

**BAY CITIES PAVING & GRADING INC.**

**Bus:** 1450 Civic Court, Bldg. B Suite #400, Concord, CA 94520  
 (925) 667-6666  
 Fax (925) 667-2122

**Mail:** Post Office Box 6227, Concord, CA 94524-6227

July 21, 2014

**FAXED**

Department of Transportation, MS 43  
 Attn: John McMillan, Deputy Division Chief  
 1727 30<sup>th</sup> Street  
 Sacramento, CA 95816

Project: 04-152724  
 Bid Opening: 07/08/14  
 Re: Response to Protest Letter of O.C. Jones & Sons, Inc.

Dear Mr. McMillan,

On July 17, 2014, O. C. Jones & Sons, Inc. ("OCJ") submitted a protest of Bay Cities' bid. Bay Cities has exceeded the DBE goal of 14% and Bay Cities' Total Bid Price of \$11,745,322 is more than \$670,000 lower than the next lowest bidder. OCJ claims that Bay Cities failed to comply with the mandatory requirements for subcontractor listing. On bid day, Bay Cities listed Central Striping for: Lead Compliance Plan (Partial), Striping, Markers; Remove Striping, Markings, Markers. Bay Cities descriptions of Central Striping's items of work correlate to the Contract's Bid Items as follows:

Bay Cities' Bid Day

Sub List Descriptions

Contract Bid Item No. With Descriptions

Lead Compliance Plan (Partial)	#1	Lead Compliance Plan
Remove Striping	#30	Remove Thermoplastic Stripe (Haz Waste)
	#37	Remove Thermoplastic Traffic Stripe
Remove Markings	#38	Remove Thermoplastic Pavement Markings
Remove Marker	#39	Remove Pavement Marker
Striping	#131	Thermoplastic Traffic Stripe
	#132	4" Thermoplastic Traffic Stripe
	#133	8" Thermoplastic Traffic Stripe
Marking	#134	Thermoplastic Pavement Marking
Markers	#135	Pavement Marker (Retroreflective)

On July 8, 2014, Central Striping issued a bid to Bay Cities for the above-listed bid striping items to Bay Cities (see Attachment A). These Bid Items would be covered with a listing of:

"1 (p) 30, 37-39, 131-135"

In fact, Bay Cities transposed the placement of the hyphen between Items 30 and 37 to items 37 and 39 and wrote:

"1(p) 30-37 39, 131-135"

John McMillan  
July 21, 2014  
Page 2

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Both OCJ (the second-lowest bidder) and A. Teichert & Sons (the third-lowest bidder) listed Central Striping for Items "30 and 37-39" instead of "30-37" because items 31 to 36 are unrelated to striping. A copy of Central Striping's quote to OCJ (Attachment B from OCJ's DBE submittal) is the same as Central Striping's quote to Bay Cities (Attachment A) and shows that Central did not bid Items No. 31 to 36.

#### Caltrans Can Waive Clerical Errors That Do Not Materially Affect The Bid

The transposing of a hyphen is a clerical error which did not affect pricing and provided Bay Cities with no advantage over OCJ or any other bidder. In the past, Caltrans had deemed that Bidders may not expand the work listed for subcontractors because this would allow for bid shopping and provide an advantage to that Bidder. Here, however, it is clear that Bay Cities was not attempting to expand Central Striping's work to include items such as ADL Burial Location (Item No. 31), Noise Monitoring (Item No. 33) or remove Guardrail (Item No. 34). Central Striping never bid these items. In May of 2014, Bay Cities protested the bid of MCK Services, Inc. for enlarging the work listed for Safety Striping. On June 17, 2014, Caltrans denied Bay Cities' protest in writing:

"Caltrans reviewed the bid documents for MCK in totality and determined that MCK did list Safety Striping to perform work described as Striping and Markers...The amount of the bid as listed on MCK's subcontractor list form for Safety Striping was the same as the quote submitted by Safety Striping. There is no evidence of bid shopping. Therefore the bid is determined to be clerical in nature and does not materially affect the bid and can therefore be waived by Caltrans." (Attachment C)

If Caltrans reviews Bay Cities' bid in totality (as well as the quotes which Central Striping provided to both Bay Cities and OCJ), a clerical mistake was clearly made when Bay Cities transposed a hyphen in listing the bid item numbers. As with MCK's bid, the clerical error did not involve any bid shopping, provided Bay Cities with no advantage, and did not materially affect Bay Cities' bid.

