

**CONSTRUCTION COMPANY**

P.O. BOX 1508, RANCHO CORDOVA, CA 95741-1508 (916)852-5530 FAX (916)852-5533

December 21, 2015

CERTIFIED US MAIL

State of Transportation**Department of Transportation**

1727 30th Street, Bidder Exchange, MS 43
Sacramento, CA 95816

Attn: John C. McMillan, Deputy Division Chief, Office Engineer

Reference: Contract No. 05-0F7004
Route 68 Near Salinas from 0.2 Mile east of Reservation Road UC to
Spreckles Blvd UC

Subject: Golden State Bridge – Bid Protest

Mr. McMillan,

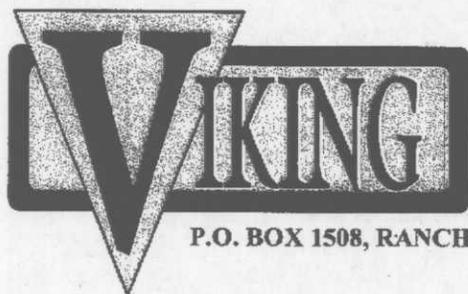
This is Viking Construction Company Inc.'s [hereinafter "Viking"] response to the bid protest submitted by Golden State Bridge, Inc. [hereinafter "Golden State"] in connection with the above-referenced project. For each of the reasons stated below, Viking's bid is the lowest responsive bid and the contract should be awarded to Viking.

MALCOLM SCOPE OF WORK AND PROPOSAL

Attached as Exhibit A is a copy of the Malcolm Drilling Co. [hereinafter "Malcolm"] proposal submitted to Viking on the day of the bid opening. Malcolm's quote provided pricing for bid items 79 and 81.

VIKING SUBCONTRACTOR LIST

Viking listed Malcolm to perform 40% of Item 79 and 40% of Item 81 and described the work as "Drill Piles, Set Cages, Place Concrete." Attached as Exhibit B is a copy of that portion of Viking's subcontractor list identifying Malcolm and its intended scope of work. Viking listed Malcolm for bid items 79 and 81 in accordance with their quote provided in Exhibit A. However, as noted by Golden State, the description shown on the sub listing is more closely in line with bid item 80 and 82. Regardless of which items Malcolm was listed for, the description of their work is clearly and accurately described on the sub listing and ultimately there is no affect to the amount of Viking's bid.

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THE BID ITEM DESCRIPTION IS INCONSEQUENTIAL

Even if the incorrect Bid item description for Malcolm's work was deemed a mistake, the inadvertent error by Viking in identifying Malcolm's scope of work with bid items 79 and 81, rather than bid items 80 and 82 is clearly inconsequential and may be waived by Caltrans under California Law. The Court in *Ghilotti Construction Co. v. City of Richmond* (1996) 45 CA 4th 897, 904-905 stated the law in California that:

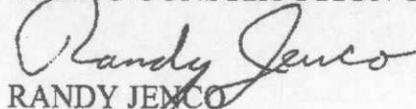
However, it is further well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential. (47Ops.Cal.Atty.Gen.129,130(1966), quoted with approval in *National Identification Systems, Inc. v. State Board of Control* (1992) 11 CA 4th 1446,1453 and *Konica Business Machines USA, Inc. v. Regents of University of California* (1988) 206 CA 3rd 449,453.)

The protest from Golden State alleges that Viking's Bid is unbalanced because Malcolm's scope of work was identified with Bid Item's 79 and 81 rather than Bid Items 80 and 82. Viking's bid is not unbalanced and this is evidenced by reviewing the bid prices from other bidders. Specifically, Viking bid prices for Item 79, 80, 81, and 82 are in line with the bid prices for the Third and Fifth bidders.

The inadvertent error by Viking in identifying Malcolm's scope of work with Bid items 79 and 81, rather than 80 and 82, constitutes an irregularity that is inconsequential because it clearly did not give Viking any advantage or benefit whatsoever over the other bidders. This error did not change Viking's total bid amount. Nor does this in any way alter the scope of work to be performed by Malcolm or change the amount of its bid. As a result, the Authority may waive this irregularity under California law. The intent of the California Subletting and Subcontracting Fair Practices Act is to prevent bid shopping. [Calif. Public Contract Code 4101] Viking did not engage in bid shopping, to the contrary, Viking listed Malcolm and substantially complied with the purpose and legislative intent of the Fair Practices Act.

For each of the reasons stated above, we request Caltrans award the contract to Viking as the lowest responsive bidder.

Very Truly Yours,
VIKING CONSTRUCTION COMPANY, INC.


RANDY JENCO
President

Dec. 8. 2015 12:26PM

No. 0330 P. 1/5

**MALCOLM**

Look to the Blue

EXHIBIT A

Post-It® Fax Note	7671	Date	12/8	# of pages	5
To	Randy	From	David Walker		
Co./Dept.	Viking Constr	Co.	Malcolm Drilling		
Phone #	916-852-5530	Phone #	510) 780-9181		
Fax #	916-852-5533	Fax #	510) 780-9177		

December 8, 2015

MDCI Est. No. 337-15

RE: 05-OF7004
 In Monterey County Near Salinas from 0.2
 Mile East Of Reservation Road Undercrossing
 to Spreckels Blvd. Undercrossing
 Salinas, CA

Bid Date: December 8, 2015
 2:00 PM

Gentlemen:

Malcolm Drilling Company Inc. (MDCI) proposes to furnish pile concrete, labor, and equipment necessary to install **Cast-In-Steel-Shell Concrete Piling (CISS)** in accordance with the plans and specifications dated June 22, 2015. Our price is based upon the Log of Test Borings included in the Plans & Specifications, our scope of work outlined herein, and the attached Malcolm Drilling Company, Inc. Standard Conditions:

ACKNOWLEDGEMENT:

Addendum No. 1, dated November 13, 2015.
 Addendum No. 2, dated November 24, 2015.
 Addendum No. 3, dated November 30, 2015.
 Addendum No. 4, dated December 3, 2015.

