



TEICHERT CONSTRUCTION

Established 1887

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December 6, 2013

VIA FACSIMILE (916) 227-6282 AND U.S. MAIL

John C. McMillan
Deputy Division Chief
Office Engineer
Division of Engineering Services
State of California
Department of Transportation (Caltrans)
1727 30th, Bidder Exchange, MS 43
Sacramento, CA 95816-8041

Subject: Contract No. 04-2A6204
04-Sol-12-20.6/23.5
Bids Opened: November 06, 2013
Protest of Nonresponsive Determination Letter

Dear Mr. McMillan:

Teichert Construction ("Teichert") is in receipt of Caltrans' letter dated December 4, 2013. In the December 4th letter, Caltrans notified Teichert that its bid was non-responsive, because of an inconsistent Subcontractor List form. Teichert objects to Caltrans' finding of Teichert's bid as non-responsive. As explained in more detail below, Teichert respectfully requests the Department rescind their letter dated December 4, 2013.

Teichert's Subcontractor List Satisfies the Subcontractor Listing Law and Caltrans Standards

Teichert's bid is **\$346,450 less** than RGW's bid. The purposes of competitive bidding are to guard against favoritism, to prevent the waste of public funds, to obtain the best economic result for the public, and to stimulate advantageous market place competition. Bid responsiveness considerations "must be evaluated from a practical standpoint, with reference to the facts of the case. They must be viewed in light of the public interest, rather than the private interest of a disappointed bidder" hoping to prevail in protesting the low bid. *Ghilotti Construction Co. v. City of Richmond* 45 Cal. App. 4th 897, 908-09 (1996) (citing *Judson Pacific-Murphy Corp. v. Durkee* (1956) 144 Cal. App. 2d 377, 383). It would be a "disservice to the public" if a losing bidder were allowed to comb through the bid of the low bidder after the fact, in an effort to cancel the low bid on minor technicalities, with the hope of securing acceptance of its higher bid. "Such construction would be adverse to the best interests of the public and contrary to public policy." *Durkee*, 144 Cal. App. 2d at 383. It is clear that RGW is combing through Teichert's more competitive bid to invent a deficiency where there is none.

The Department's Subcontractor List form instructs bidders to: "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."

Teichert's Subcontractor List fully complies with the requirements of the Subcontractor Listing Law and the Contract specifications. Teichert submitted its bid and accompanying Subcontractor List within the allotted time provided in the Contract documents. There is no irregularity in Teichert's bid. Teichert did not change subcontractors or the description of subcontracted work on its Subcontractor List. The column 4 descriptions in Teichert's Subcontractor List are consistent with the bid item numbers listed in column 2 of its 24-hour submittal. In completing its Subcontractor List, Teichert merely followed Caltrans' past responsiveness determinations (one of which is discussed below and specifically resulted in a contract award to RGW Construction Inc. ("RGW")).

The Bid Items in Column 2 for Selby's Soil Erosion Control Inc. are Consistent with the Description of Subcontracted Work Listed in Column 4 for Selby's Soil Erosion Control Inc.

Caltrans' letter states that Teichert added work in its 24-hour Subcontractor List form when it included in column 2 Bid Item 32, Wildlife Exclusion and Bid Item 33, Temporary Fence (Type ESA) as work to be performed by Selby's Soil Erosion Control Inc. ("Selby's"). Teichert's bid-day Subcontractor List and 24-hour submittal are entirely consistent. Moreover, Caltrans has awarded projects to bidders, specifically including RGW, who have listed bid items for Temporary Fence (Type ESA) under a description of Erosion Control in their 24-hour Subcontractor Listing.

For example, on September 14, 2012, Caltrans rejected a protest by Ghilotti Brothers Inc. ("Ghilotti") of RGW's low bid on Contract No. 04-3A9214. In its protest Ghilotti alleged that RGW added bid item 5 Temporary Fence (Type ESA) to Marina Landscape who was performing Erosion Control on their 24-hour subcontractor list. Caltrans' found Ghilotti's protest lacked merit and proceeded with the contract award to RGW.

