-04-235624, bid protests are "part of the industry policing itself." For the contracts which RGW cited, no other bidder protested the failure to list a location and violations were overlooked. Similarly, Caltrans awarded contracts to bidders who had failed to accurately

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describe subcontractor's work until other bidders began pointing out these violations to Caltrans. Once the violations were brought to the attention of Caltrans, Caltrans adhered to the bid requirements and determined the violations resulted in non-responsive bids. It is for this exact reason that Caltrans staff determined that Hayes & Sons' bid was non-responsive on Contract 01-474414 for failure to list the locations of two subcontractors.

MCM has exposed RGW's violation of the Subcontractor Listing Law. Now that Caltrans is aware of this violation, MCM requests that Caltrans comply with its Bid Documents and determine that this failure "will result in a non-responsive bid." If Caltrans opens the door to knowingly accepting violations of the Subcontracting Listing laws, then Caltrans can expect to receive a never-ending barrage of requests from other bidders that their violations of the listing law (failure to list the subcontractor's name, location or description) be treated like RGW's request. For the integrity of the bidding process and avoiding claims of favoritism, RGW's request for a preference and its bid should be denied.

Lastly, RGW says it has clearly shown that it intended to use Central Striping and not Centerline Striping because it clearly wrote the name of "Central Striping" on the bid. RGW writes that any questions about the identity of the striping subcontractor are "ridiculous." RGW's twice (on the Subcontractor List and the 24-Hour submittal) clearly wrote down the location of its striping subcontractor as being from Elk Grove. It is common knowledge that the prime striping subcontractor from Elk Grove is Centerline Striping. It is ridiculous for RGW to deny that it aware of this fact or to deny that it wrote down the same location of "Elk Grove" twice. The location of "Elk Grove" is no less valid than the name of "Central Striping" just because RGW says that it is after the bid opening.

With respect to the citation of Contract 01-474414, (MCM Attachment 7) RGW tries to put words in Caltrans' mouth. Caltrans letter of June 13, 2013 clearly states:

"H&SI failed to submit the location for Jensen Drilling Co. and Apply A Line Striping (sic), as required in Column 1.

Based on the above, Caltrans finds your bid is nonresponsive."

Caltrans has made it very clear to bidders on future projects that failure to submit the location of a listed subcontractor is an error that Caltrans will not waive. Caltrans must apply that ruling uniformly. If that determination has been overlooked on other projects is of no relevance, where as here it has been clearly pointed out by MCM and admitted to by RGW.

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

RGW's explanation regarding the inconsistency among its work description for AC Dike, its 24 hours submission for AC Dike, and its DBE Commitment is tantamount to asking Caltrans to allow it to change its bid after the bid documents are submitted. It is clear, from the Exhibits submitted to support our protest, that the bid of AC Dike was to perform all of the work of

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"Place Hot Mix Asphalt Dike" as described by RGW in its Subcontractor List submitted with its bid. Attachment 2 previously submitted with our initial bid protest letter, 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.

The Department must not allow RGW to change its initial DBE Commitment submittal to avoid the proper application of the bid specifications that require the consistency among the various subcontractor listing provision of the express terms of the bid specifications and interpretations that Caltrans has applied in the past. Caltrans has consistently required that the DBE Commitment must be consistent with the Subcontractor Listing.

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 that require consistency among the bid documents submitted.

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 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.

It should be noted that the documents submitted by RGW with its responses to this bid protest do not support RGW's contention that it was filling a gap in the quote of Central Striping. Missing from the documentation is the "page 3 of 3" of the quote facsimile sent by Central Striping on March 18, 2014 at 11:32 am. (See Section 4, Attachment G of the RGW documents; sheets 100 and 101 of 206) of the PDF file labeled as RGW Bid Protest Response 3 on the Caltrans website posting) Sheet 102 of the RGW response 3 is a revised quote addressed exclusively to RGW and

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does not include any notation of when it was provided and it is missing the terms and conditions page of the Central Striping bid. 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.

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. There is no gap in a scope of work quoted by a subcontractor that expressly excludes a "scope of work" in its quote.

Please note that the handwritten notations on the faxed quote from Central Striping, (Section 4, Attachment G of the documents submitted by RGW) indicates an adjustment to the quote for Central Striping. The notation indicates "MOB", then it indicates "8 EA 4,500 + \$36,000." We submit that the cost of providing Traffic Control for 8 or 9 striping operation far exceeds 1% value of bid item No. 6. Further, there is nothing on the notations that indicates the price quote for the traffic control from Central Striping. The only indication for that price is on the modified quote sheet that bears an indication of when it was submitted by Central Striping.

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.

As stated in MCM's previous protest correspondence, the instance of 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. The previous determinations by Caltrans finding bids to be non-responsive on this basis, have been well documented in MCM previous protest letters on this contract.

Further, as noted above the DBE Commitment submitted by RGW within the time limits required by the bid specifications relating to AC Dikes, is not consistent with the Subcontractor List. RGW should not be allowed to submit a revised DBE Commitment over 3 weeks after the bid opening. The time limit for submitting the DBE Commitment is 4 days and the time limit for declaring an inadvertent clerical error is 2 working days after bid opening.

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RGW's protest of MCM's bid is without merit:

It appears that RGW is attempting to now attack MCM's bid since it has become clear the RGW's bid is indeed nonresponsive. RGW is now hoping that Caltrans will reject all bids and RGW will get another chance to get it right.

MCM subcontractor listing submitted with the bid and its 24 hour submission are consistent and MCM's bid meets all the requirements of the bid specifications.

The items described in RGW's protest of MCM's bid are very similar to the protest file by Security Paving in the bid for Contract 06-442624. There the protest was rejected by Caltrans and the contract was award to MCM, the low responsive and responsible bidder based on

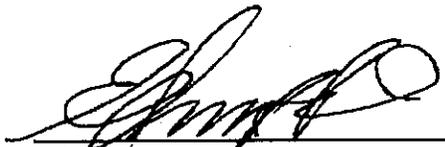
The untimely bid protest of RGW should be rejected as being without merit.

Based on the information provided by MCM in protest of the bid of 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.

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.

Sincerely,

MCM CONSTRUCTION, INC.



Edmundo A. Puchi
Treasurer and General Counsel

/eap

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