In the interest of reducing the public's expenditures, Caltrans has routinely waived obvious clerical errors when the errors were immaterial. For instance, on Contract No. 10-415804, Teichert protested Security Paving for listing Safety Striping for Item No. 92 work which was clearly a mistake. In denying Teichert's request, Caltrans noted that Security Paving had received no advantages and that Security Paving's listing of Safety Striping for "bid item 192 Item was a clerical mistake." (Attachment D). For Contract No. 92 05-315804, RGW protested GCC/MCM's bid for listing AGO Landscape of Sacramento for landscaping. In denying the protest, Caltrans determined that there was no landscaping company in Sacramento named "AGO Landscape" and "Clearly, the revised name of AGL Landscape was what was intended." (Attachment D). For Contract No. 08-1C8904, Autobahn provided a quote for Type D markers as part of its DVBE package even though the Contract required Type H markers. In denying a protest of Autobahn's bid, Caltrans wrote that even though a quote of Type H markers should

John McMillan  
July 21, 2014  
Page 3

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have been used:

“the error is simply a clerical error, does not affect the bid and can therefore be waived by Caltrans.” (Exhibit E).

More recently, Granite made an obvious mistake in listing Apply-A-Line for 6 items of work with percentages of work exceeding 100% such as listing Apply-A-Line for 180% of Pavement Markers. Ghilotti Construction Company protested Granite's bid. In a letter dated July 8, 2014, Caltrans wrote that “an error was committed with regard to the percentage of work identified” but waived because “no competitive advantage is given to the bidder.” (Attachment F). In denying all of these protests, Caltrans has used common-sense to figure if the bidder “gained an advantage” over other bidders from the obvious mistake. The misplacement of the hyphen in Bay Cities' bid is as apparent as the misspelling in GCC/MCM's bid or the error in Security Paving's bid or the listing of Apply-A-Line for more than 100% for six items of work. And like these others errors, Bay Cities' error is waivable because it provided Bay Cities with no advantage over other bidders.

Bay Cities' misplacement of a hyphen was a non-material clerical error which Caltrans is free to waive. If Caltrans chooses not to waive this error, then the State will unnecessarily pay an additional \$671,000 to have the second lower bidder perform the work. Bay Cities requests that Caltrans waive this clerical error and award the Contract to Bay Cities. If you have any questions about this, please contact me.

Sincerely,



Marlo Manqueros  
Vice-President

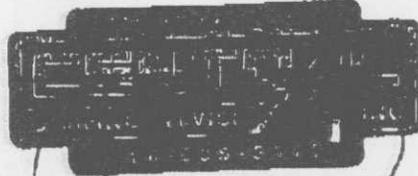
cc: File

Attachment #1

From: Central Striping Fax: (916) 898-1272

To: Fax: +1 (510) 828-0980

Page 2 of 3 07/08/2014 1:52



California LIC #403896 CLASS C32  
Tennessee LIC #C-11288  
Nevada LIC #0039313  
Oregon LIC #118214  
Small Business Enterprise #0020572

# Bid Proposal-Rev 2

TO: Contractors  
LOCATION: Rte 4/242 Contra Costa County  
PROJECT: Caltrans 04-152724