In Contract No. 04-3A9214 ... "Caltrans has determined that bid item 5 Temporary Fence (Type ESA) is a component of Erosion Control." Consistent with this determination, Teichert (and likely other bidders) has listed Temporary Fence (Type ESA) under an Erosion Control description. Wildlife Exclusion Fence is considered by the industry to be the same type of construction; fabric mesh, zipped tied t-posts. Caltrans has to be consistent with their decisions on what constitutes a responsive bid from a nonresponsive bid, and cannot show favoritism to one contractor by ruling differently than it has ruled in the recent past.¹

RGW has submitted a protest of Teichert's bid on Contract No. 04-2A6204. Notably, RGW's present argument directly contradicts the arguments it raised in its defense to the same allegations of a revised Subcontractor List claimed by Ghilotti in 04-3A9214. RGW originally listed Marina Landscape to perform "Erosion Control" in its bid day Subcontractor List, and then RGW included bid item 5 Temporary Fence (Type ESA) in column 2 as part of the work subcontracted to Marina Landscape in its 24-hour submittal.

¹ A Copy of Caltrans' 04-3A9214 letter is attached to this letter for your facility of reference.

RGW is now making the same baseless allegations that Ghilotti made against RGW on 04-3A9214. RGW is seeking special treatment in this regard, since it asked Caltrans to reject Ghilotti's protest based on its listing Temporary Fence (Type ESA) under an erosion control description, and is now asking that Caltrans find another contractor non-responsive for having listed Temporary Fence (Type ESA) under an erosion control description. RGW can't have it both ways! Teichert respectfully requests Caltrans reject RGW's frivolous bid protest.²

In conclusion, Teichert's bid is free of any defects that would preclude Caltrans from awarding the Contract to Teichert. Teichert's Subcontractor List satisfies the requirements of the Subcontractor Listing Law and the Contract specifications. Teichert listed its subcontractors, and it listed in general terms the work to be performed by each listed subcontractor. Teichert submitted its Subcontractor List consistent with Caltrans' past evaluations and determinations of responsiveness.

For the reasons stated above, Caltrans' past precedence, and Teichert's letter of December 4, 2013, Teichert respectfully asks that Caltrans rescind its December 4th letter addressed to Teichert, and reinstate Teichert's bid as responsive.

Teichert is the lowest responsive and responsible bidder on Contract No. 04-2A6204, and Caltrans should proceed with award of this contract to Teichert. Teichert requests a meeting with Caltrans prior to award to any other bidder on Contract No. 04-2A6204. Should you need any additional information, I can be reached at 916-645-4855.

Sincerely,



Eric Stannard
Director of Public Procurement

eb
Attachment

cc: 5. Heraty – Teichert Construction

²Teichert submitted to Caltrans a formal response to RGW's protest letter on December 4, 2013.

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER, MS 43
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PHONE (916) 227-6280
FAX (916) 227-6282
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*Flex your power!
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September 14, 2012

Facsimile: (415) 454-8376

Thomas G. Barr, Vice President
Ghilotti Brothers, Inc.
525 Jacoby Street
San Rafael, CA 94901

04-3A9214
04-Ala-880-22.6/24.0
B.O. 8/22/12

Dear Mr. Barr:

The Department of Transportation (Caltrans) received the attached letter dated September 7, 2012 from Ghilotti Brothers, Inc. (Ghilotti) protesting RGW Construction, Inc.'s (RGW) and O.C. Jones & Sons, Inc.'s, (OC Jones) Subcontractor List form. The protest states that RGW and OC Jones added bid item 5 Temporary Fence (Type ESA) to Marina Landscape who was performing erosion control on their revised Subcontractor List forms. In addition, Ghilotti alleges that RGW added bid items 125, 127, 129 and 131 Furnish Piling to Harris Salinas Rebar, Inc. who was performing rebar on the revised Subcontractor List form. Ghilotti requests Caltrans find RGW and OC Jones nonresponsive and award the contract to Ghilotti.

