



GENERAL ENGINEERING CONTRACTOR  
DVBE/SBE #60085  
Lic. #707211

State of California  
Department of Transportation  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> Street  
P.O. Box 168041  
Sacramento, CA 95816-8041

11/19/14

Attn: John McMillan, Deputy Division Chief

Re: Contract 04-0J5804  
Santa Clara County at Various Locations  
Bid Protest

Mr. McMillan,

West Coast Structures Inc. dba, Western Structures ("WS") hereby protests the award of Caltrans contract 04-0J5804 to Peterson Chase General Engineering Contractor ("PC"). This protest is based upon ("PC") submitting a mathematically and materially unbalanced bid. The contract should be awarded to ("WS"), the lowest responsive and responsible bidder.

("PC") submitted item 18 Furnish Polyester Concrete Overlay at the unit price of \$50.00 per cf. A written material quote provided by KwikBond Polymers quoted purchase price of Item 18 is \$59.00 per cf for material only, after tax and shipping the extended price per the quote is \$66.27 per cf. (Exhibit 1) KwikBond Polymers project quote.

("PC") submitted item 21 Furnish Bridge Deck Treatment Material at the unit price of \$41.00 per gallon. A written material quote provided by KwikBond Polymers quoted purchase price of \$40.00 per gallon material only. After tax and shipping the extended price per the quote is \$46.09 per gallon. (Exhibit 2) KwikBond Polymers project quote.

Code of Federal Regulations, Title 23, 635.102 (Exhibit 3 and 3a)

The Department's Ready To List and Construction Contract Award Guide (RTL Guide) defines mathematically unbalanced as follows: "A bid is mathematically unbalanced if the bid is structured on the basis of nominal prices for some work and inflated prices for other work; that is, each element of the work must carry its proportionate share of the total cost of the work plus profits."

Under Federal Regulations and the Department (RTL Guide), ("PC's") bid is clearly mathematically and materially unbalanced. The price does not "reflect reasonable cost plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs and other direct costs". The bid submitted by ("PC") poses an unacceptable risk to Caltrans and generates a reasonable doubt that the award of the contract to ("PC") would result in the lowest ultimate cost to the state.

("PC's") bid generates a substantial doubt that award of the contract to ("PC") would result in the lowest ultimate cost to the state as it would be impossible to identify where ("PC") has allocated the costs associated with Bid Items 18 Furnish Polyester Concrete Overlay and 21 Furnish Bridge Deck Treatment Material, and therefore impossible for the state to realize the true savings in the likely event of a bid item quantity under run or elimination by awarding this contract to ("PC"). The contract should be awarded to the lowest responsive and responsible bidder.

Thank you in advance for your consideration in this matter.

Respectfully,



Brian M Skajem  
President  
West Coast Structures Inc.  
Db; Western Structures

Ex 1



Quotation

923 Teal Drive  
 Benicia, CA 94510  
 (866) 434-1772 (p)  
 (707) 746-7981  
 California Small Business # 25239  
 randy@kwikbondpolymers.com

Quote # 14-141112 -A  
 Contract # 04-0J5804  
 Bid Date 11/13/2014  
 Start Date ???  
 Terms net 30

Description	CF	CF Price	Total
PPC 1121 Drums & 2-ton SS	1,896	\$59.00	\$111,864.00
Estimated Freight			\$4,000.00
		<b>Sub Total</b>	\$115,864.00
Sales Tax 8.750%			\$9,788.10
		<b>Total</b>	<b>\$125,652.10</b>

Note: Add \$6.23/CF for materials shipped in 50# bags. If product is ordered in tankers and dropped at the job site, the demurrage fee is \$150/day plus a round trip "Bob Tail" charge of \$2.50/mile from tanker rental company to jobsite. PPC 1121 is sold by Volume. KBP has estimated the neat line quantity based on plan minimum thickness. Many projects will require more material than neat line quantities. Bidders are advised to include an appropriate escalation in their bid to account for waste. Sales Tax rate subject to change. Tech Service Fee - \$450/day plus all travel expenses- air, car, hotel, expenses based on actual cost.

1896  
 \$66.27 CF

Freight is an estimate only and based on full truck load releases of material. Freight rates are subject to change without notice based on availability & current market prices at time of delivery. Actual freight costs for shipping all material and associated demurrage, back haul, and fuel surcharges charges will be billed to contractor.

\*\*\* PPC 1121 is a composite system that requires all components be supplied by Kwik Bond Polymers. Use of any materials in the polyester concrete not approved by KBP will void any warranties and may result in product failure.

Inclusions: The amount of materials to produce average PPC unit weight of 135 lbs/cf and 12% resin content along with sufficient primer to meet spread rates according to special provisions or specifications. The estimate is developed on working temperatures of 70F. Colder temperatures may require additional accelerators and/or resin at an additional charge.

