

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!*

August 21, 2013

Facsimile: (209) 263-0123

Shawn N. Simmons, Western Division Manager
Chester Bross Construction Company
39 California Street PMB 118
Valley Springs, CA 95252

08-0K3104
08-SBD-95-51.2/51.6
B.O. 07/11/2013

Dear Mr. Simmons:

The Department of Transportation (Caltrans) received the attached letters from Chester Bross Construction Company (Chester Bross) for Contract No. 08-0K3104 on July 26 and August 9, 2013, protesting the Subcontractor List form submitted by Las Vegas Paving Corporation (LVP). The protest alleges that LVP did not adequately describe the work to be performed by each subcontractor in column 4; that Bid Item 5, Traffic Control System, was listed as work to be performed for more than one Subcontractor; and that LVP omitted Bid Item 43, Thermoplastic Traffic Stripe. Chester Bross requests that Caltrans find the bid submitted by LVP nonresponsive and award the contract to Chester Bross.

After further review of the bid documents and the protest submitted by Chester Bross, Caltrans finds that the description of work to be performed in column 4 of the Subcontractor List is acceptable and further finds that Bid Item 5, Traffic Control, was listed by two separate contractors, but the total work to be performed was less than 100 percent of the bid item. As such, LVP has met the requirements for submission of the bid and cannot be found nonresponsive on the basis of which Chester Bross is asserting.

Therefore, Caltrans finds that Chester Bross' protest lacks merit and will proceed to award this contract to the lowest responsible bidder.

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".

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

Attachments

Received

Jul 26 2013 05:45pm

From:

07/26/2013 17:47

#013 P.001/004



July 26, 2013

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

ATTN: Mr. John C. McMillan
Deputy Division Chief

Subj: 08-OK3104 STATE HIGHWAY IN SAN BERNARDINO COUNTY FROM 13.9 MILES NORTH OF
HAVASU LAKE ROAD TO 5.5 MILES SOUTH OF ROUTE 40/95 SEPERATION
FEDERAL PROJECT NO. ACSTP-P095(024)E

Re: FORMAL PROTEST OF BID SUBMITTED BY LAS VEGAS PAVING CORPORATION

Dear Mr. McMillan,

Please consider this letter to be a formal protest of the bid submitted by Las Vegas Paving Corporation (LVP) in connection with Contract No. 10-OK3104. Chester Bross Construction is presently the Second Lowest bidder on the subject project. The bid turned in by Las Vegas Paving Corporation is 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." *No other revisions to the form are permitted.*

Page 1 | 4

39 California St. PMB 11B, Valley Springs, CA. 95252
209-920-3595 - Phone
209-263-0123 - Facsimile



The Caltrans Standard Specifications dated 2010, Section 2-1.33C, second paragraph states with definitive clarity... "The *Subcontractor List* must show the name, address, and work portions to be performed by each subcontractor listed. Show work portions by bid item number, description, and percentage of each bid item subcontracted."

In violation of this express requirement of the bid documents, LVP has effectively made multiple errors to the Initial and subsequent Subcontractor Listing.

The first direct violation of this express requirement of the bid documents in the LVP Subcontractor Listing, is that LVP did not provide complete information in column 4. This fact holds true with respect to both, the bid day Subcontractor Listing and the 24 hour Subcontractor listing. Column 4 of the Subcontractor List clearly requires the bidder to provide the "Description of Subcontracted Work". The bid day Subcontractor List submitted by LVP contains bid item numbers in column 4 with no description of the subcontracted work. This is not what is required by the governing documents as outlined herein, but is in fact a violation and error on the part of LVP. Additionally, on the 24 hour, or final Subcontractor List as submitted by LVP, the column 4 information is again bid item numbers, not a Description of Subcontracted Work. LVP has however provided the same bid item number information correctly in Column 2. The information provided by LVP as submitted in Column 4 is not correct, and is in direct violation of the express requirements of the bid documents. Additional substantiation can be provided elsewhere in the bid documents as follows. The pages of the Bid Item List, pages 3, 4, and 5 of this contract's bid documents all clearly define each column on the Bid Item List; "Item No. // Item Code // Item Description // Unit of Measure // Estimated Quantity // Unit Price // Item Total". The bid documents even provide the Item Description for the bidding contractor in the Item Description column. It is clear to even the most casual review that LVP did not provide complete information in Column 4, period, let alone within the time specified. An additional point in fact is that presently, on the Caltrans website under the post bid files section, there is no other bid proposal posted by any other bidding contractors that incorrectly utilize bid item numbers under Column 4. All of the other bid documents submitted correctly utilize the Item Description under Column 4 of the Subcontractor List. The last sentence of the paragraph at the top of the Subcontractor List states with no ambiguity... "*Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.*" Based on the facts presented herein and substantiated by Caltrans past precedence, Caltrans must find the bid submitted by Las Vegas Paving Corporation nonresponsive and award the contract to the lowest responsive bidder, Chester Cross Construction.

