



TEICHERT CONSTRUCTION

Established 1887

Fresno District
4533 E. Citron Avenue
Fresno, CA 93725
P.O. Box 520
Fowler, CA 93625-0520
(559) 813-3100 • FAX (559) 813-3099

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 Opened: 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 Crisp 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
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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

eb
Attachment

cc: N. Rinaldi – Teichert Construction

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

Bidder Name: Orsted Bros Construction Co

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) 227-6282 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

CHRISP COMPANY STOCKTON, CA.	1	100	LEAD EQUIP REAR
	3	8	TRAFFIC CONTROL (PARTIAL)
	7	100	REMOVE EXISTING PAVT MARKS
	16	100	4" THERMO STRIPE
	17	100	THERMO PAVT. MARKS.
	18	100	4" THERMO STRIPE BKN.
19	100	PAVMT. MARKER RETRO.	
STATEWIDE TRAFFIC SAFETY & SIGNS FRESNO, CA.	2	6	CONST AREA SIGNS (PARTIAL)
SOUTH /MACK INC. dba FLATLINER DIAMOND PROFILING KINGSBURG, CA.	11	42	PREPAVE GRINDING DAY (PARTIAL)
ASPHALT OIKE CONST. INC. dba APCO GOSHEN, CA.	9	10	SHOULDER BACKING (PARTIAL)
F AND S DUBE INC. SUSANVILLE, CA.	(4)		

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DN

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

Bidder Name: Arctic Brass Construction

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) 227-6282 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 No.	Column 3: Percentage of bid item subcontracted	Column 4: Description of Subcontracted Work
ROLL 'N ROCK CONSTRUCTION INC. MCUMIT SHASTA, CA.	3	⁶⁵ 92.95	TRAFFIC CONTROL (PARTIAL)
	4	100	P.C.M.S.
	11	18	PREPAVE GRINDING DAY (PARTIAL) (TRAFFIC CONTROL)
FONSECA/MCEROY GRINDING COMPANY, INC. FRESNO, CA.	8	29	COLD PLANE ASPHALT CONC. PAVEMENT (PARTIAL)

ADA Notice

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DM

DISTRICT-COUNTY-ROUTE: 06 - TUL - 43
 CONTRACT NO.: 06-0Q7704
 TOTAL BID: +2/13 \$ 1,454,479.00
 BID OPENING DATE: 12/18/13
 BIDDER'S NAME: CHESTER BROSS CONST. CO.
 DVBE PRIME CONTRACTOR CERTIFICATION ¹

Chester Bross Construction Co. listed Bid Item 3 in its Subcontractor List for more than one subcontractor. Per Public Contract Code 4106, Chester Bross is required to self perform Bid Item 3, and thus cannot claim this value for DVBE participation

Bid Item Number	Description of Work to Be Subcontracted to DVBE or Materials to Be Supplied by DVBE ²	For Caltrans Only	DVBE (Name, Telephone No. and Certification No.)	\$ Amount
3	PARTIAL TRAFFIC CONT. FLAGGING/PILOT CAR 18 SHIFTS		ROLL 'N ROCK CONST INC. 825 DEETZ RD. MOUNTAIN VIEW, CA 96067 PH 530-925-1408 FX 530-926-0480 CERT # 1750745	\$38,646.00
4	PCMS WEEKLY RENTALS 4 WEEKS @ \$500.00 EA			\$2000.00
11	PARTIAL TRAFFIC CONT. FLAGGING/PILOT CAR AS PART OF PRE-PAVE GRINDING. 3 SHIFTS			\$6,441.00
			Total Claimed Participation	\$ <u>47,087.00</u> <u>3.24</u> %

Names of first tier DVBE subcontractors and their items of work listed must be consistent with the names and items of work in the Subcontractor List (Pub Cont Code § 4100 et seq.) submitted with the bid. Identify second and lower tier subcontractors on this form.