QUOTED BY: Kenneth Ickes  
BID DATE: Tuesday, July 8, 2014  
BID TIME: 2:00 PM

ITEM NO.	ITEM DESCRIPTION	UNITS	HOW	UNIT PRICE	TOTAL AMOUNT
1	LEAD COMPLIANCE	1	LS	1,500.00	1,500.00
7	TEMPORARY TRAFFIC STRIPE (PAINT)	12,800	LF	1.50	19,200.00
30	REMOVE YELLOW THERMO TRAFFIC STRIPE (HAZ WASTE)	9,900	LF	1.50	14,850.00
37	REMOVE THERMOPLASTIC TRAFFIC STRIPE	19,400	LF	0.50	9,700.00
38	REMOVE THERMOPLASTIC PAVEMENT MARKING	790	SP	4.00	3,160.00
39	REMOVE PAVEMENT MARKER	580	EA	2.00	1,160.00
131	THERMOPLASTIC TRAFFIC STRIPE	200	LF	10.00	2,000.00
132	4" THERMOPLASTIC TRAFFIC STRIPE	24,600	LF	1.50	36,900.00
133	8" THERMOPLASTIC TRAFFIC STRIPE	5,330	LF	3.00	15,990.00
134	THERMOPLASTIC PAVEMENT MARKING	750	SP	10.00	7,500.00
135	PAVEMENT MARKER (RETROREFLECTIVE)	660	EA	10.00	6,600.00
137	MOBILIZATION	1	LS	20,000.00	20,000.00
				<b>TOTAL</b>	<b>\$ 138,560.00</b>

SEE PAGE 1 OF 1 FOR SPECIFIC TERMS AND CONDITIONS RELATING TO THIS QUOTATION.  
THIS TRANSMISSION CONSISTS OF TWO PAGES. IF THE TRANSMISSION IS NOT LEGIBLE PLEASE CONTACT OUR OFFICE.

ACCEPTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

P.O.# OR COO#: \_\_\_\_\_

*(Handwritten initials: IN) (Handwritten initials: CS)*

From: Central Striping

Fax: (916) 895-1272

To:

Fax: +1 (826) 687-2122

ATTACHMENT D  
Page 2 of 3 07/08/2014 1:31



California LIC #403896 CLASS C32  
Hawaii LIC #C-11288  
Nevada LIC #0039313  
Oregon LIC #118214  
Small Business Enterprise #0020572

# Bid Proposal-Rev 2

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7	TEMPORARY TRAFFIC STRIPE (PAINT)	12,800	LF	1.50	19,200.00
30	REMOVE YELLOW THERMO TRAFFIC STRIPE (TAZ WASTE)	9,900	LF	1.50	14,850.00
37	REMOVE THERMOPLASTIC TRAFFIC STRIPE	19,400	LF	0.50	9,700.00
38	REMOVE THERMOPLASTIC PAVEMENT MARKING	790	SF	4.00	3,160.00
39	REMOVE PAVEMENT MARKER	580	EA	2.00	1,160.00
131	THERMOPLASTIC TRAFFIC STRIPE	200	LF	10.00	2,000.00
132	4" THERMOPLASTIC TRAFFIC STRIPE	24,600	LF	1.50	36,900.00
133	8" THERMOPLASTIC TRAFFIC STRIPE	5,330	LF	3.00	15,990.00
134	THERMOPLASTIC PAVEMENT MARKING	750	SF	10.00	7,500.00
135	PAVEMENT MARKER (RETROREFLECTIVE)	660	EA	10.00	6,600.00
155	MOBILIZATION	1	LS	20,000.00	20,000.00
SEE PAGE 1 OF 2 FOR SPECIFIC TERMS AND CONDITIONS RELATING TO THIS QUOTATION. THIS TRANSMISSION CONSISTS OF TWO PAGES. IF THE TRANSMISSION IS NOT LEGIBLE PLEASE CONTACT OUR OFFICE.				<b>TOTAL</b>	<b>\$ 138,560.00</b>

ACCEPTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

P.O.# OR CCO#: \_\_\_\_\_

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr. Governor

DEPARTMENT OF TRANSPORTATION  
 DIVISION OF ENGINEERING SERVICES  
 OFFICE ENGINEER  
 P.O. BOX 168041, MS-43  
 SACRAMENTO, CA 95816-8041  
 PHONE (916) 227-6299  
 FAX (916) 227-6282  
 TTY 711  
 www.dot.ca.gov

RECEIVED

Attachment C

JUN 20 2014

BAY CITIES PAVING &amp; GRADING



Serious drought.  
 Help save water!