After a review of plan sheets EC-1 and EC-6, Caltrans has determined that bid item 5 Temporary Fence (Type ESA) is a component of Erosion Control. A review of Standard Plan B 2-5 and B 2-8 confirms that rebar is a component in bid items 125, 127, 129 and 131 Furnish Pile.

Based on the above, Caltrans finds Ghilotti's protest lacks merit and will award the contract to the lowest responsive bidder.

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

Sincerely,

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



General Engineering Contractors – Excavating, Paving, Grading, Concrete
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STATE CONTRACTORS LICENSE # 132128

Via U.S. Mail and Facsimile (916) 227-6282

Mr. Earl Seaberg
MSC 43
Office Engineer Contracts Award Branch Chief
California Department of Transportation
1727 30th Street
Sacramento, Ca 95816-7005

Attn: Earl Seaberg, Deputy Division Chief

Re: Route 880, In Alameda County In San Leandro From 0.4 Mile South Of Marina Boulevard
Overcrossing To 0.3 Mile North Of Route 112/880 Separation
Caltrans Contract No. O4-3A9214
Protest of Bids Submitted by RGW Construction and O.C. Jones & Sons, Inc.

Dear Mr. Seaberg:

Please consider this letter to be a formal protest of the bids submitted by RGW Construction, Inc. (RGW) and O.C. Jones & Sons, Inc., (OCJ) in connection with Contract No. O4-3A9214. Their bids are nonresponsive and therefore must be rejected based on the Department's bidding requirements and strictly-enforced policies.

The Subcontractor List form states in part, ... "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 within the time specified will result in a nonresponsive bid."

In violation of this express requirement of the bid documents, both RGW and OCJ revised their Subcontractor List form by adding subcontracted work that was not listed on their bid day form. Since Marina Landscape was originally subcontracted by RGW to perform "Erosion Control", but bid item 5 Temporary Fence (Type ESA) was added to the revised bid list submitted by RGW on August 23, 2012, the bid submitted by RGW is nonresponsive. Furthermore, since Harris Salinas Rebar, Inc. (HSR) was originally subcontracted by RGW to perform "Rebar", but bid items 125, 127, 129 and 131 Furnish Piling were added to the revised bid list submitted by RGW on August 23, 2012, the bid submitted by RGW is nonresponsive.

The Furnish Piling issue in RGW's bid is exactly the same as the Root Wad Revetment issue that caused Caltrans to determine the bid submitted by Ghilotti Bros / RM Harris JV (Ghilotti-Harris) for Contract No. 04-3A23U4 to be nonresponsive. A bid protest for that contract was submitted by DeSilva Gates Construction (DGC) that contended since Atlas Tree Surgery, Inc. (Atlas) was originally subcontracted by Ghilotti-Harris to perform "Clear and Grub", but Root Wad Revetment was added to the revised bid list submitted by Ghilotti-Harris on August 9, 2012, its bid was nonresponsive. Ghilotti-Harris argued that Atlas was listed for a cost of \$1,500.00 for staging of



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root wad material from log spurs with root wad that were obtained from trees removed as part of the their clear and grub work. Ghilotti-Harris argued that the Root Wad Revetment work was not added work and was simply a part of its originally listed clear and grub scope of work. Clearly, the root wads were only "supplied" to the Root Wad Revetment bid item work by Atlas. Caltrans disagreed, citing that Root Wad Revetment was added to the revised bid list, and determined the bid submitted by Ghilotti-Harris to be nonresponsive in its August 30, 2012 letter.

