

# TEICHERT CONSTRUCTION

Established 1887

December 13, 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 30<sup>th</sup>, 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, and on December 6<sup>th</sup> submitted a formal protest to Caltrans requesting the nonresponsive finding be rescinded. Teichert is submitting this letter to present further substantiation of why Caltrans should rescind the nonresponsive finding, and again respectfully requests the Department rescind their letter dated December 4, 2013.

**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.**

Teichert submitted a letter to Caltrans on December 6, 2013 protesting its finding of Teichert's bid nonresponsive. Without repeating the substance of Teichert's letter, Teichert explained how its 24-hour Subcontractor List submittal is consistent with its bid day submittal. Furthermore Teichert pointed to Caltrans' precedence on Contract No. 04-3A9214 allowing RGW Construction Inc. ("RGW") to add bid item 5 Temporary Fence (Type ESA) to Marina Landscape who was performing "Erosion Control."

In Contract No. 04-3A9214 ... "Caltrans has determined that bid item 5 Temporary Fence (Type ESA) is a component of Erosion Control", and thus Caltrans proceeded with the contract award to RGW. <sup>1</sup>

<sup>1</sup> A Copy of Caltrans' letter is attached to this letter for your facility of reference.

John C. McMillan  
Deputy Division Chief  
December 12, 2013  
Page 2 of 2

Section 14 Environmental Stewardship of the Special Provisions for Contract No. 04-2A6204, requires contractors in Section 14-1.04C(1) General, to:

"Install wildlife exclusion fence at the same time you install temporary fence (Type ESA)..." (Emphasis Added)

Section 14-1.02A further provides that:

"An ESA exists on this project.

Before start of work, protect the ESA by installing fence (Type WM, metal post), wildlife exclusion fence and temporary fence (Type ESA)."  
(Emphasis Added)

Clearly wildlife exclusion fence and temporary fence (Type ESA) serve a similar purpose, and are of the same type of construction. The specifications essentially link this work together.

Caltrans has established the Temporary Fence (Type ESA) is permissible to be listed under an Erosion Control description, and the specifications have linked the Wildlife Exclusion Fence work to the Temporary Fence (Type ESA) work. It reasons then that Wildlife Exclusion Fence is permissible under the same description allowed for Temporary Fence (Type ESA).

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 letters of December 4, 2013 and December 6, 2013, Teichert respectfully asks that Caltrans rescind its December 4<sup>th</sup> 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. Should you need any additional information, I can be reached at 916-645-4855.

Sincerely,



Eric Stannard  
Director of Public Procurement

eb  
Attachment

cc: Sean Heraty – Teichert Construction  
Mulissa Smith – Contract Awards Branch Chief – Office Engineer

**DEPARTMENT OF TRANSPORTATION**  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER, MS 43  
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*Flex your power!  
Be energy efficient!*

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:

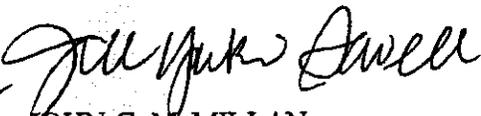
The Department of Transportation (Caltrans) received the attached letter dated September 7, 2012 from Ghilotti Brothers, Inc. (Ghilotti) protesting RGW Construction, Inc.'s (RGW) and O.C. Jones & Sons, Inc.'s, (OC Jones) Subcontractor List form. The protest states that RGW and OC Jones added bid item 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

**\*\* Transmit Confirmation Report \*\***

Dec 13 2013 01:19pm

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TEICHERT CONSTRUCTION Fax:916-645-4801

Name/Fax No.	Mode	Start	Time	Page	Result	Note
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**TEICHERT CONSTRUCTION**

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**FAX COVER SHEET**

To: Office Engineer  
COMPANY: State of California-Dept. of Transportation  
FAX NUMBER: (916) 227-6282  
PHONE NUMBER: N/A

FROM: Eric Stannard  
Director of Public Procurement

DATE: December 13, 2013  
PAGES: 4 including Cover Sheet

RE: Contract No. 04-2A6204  
04-Sol-12-20.6/23.5  
Bids Opened: November 06, 2013  
**Bid Protest of RGW Construction to award contract to Teichert Construction,  
the lowest responsive and responsible bidder.**