June 17, 2014

Facsimile: (925) 687-2122

Benjamin L Rodriguez, President  
 Bay Cities Paving & Grading Inc.  
 1450 Civic Ct.  
 Concord, CA. 94520

04-4H4904  
 04-A1a-84-6.9/8.0  
 B.O. 04/22/2014

Dear Mr. Rodriguez:

The Department of Transportation (Caltrans) received the attached letter dated May 01, 2014, from Bay Cities Paving & Grading Inc. (Bay Cities) protesting the bid documents submitted by MCK Services Inc. (MCK) for Contract 04-4H4904.

The protest states that MCK submitted an inconsistent Certified Disabled Veterans Business Enterprise (DVBE) Summary form and Subcontractor list form. MCK submitted a quote for Safety Striping that included Bid Item 3, Traffic Control (Partial) in the amount of \$8,250 but failed to list it on its DVBE Summary form and Subcontractor List form. Bay Cities requests that Caltrans to find the bid submitted by MCK nonresponsive.

Caltrans reviewed the bid documents for MCK in totality and determined that MCK did list Safety Striping to perform work described as Striping and Markers; however the performance of this work includes a reasonable portion of traffic control. The amount of the bid as listed on MCK's subcontractor list form for Safety Striping was the same as the quote submitted by Safety Striping. There is no evidence of bid shopping. Therefore, the error is determined to be a clerical in nature, and does not materially affect the bid and can therefore be waived by Caltrans. Based on this, MCK's DVBE Participation amount will not be affected.

Based on the above, Caltrans finds Bay Cities Paving's protest lacks merit and will proceed to award the contract to the lowest responsible bidder, provided that all requirements have been met.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Manager, at (916) 227-6228.

  
 JOHN C. McMILLAN  
 Deputy Division Chief  
 Office Engineer  
 Division of Engineering Services

Attachment

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN, Jr. Governor

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  
 PHONE (916) 227-6280  
 FAX (916) 227-6282  
 TTY 711



Flex your power!  
 Be energy efficient!

Attachment D

July 12, 2012

Facsimile: (209) 983-2375

Gary Johns, Vice President  
 Teichert Construction  
 265 Val Dervin Parkway  
 Stockton, CA 95206

10-415804  
 10-Mer-99-0.0/4.6  
 B.O. 6/27/12

Dear Mr. Johns:

The California Department of Transportation (Caltrans) received the attached letter dated July 9, 2012 from Teichert Construction (Teichert) protesting the award of Contract 10-415804 to Security Paving Company, Inc. (SPCI). Teichert's protest alleges SPCI made changes to their 24 hour Subcontractor listing and expanded the scope of work intended for AGL Landscapes, Inc. and Safety Striping Service, Inc. Teichert requests Caltrans find SPCI's bid nonresponsive.

Caltrans reviewed the protest and finds that SPCI's description of subcontractor work for Landscape and Striping for bid item 19 Traffic Control Systems and bid item 60 Erosion Control was accurate and the description of work for the bid items are acceptable. SPCI gained no advantage. Listing Safety Striping Service, Inc for bid item 192 was a clerical error.

Based on the above, Caltrans finds Teichert's protest lacks merit and will award the contract to SPCI.

If you have any questions, please contact David Neumann, Contract Awards Branch Chief, at (916) 227-6285.