HSR is supplying rebar for the Furnish Piling bid item work, just the same as root wads were supplied by Atlas for the Root Wad Revetment work. RGW has added Furnish Piling work to its Rebar subcontractor in violation of the Subcontractor List form so its bid is therefore nonresponsive.

Since Marina Landscape was originally subcontracted by OCJ to perform "Hydroseed and Erosion Control - Partial", but bid item 5 Temporary Fence (Type ESA) was added to the revised bid list submitted by OCJ on August 23, 2012, the bid submitted by OCJ is nonresponsive. RGW has also added work to its Rebar to subcontractor.

We respectfully request that the Department uphold our protest and award the contract to our company, which submitted the lowest responsive bid for Contract No. O4-3A9214.

Thank you for your attention to this matter and please feel free to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Thomas G. Barr". The signature is written in a cursive, flowing style.

Thomas G. Barr
Vice President Estimating

Enclosure

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-05-1181.2 (REV 3/2011)

Bidder Name: RGW Construction, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1% of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). 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 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Marina Landscape Anaheim, CA <i>Temp Fence (ESA)</i>	5	55%	Erosion Control
	14	79%	
	15	71%	
	19	100%	
	21	100%	
	96	100%	
	97	100%	
	98	100%	
	99	100%	
	100	100%	
R.E. Serrano Martinez, CA	111	100%	Rapid Set Concrete
Independent Structures, Inc Redding, CA	50	75%	Sign Structures
	149	100%	
	150	100%	
	151	100%	
	152	100%	
	155	100%	

ADA Notice: For more info with respect to ADA, the contractor is advised to consult the following: For information call (916) 654-0411 or TDD (916) 836-3300 or visit: www.dts.ca.gov or www.ctd.ca.gov

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STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-05-01102.2 (REV. 1/31/11)

Bidder Name: RGV Construction, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6202 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: BIR Est. No.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Foundation Constructors, Inc. Oakley, CA	125	98%	Pile Driving
	128	94%	
	127	99%	
	128	100%	
	129	99%	
	130	98%	
	131	95%	
	132	91%	
Harris Salinas Rebar, Inc. Livermore, CA	267	7%	Rebar
	125	2%	
	127	1%	
	129	1%	
	131	4%	
	138	37%	
	146	98%	
	147	100%	
	216	17%	
	231	19%	
	232	19%	
233	32%		
234	44%		
Cleveland Wrecking Co. Oakland, CA	76	98%	Demolition & Bridge Removal
	77	98%	
	83	100%	

Furnish Piling →

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STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-05-0102.2 (REV 3/2011)

Bidder Name: O.C. Jones & Sons, Inc.

The bidder must identify each subcontractor performing work in an amount of excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub. Cont. Code § 4100 et seq.). 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 within the time specified will result in a non-responsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Marina Landscape Anaheim, CA Temp Fence (ESA)	5, 14, 15.	90%	Hydroseed and Erosion Control - Partial
	18-21.	90%	
	98-100	100%	
FBD Vanguard Construction Livermore, CA	110, 111	100%	Lean Concrete Base
Independent Structures Redding, CA	50,	75%	Overhead Signs and Related
	149-153,	100%	
	155, 159, 160	100%	
Linear Options Durham, CA	28,	20%	Striping and Markers and Related
	37, 45-48,	100%	
	81,	82.5%	
	235-246,	100%	
	267	1.25%	
Sanco Pipelines Campbell, CA	5-10,	100%	Underground and Related
	39-41, 44,	100%	
	51-54, 81,	100%	
	71-74, 90,	100%	
	108,	19%	
	141, 162-174,	100%	
	179-181,	100%	
	187-191,	100%	
	193-197,	100%	
	200,	100%	
	267	4%	

ABA NOTICE: For information on necessary documents, bid documents in multiple languages, for information call (916) 894-8410 or TDD (916) 894-3890 or write Records and Forms Management, 11120 J Street, MS-99, Sacramento, CA 95814.