From:

Received

Jul 26 2013 05:50pm

07/26/2013 17:47

#013 P.003/004



The second direct violation of the express requirements of the bid documents in the LVP Subcontractor Listing, is the fact that on the bid day Subcontractor List, though LVP incorrectly listed bid item numbers under column 4, it is clear that LVP listed two (2) contractors to perform bid item number 5 in its entirety. There is clearly no description whatsoever, let alone a definition of partial for either Pacific Coast Markings, of Phelan, CA. or for Force Traffic Control of Exeter, CA. However, on the 24 hour Subcontractor Listing, LVP has made definite changes to the original document as submitted with the bid. More specifically, LVP reduced the percentages of bid item 5 work performed by Pacific Coast Markings to 18% and Force Traffic Control to 26% in an effort to rectify the initial listing error. This is clearly a change to the Subcontractor List. As such, and based additionally on this fact, Caltrans must find LVP nonresponsive and award the contract to the lowest responsive bidder, Chester Bross Construction.

As an additional Segway to the immediately previous paragraph, a strong argument can be made based on Caltrans past precedence, that the original subcontractor list submittal by LVP was not only void of the necessary information in column 4, LVP neglected to list any of the subcontractor scopes of work as (partial) anywhere on the form, when in fact upon review of the LVP 24 hour subcontractor list submittal, each and every item listed is in fact a partial listing under column 3. This is a distinct change to the Subcontractor List from originally listed full 100% performance of the scope for each subcontractor listed to a reduced percentage of item performance. Though one could say this is speculative as in fact there was no description provided at any time for any item for any subcontractor under column 4. Again, based on these additional facts, Caltrans must find the LVP bid nonresponsive and award the contract to the lowest responsive bidder, Chester Bross Construction.

One last point of interest would be that LVP neglected to list bid item 43 Thermoplastic Traffic Stripe (spray able) on the Subcontractor List under the Striping Subcontractor Pacific Coast Markings or any other subcontractor for that matter. As such, were LVP to receive an award notification on this project, LVP must self-perform the work under bid item 43 with its own forces in its entirety. This may well have been yet another oversight on the part of Las Vegas Paving Corporation.

Caltrans has been consistent in its requirement that Columns 1 through 4 must be complete, accurate and in keeping with the express requirements of the bid documents or the bid will be considered nonresponsive by Caltrans. Incomplete information, changes in bid items, scopes, percentages of work to be performed, multiple subcontractors listed for the same item of work are all in direct violation of the Caltrans bidding requirements. Any such changes, omissions, deviations or irregularities have and will lead Caltrans to find a bid to be nonresponsive and though numerous

Page 3 | 4

39 California St. PMB 118, Valley Springs, CA. 95252

209-920-3595 - Phone

209-263-0123 - Facsimile



examples of the same are available on the Caltrans website, I did not see the need to provide printed proof of the same.

Caltrans has consistently found bidders to be nonresponsive for Subcontractor List revisions, incompleteness, and errors similar or exactly like those made by LVP in its bid submitted for this project. Caltrans 06-0P6104, 10-0AB404, 10-0aB724, 04-3A23U4, 04-153204 are but a few examples of similar determinations with several additional contracts presently being reviewed by the department for Subcontractor List errors of the same fundamental nature. The Department owes a duty to enforce its bid requirements in a fair and uniform manner consistent with set precedence, and in keeping with the governing Subletting and Subcontracting Fair Practices Act of the Public Contract Code. Accordingly, because LVP has violated the Department and governing bid requirements for the errors and incompleteness of its Subcontractor List, coupled with the revisions outlined herein after the bids were submitted and opened publically, Las Vegas Paving Corporation's bid for the subject project must be rejected as nonresponsive.

