

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER, MS 43
1727 30th STREET
P. O. BOX 168041
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6299
FAX (916) 227-6282
www.dot.ca.gov/hq/esc/oe



*Flex your power!
Be energy efficient!*

February 7, 2014

Facsimile: (559) 813-3099

Janez Seliskar, Chief Estimator
Teichert Construction
P. O. Box 520
Fowler, CA 93625

06-0Q7704
06-Tul-43-0.0/9.5
B.O. 12/18/2013

Dear Ms. Seliskar:

The Department of Transportation (Caltrans) received the attached letter dated December 30, 2013, from Teichert Construction (Teichert) protesting the bid submitted by Chester Bross Construction, Inc. (Chester Bross). The protest alleges that Chester Bross identified more than one subcontractor to perform bid item 3, Traffic Control and the percentage of work to be performed is in excess of 100 percent and must self perform the item with its own forces. The protest further alleges that Chester Bross identified a subcontractor on its Certified Disabled Veterans Business Enterprise (DVBE) Summary form to perform Traffic Control and claimed DVBE participation credit for the item it must self perform. As such, did not meet the DVBE participation goal of 3 percent.

The Office of Business and Economic Opportunity's Contract Evaluation Unit conducted an evaluation of the DVBE Summary and found that Chester Bross did not meet the DVBE goal of the contract.

Based on the above finding, Caltrans will proceed to award this contract to the lowest responsive and responsible bidder, provided that all requirements have been met.

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

Sincerely,

A handwritten signature in black ink, appearing to read "J. McMILLAN".

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

Attachment



TEICHERT CONSTRUCTION

Established 1887

December 30, 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. 06-0Q7704
06-Tul-43-0.0/9.5
Bids Dpened: December 18, 2013
**Bid Protest of Teichert Construction to Award of Contract to Chester Bross
Construction Co.**

Dear Mr. McMillan:

Teichert Construction ("Teichert"), the second lowest monetary bidder for the above referenced project, hereby protests the bid of the lowest monetary bidder, Chester Bross Construction Co. ("CBC"). As explained in more detail below, CBC's bid fails to comply with Caltrans' mandatory requirements for DVBE participation. Therefore, CBC's bid must be rejected as nonresponsive, and Teichert is the lowest responsive and responsible bidder eligible for award.

CBC did not comply with Caltrans' Standard Specifications 2010 Section 2-1.15, DISABLED VETERAN BUSINESS ENTERPRISES (DVBE), which states in part:

"... Meet the goal shown on the Notice to Bidders."

The Notice to Bidders for Contract No. 06-0Q7704 states the DVBE Contract goal is 3 percent. CBC claimed a DVBE commitment of 3.24 percent. However, CBC's DVBE commitment is adjusted down to only 0.58 percent, once CBC's Certified DVBE Summary form is reconciled with its Subcontractor List form.

CBC submitted its required Subcontractor List form with its bid, and within it identified Rock N' Roll Construction Inc. (95 percent) and Chrisp Company (8 percent) to perform Bid Item 3 (Traffic Control System), for a total of 103 percent.

Public Contract Code Section 4106 States in pertinent part:

"If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself." (Emphasis Added)

If CBC is awarded Contract No. 06-0Q7704, it must perform Bid Item 3 with its own forces, and thus is not allowed to subcontract any such portion of Bid Item 3 to Chrisp Company, or Rock N' Roll Construction Inc.

CBC identified Rock N' Roll Construction Inc. in its Certified DVBE Summary as providing \$38,646.00 of work for Bid Item 3, described as Partial Traffic Control. As discussed in the previous paragraphs, Bid Item 3 is disallowed from being subcontracted by CBC and as such the dollar amount listed for this item cannot be counted towards the DVBE Contract goal. Therefore CBC's claimed participation must be reduced by \$38,646.00. After the adjustment the total amount to be claimed towards the DVBE goal is \$8,441.00 or 0.58 percent.

Caltrans has strictly interpreted and firmly enforced its DVBE participation requirements. An example that is directly on point is Caltrans' letter addressed to HighLand Construction Inc. ("HCI") in connection with its bid on Contract No. 07-279804.¹

In its letter dated January 30, 2012, Caltrans rejected a bid submitted by HCI for Contract No. 07-279804, because HCI failed to comply with Public Contract Code 4106. Thus, Caltrans ruled HCI would be required to self perform bid item no. 12, and Caltrans removed \$25,000 from HCI's claimed DVBE participation. HCI's reduced DVBE participation percentage did not meet the DVBE Contract goal of 3 percent, and HCI's bid was determined nonresponsive.

CBC's bid contains a similar type of error in its Certified DVBE Summary in relation to Rock N' Roll Construction Inc, for which Caltrans found HCI's bid nonresponsive in Contract No. 07-279804.

Another example of Caltrans' adherence to Public Contract Code 4106 is its letter to Knife River Construction dated May 30, 2013 in connection with Contract No. 03-4M1604. In its letter, Caltrans determined Knife River Construction would not be allowed to subcontract Bid Item No. 1, because it listed two separate subcontractors to perform Bid Item 1 for a total of 110 percent. Caltrans expressly stated Knife River Construction must perform Bid Item 1 with its own forces.²

Similarly to Knife River Construction, CBC has identified 2 subcontractors to perform Bid Item 3 and thus would be required to perform Bid Item 3 with its own forces.

¹ A copy of Caltrans' letter is enclosed with this letter for your facility of reference.

² A copy of Caltrans' letter is enclosed with this letter for your facility of reference.

John C. McMillan
Deputy Division Chief
December 30, 2013
Page 3 of 3

In conclusion, CBC did not meet the DVBE Contract Goal of 3 percent, and is therefore not eligible for award of this contract. CBC's bid is non-responsive and must, in accordance with Caltrans' consistent practice, be rejected. Accordingly, the contract should be awarded to Teichert as the lowest responsive and responsible bidder.

Should you have questions or need additional information, I can be reached at 559-813-3053.

Sincerely,



Janez Seliskar
Chief Estimator

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Attachment

cc: N. Rinaldi – Teichert Construction

**** Transmit Conf. Report ****

P.1
CALTRANS CONTR AWARDS Fax 916-227-6282

Feb 7 2014 12:49pm

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STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

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The Office of Business and Economic Opportunity's Contract Evaluation Unit conducted an evaluation of the DVBE Summary and found that Chester Bross did not meet the DVBE goal of the contract.

Based on the above finding, Caltrans will proceed to award this contract to the lowest responsive and responsible bidder, provided that all requirements have been met.

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Sincerely,

JOHN C. McMILLAN
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