Lead Time: Contractors should allow maximum lead time, but not less than 5 weeks prior to delivery date.

Terms: Quotation is subject to Kwik Bond Polymers, LLC Standard Terms & Conditions in effect at the time of this quotation.

Delivery is subject to contractor being current on all obligations owed to Kwik Bond Polymers as of the date of requested delivery.

Quote must be signed and returned within 60 days of quote date

Prices are valid through 12-31-2015

Randy Slezak- Kwik Bond Polymers

Contractor Signature

Ex 2



### Quotation

923 Teal Drive  
Benicia, CA 94510  
(866) 434-1772  
(707) 746-7981  
California Small Business # 25239  
randy@kwikbondpolymers.com

Quote # 14-141112-B  
Contract # 04-0J5804  
Bid Date 11/13/2014  
Start Date ????  
Terms net 30

Description	Gallons	Unit Price	Total
High Molecular Weight Methacrylate Sealer			
KBP 204	5,386	\$40.00	\$215,440.00
Monomer - promoter - accelerator - initiator			
	Quantity	Unit Price	
Top Sand - 2800 # pallets	39	\$252.00	\$9,828.00
Estimated Freight			\$3,300.00
Sales Tax 8.750%			\$19,710.95
		<b>Total</b>	<b>\$248,278.95</b>

5,386

\$46.09 per gallon

**Note:** The quoted price is based on shipping full totes or drums of KBP-204 KBP-103 / KBP Flex monomer with the appropriate initiators in standard sized containers. Store KBP 204 at <80 F and out of direct sunlight. Sales Tax rate subject to change. Freight rates are estimates only and may change. Tech Service Fee - \$450/day plus all travel expenses- air, car, hotel, meals expenses based on actual cost.

Freight is an estimate only and based on full truck load releases of material. Freight rates are subject to change without notice based on availability & current market prices at time of delivery. Actual freight costs for shipping all material and associated demurrage, back haul, and fuel surcharges charges will be billed to contractor.

**Lead Time:** Contractors should allow maximum lead time, but not less than 5 weeks prior to delivery date.

**Terms:** Quotation is subject to Kwik Bond Polymers, LLC Standard Terms & Conditions in effect at the time of this quotation.

**Delivery** is subject to contractor being current on all obligations owed to Kwik Bond Polymers on all projects as of the date of requested delivery.

**Quote must be signed and returned within 60 days of quote date**

**Prices are valid through 12-31-2015**

Randy Slezak - Kwik Bond Polymers

Contractor Signature

# ELECTRONIC CODE OF FEDERAL REGULATIONS

**e-CFR Data is current as of November 18, 2014**

Title 23 → Chapter I → Subchapter G → Part 635 → Subpart A → §635.102

Title 23: Highways  
PART 635—CONSTRUCTION AND MAINTENANCE  
Subpart A—Contract Procedures

## §635.102 Definitions.

As used in this subpart:

*Administrator* means the Federal Highway Administrator.

*Calendar day* means each day shown on the calendar but, if another definition is set forth in the State contract specifications, that definition will apply.

*Contract time* means the number of workdays or calendar days specified in a contract for completion of the contract work. The term includes authorized time extensions.

*Design-build project* means a project to be developed using one or more design-build contracts.

*Division Administrator* means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.

*Force account* means a basis of payment for the direct performance of highway construction work with payment based on the actual cost of labor, equipment, and materials furnished and consideration for overhead and profit.

*Formal approval* means approval in writing or the electronic transmission of such approval.

*Incentive/disincentive for early completion* as used in this subpart, describes a contract provision which compensates the contractor a certain amount of money for each day identified critical work is completed ahead of schedule and assesses a deduction for each day the contractor overruns the incentive/disincentive time. Its use is primarily intended for those critical projects where traffic inconvenience and delays are to be held to a minimum. The amounts are based upon estimates of such items as traffic safety, traffic maintenance, and road user delay costs.

*Liquidated damages* means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a State transportation department because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

*Local public agency* means any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State transportation department in highway matters.

*Major change or major extra work* means a change which will significantly affect the cost of the project to the Federal Government or alter the termini, character or scope of the work.

11/20/2014

eCFR — Code of Federal Regulations

\* *Materially unbalanced bid* means a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Federal Government.

\* *Mathematically unbalanced bid* means a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

*Public agency* means any organization with administrative or functional responsibilities which are directly or indirectly affiliated with a governmental body of any nation, State, or local jurisdiction.

*Publicly owned equipment* means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations.

*Specialty items* means work items identified in the contract which are not normally associated with highway construction and require highly specialized knowledge, abilities or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract; in general, these items are to be limited to minor components of the overall contract.

*State transportation department (STD)* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State transportation department" if the context so implies.

*Workday* means a calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State-recognized legal holidays.

[62 FR 6873, Feb. 14, 1997, as amended at 67 FR 75924, Dec. 10, 2002]

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Ex 3A