SCOPE OF WORK:

1. Machine drill and clean inside walls of CISS.
2. Furnish and place seal course.
3. Place rebar cage. Material furnished by others.
4. Furnish and place concrete.
5. Furnish concrete pump as required.

Malcolm Drilling Company, Inc.
 3503 Breakwater Court, Hayward, CA 94545
 Tel. 510-780-8181 Fax 510-780-9167
 Contractors License No. 259543
 DIR Public Works Contractor Registration No. 1000003389

Dec. 8. 2015 12:26PM

No. 0330 P. 2/5

05-DF7004
Page 2 of 4MDCI EST No. 937-15
December 8, 2015

Item	Item Description	Unit of Measure	Estimated Quantity	Unit Rate	Total Amount
	Mobilization	LS	1	\$75,000.00	\$75,000.00
79	Furnish 36" Cast-in-Steel Shell Concrete Piling	LF	11,697	\$95.00	\$1,111,215.00
81	Furnish 48" Cast-in-Steel Shell Concrete Piling	LF	1,333	\$145.00	\$193,285.00
				Total Bid	\$1,379,500.00

* The above breakdown is for accounting purposes only. We will accept a contract only for the entire project as quoted.

This proposal has included one mobilization to the project. Add **\$75,000.00** for each additional mobilization.

SPECIAL CLARIFICATIONS:

While all inclusions and exclusions in the attached Standard Conditions apply, we wish to specifically emphasize the following exclusions:

- 1) Access is to be provided by others. MDCI anticipates constructing the CISS with a Bauer BG-20 drill rig. The BG-20 is described as a crawler mounted top drive. It is approximately 16' wide and 20' long and the boom sticks up 80' when drilling, and weighs 175,000 lbs. It can safely reach out approximately 5' from the edge of its tracks. A special access bench will be required to reach the 48" Abutment Piles, this access bench is to be provided by GC. This drill rig will require a minimum 25' tall access road under the exiting bridges in order to install the piles located between the two bridges.
- 2) This proposal is based on normal working hours, at MDCI option up to a 10 Hour shift.
- 3) Protection of structures adjacent to work areas to be installed and maintained by others. The protection, repair, and replacement of damaged areas caused by the drill rig are excluded.
- 4) Construction water shall be supplied by the general contractor.
- 5) MDCI has included all the required water storage tanks (8 Total, 18,000 Gals Each), however removal and disposal of the water and sediment has been excluded. We have allowed 1 week of tanks stand by time for the GC to clean out each tank.
- 6) All traffic control, lighting and signage to be provided by others.
- 7) Survey, control, layout, as-built drawings, and monitoring are excluded. Layout is to include center of hole, offset stakes, elevations for steel at all locations.
- 8) Protection, location, potholing and relocation of existing and new utilities are excluded.
- 9) Continuous Stockpiling, loading, hauling and disposal of drill spoils & concrete are excluded. We also exclude containment, control, removal and disposal of all drill water/slurries associated with the drilled shaft work.
- 10) Concrete wash-out facilities (furnished and maintained) by others.
- 11) All tasks related to SWPPP including providing and maintaining all BMP's, street cleaning, and tracking control devices or measures including dust control.

Dec. 8. 2015 12:26PM

No. 0330 P. 3/5

05-OF7004
Page 3 of 4MDCI EST No. 337-15
December 8, 2015

- 12) Indemnity shall be limited to MDCI's proportionate fault. See Item 14 of MDCI's Standard Conditions.
- 13) Full payment for MDCI work shall be made within 45 days after completion and acceptance of that work.

If you have any questions regarding this proposal, please contact this office.

Respectfully submitted,
MALCOLM DRILLING CO., INC.



David Walker
Project Manager
Attachments: Standard Conditions (2 pages)

EXHIBIT B

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 05-0F7004 Project ID: 0500000049

Bidder Name: Viking Construction Company

Bidder ID: VC0000014625

DES-OE-0102.2C (REV 03/2015)

Bidding Firm: Viking Construction Company

List this sub? Yes

34) Business Name Foundation Constructors, Inc.

Location City Oakley State CA

California Contractor License Number 270761

Public Works Contractor Registration Number 1000005585

Portion of Work Subcontracted:

Item %	Description
79 60	Furnish Piling
80 71	Drive Piles
81 60	Furnish Piling
82 83	Drive Piles

List this sub? Yes

35) Business Name Malcolm Drilling Company

Location City Hayward State CA

California Contractor License Number 259243

Public Works Contractor Registration Number 1000003389

Portion of Work Subcontracted:

Item %	Description
79 40	Drill Piles, Set Cages, Place Concrete
81 40	Drill Piles, Set Cages, Place Concrete



- P. O. Box 1508
- Rancho Cordova, CA 95741-1508
- Phone (916) 852-5530
- Fax (916) 852-5533

FAX

To:	Caltrans Office Engineer	From:	Troy Clemons
Fax:	916-227-6282	E-mail:	tclemons@vikingbridges.com
Phone:		Date:	12/21/2015
Subject:	Contract 05-0F7004	Pages:	7 (including cover)

Urgent For Review Please Comment Please Reply Please Recycle

Please see attached letter regarding the Bid Protest from Golden State Bridge on the subject contract.

Please contact our office at 916-852-5530 if you should have any questions.

Best Regards,

Troy Clemons