- DVBE prime contractors must enter their DVBE reference number or their DBA name as listed with Department of General Services (DVBE prime contractors are credited with 100 percent DVBE participation and need not complete the above table).
- If 100% of an item is not performed or supplied by the DVBEs, describe the exact part, including the planned location of work to be performed, of item to be performed or supplied by DVBE.

Submit to:

MSC 43
 OFFICE ENGINEER
 DEPARTMENT OF TRANSPORTATION
 1727 30TH STREET
 SACRAMENTO, CA 95816-7005

[Signature] 12/18/13
 Signature of Bidder Date

573 221 5958 or 209-920-3595
 (Area Code) Telephone Number

[Signature]
 Contact Person (Type or Print)

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER, MS 43
1727 30th STREET
P. O. BOX 168041
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6300
FAX (916) 227-6282
TTY 711



*Flex your power!
Be energy efficient!*

January 30, 2012

Facsimile: (714) 538-5157

Kristi Stelle, Vice President
HighLand Construction, Inc.
133 N. Pixley Street
Orange, CA 92868

07-279804
07-LA-10,710-20.6/21.4,26.3/26.6
B.O. 12/1/11

Dear Ms. Stelle:

The Department received the attached Certified DVBE Summary on December 5, 2011, for Contract No. 07-279804 from HighLand Construction, Inc. (HighLand). In the summary, LML Enterprises, Inc. (LML) is listed to perform bid item no. 12, Clearing and Grubbing for the amount of \$25,000. The "Certified DVBE Summary" states in part:

"Names of first tier DVBE subcontractors and their items of work listed must be consistent with the names and items of work in the Subcontractor List (Pub Cont Code §4100 et seq.) submitted with the bid..."

The Public Contract Code § 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 of work himself or herself, and that the prime contractor shall perform that portion himself or herself..."

HighLand failed to list LML on its "Subcontractor List" therefore, it must self perform all work of bid item no. 12, Clearing and Grubbing with its own forces. With that self performance, \$25,000 must be removed from the "Certified DVBE Summary". Subsequently, HighLand's DVBE participation is reduced to 0.79 percent.

The Department notifies HighLand that its bid is nonresponsive since it did not comply with Contract Special Provision Section 2-1.03, DISABLED VETERAN BUSINESS ENTERPRISES, which states in part:

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

The DVBE Contract goal is 3 percent, HighLand achieved 0.79 percent participation. Therefore, Highland is nonresponsive.

Ms. Stelle
January 30, 2012
Page 2

The Department will award the contract to the lowest responsive bidder.

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

Sincerely,



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

Attachments

c: Desert Concepts Construction, Inc.
77-770 Country Club Drive, Suite D
Palm Desert, CA 92211
Fax: (760) 200-9014

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER, MS 43
1727 30th STREET
P. O. BOX 168041
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6280
FAX (916) 227-6282
TTY 711



*Flex your power!
Be energy efficient!*

May 30, 2013

Facsimile: (530) 894-6220

Richard A. Lanier, Estimating Manager
Baldwin Contracting Co., dba Knife River Construction
1764 Skyway
Chico, CA 95928

03-4M1604
03-But-32-11.3/R15.5
B.O. 05/15/2013

Dear Mr. Lanier:

The Department of Transportation (Caltrans) received a bid submitted by Baldwin Contracting Co., dba Knife River Construction (Knife River) for Contract No. 03-4M1604 on May 15, 2013. Knife River identified Global Environmental Network (44 percent) and Sierra Traffic Markings (66 percent) to perform Bid Item 1 (Lead Compliance Plan), for a total of 110 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 contractors bid, the prime contractor agrees that he or she is fully qualified to perform that portion of work himself or herself, and that the prime contractor shall perform that portion himself or herself.”

If Knife River is awarded Contract No. 03-4M1604, it must perform Bid Item 1 with its own forces.

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 "John C. McMILLAN".

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

Attachment