Sincerely,

JOHN C. McMILLAN  
 Deputy Division Chief  
 Office Engineer  
 Division of Engineering Services

Attachment

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER  
P.O. BOX 168041, MS-43  
SACRAMENTO, CA 95816-8041  
PHONE (916) 227-6299  
FAX (916) 227-6282  
TTY 711  
www.dot.ca.gov



Serious drought.  
Help save water!

Attachment E

June 11, 2014

Facsimile: (951) 352-4301

Brian M. Skajem, President  
West Coast Structures Inc., dba  
Western Structures  
6005 Tyler Street  
Riverside, CA 92503

08-1C8904  
08-Riv-10-R110.4/R152.4  
B.O. 05/15/2014

Dear Mr. Skajem:

The Department of Transportation (Caltrans) received the attached letter dated May 27, 2014, from Western Structures (Western Structures) protesting the bid submitted by Autobahn Construction Inc.'s (Autobahn) on Contract 08-1C8904. The protest alleges that Autobahn's Certified Disabled Veteran Enterprise (DVBE) Summary form is inconsistent with Eighth Avenue Enterprise's (Eighth Avenue) submitted quote because it includes pricing for 3,000 Type D Markers and Type D Markers are not used for this contract. Western Structures disputes the monetary value of \$2,844 (tax included) for the Type D Markers and claims it should not be included in the DVBE claimed participation for this project.

Caltrans has determined that although Type D markers are not used and the quote should have been for Type H, the cost of type H and type D markers is the same. Therefore, the error is simply a clerical error, does not materially affect the bid and can therefore be waived by Caltrans. Based on this, the error does not have an impact on the DVBE Claimed Participated. The Office of Business and Economic Opportunity's, Contract Evaluation Branch conducted a review of the DVBE submittal and determined that Autobahn has met the 3 percent goal for this project and Caltrans will proceed to award this contract to Autobahn.

If you have any questions, please contact Melissa Smith, Contract Awards Branch Manager, at (916) 227-6228.

Sincerely,

PC JOHN C. McMILLAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

Attachment

DEPARTMENT OF TRANSPORTATION  
 DIVISION OF ENGINEERING SERVICES  
 OFFICE ENGINEER, MS 43  
 1727 30<sup>th</sup> STREET  
 SACRAMENTO, CA 95816-8041  
 PHONE (916) 227-6299  
 FAX (916) 227-6282  
 www.dot.ca.gov/hq/es2/oc



Serious drought  
 Help save water!

Attachment F

July 9, 2014

Facsimile: (707) 585-0129

Thomas Smith, Estimating Manager  
 Ghilotti Construction Company  
 246 Ghilotti Avenue  
 Santa Rosa, CA 95407

01-474904  
 01-Men-1-70.3/70.7  
 B.O. 6/18/2014

Dear Mr. Smith:

The Department of Transportation (Caltrans) received the attached letter dated June 26, 2014 from Ghilotti Construction Company (Ghilotti) protesting the bid submitted by Granite Construction Company (Granite) for Contract No. 01-474904.

The protest alleges that Granite's Subcontractor List form specifies that Apply-A-Line is to perform bid items 5 (temp. pavement marking), 6 (temp traffic stripe), 32 (remove yellow stripe), 106 (thermoplastic marking), 107 (paint marking), and 108 (pavement marker) each at greater than 100 percent (170, 120, 132.5, 240, 120, and 180 percent respectively). Ghilotti requests Caltrans find Granite nonresponsive and award the contract to Ghilotti.

After a review of the bid documents submitted by Granite, Caltrans determined that an error was committed with regard to the percentage of work identified for the above mentioned bid items. Caltrans finds that this error is waivable, since the work to be performed could not exceed 100 percent. As such, by waving this error, no competitive advantage is given to the bidder.

Based on the above determination, Caltrans finds Ghilotti's protest lacks merit and will proceed to award the contract to the lowest responsible bidder provided that all requirements are met.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,

  
 JOHN C. MCMILLAN  
 Deputy Division Chief  
 Office Engineer  
 Division of Engineering Services

Attachment