Based in no small part on the facts presented herein, it is respectfully and formally requested that the Department uphold and validate Chester Bross Construction's bid protest and award the contract to our company, which submitted the lowest responsive and responsible bid for Contract No. 08-OK3104.

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

Very truly yours,

Shawn N. Simmons
Western Division Manager

Via FedEx to the address above
Via Facsimile to (916) 227-6282



August 9, 2013

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

ATTN: Mr. John C. McMillan
Deputy Division Chief

Subj: 0B-0K3104 STATE HIGHWAY ROUTE 95 IN SAN BERNARDINO COUNTY FROM 13.9 MILES NORTH
OF HAVASU LAKE ROAD TO 5.5 MILES SOUTH OF ROUTE 40/95 SEPERATION
FEDERAL PROJECT NO. ACSTP-P095(024)E

Re: FORMAL REBUTTAL TO LAS VEGAS PAVING CORPORATION INITIAL RESPONSE TO PROTEST OF
BIO

Dear Mr. McMillan,

As outlined in our initial Letter of Protest dated July 26, 2013, the bid turned in by Las Vegas Paving Corporation (LVP) is nonresponsive and therefore must be rejected based on the Department's bidding requirements and strictly-enforced policies.

The response letter provided to the Department dated August 5, 2013 by LVP has no merit whatsoever, notwithstanding the second sentence on page 2 of 2 that one can only assume relates to the omission of bid item #43 contention. LVP has not provided any legitimate information that would negate the protest allegations other than possibly that of the previously mentioned bid item #43 where to LVP will self-perform the Thermoplastic Traffic Stripe work.



published on the Caltrans website. The bid turned in by CBC is correct, accurate, complete, and in keeping with all pertinent governing documents, requirements and applicable law.

By the letter provided by LVP, CBC concedes that LVP has validated the fact that it will indeed perform the bid item 43 Thermoplastic Traffic Stripe in its entirety with LVP's own labor, equipment and materials were they to be awarded the project.

Additionally, and by its own admission, LVP substantiates the fact that it listed more than one contractor to perform bid item #5 Traffic Control in its entirety on the bid day submittal of the Subcontractor Listing, while on the 24 hour Subcontractor List submitted, both initially listed subcontractors were only performing a partial portion of the bid item #5 work. This fact is a change to the Subcontractor List and as outlined herein constitutes the bid submitted by LVP to be deemed nonresponsive.

LVP goes on to admit to providing incorrect information on other Caltrans projects, to include projects that LVP may have under contract.

CBC cannot speak to the apparent unchallenged past contracts outlined in the LVP letter that again lend favor to LVP admitting to filling out the necessary bid documents incorrectly. CBC can only speculate that this was a possible oversight by the department that fortunately for LVP went unchallenged by the other bidders. But again, this would be speculation on our part and we choose to address fact alone.

At the risk of being repetitive, we think it pertinent to again state that Caltrans has consistently found bidders to be nonresponsive for Subcontractor List revisions, incompleteness, and errors similar or exactly like those made by LVP in its bid submitted for this project. Caltrans 06-0P6104, 10-0A8404, 10-0a8724, 04-3A23U4, 04-1S3204 are but a few examples of similar determinations with several additional contracts presently being reviewed by the department for Subcontractor List errors of the same fundamental nature. The Department owes a duty to enforce its bid requirements in a fair and uniform manner consistent with set precedence, and in keeping with the governing Subletting and Subcontracting Fair Practices Act of the Public Contract Code. Accordingly, because LVP has violated the Department and governing bid requirements for the errors and incompleteness of its Subcontractor List, coupled with the revisions outlined herein after the bids were submitted and opened publically, Las Vegas Paving Corporation's bid for the subject project must be rejected as nonresponsive.



Based in no small part on the facts presented herein, it is respectfully and formally requested that the Department uphold and validate Chester Bross Construction's bid protest and award the contract to our company, which submitted the lowest responsive and responsible bid for Contract No. 08-OK3104.

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

Very truly yours,

Shawn N. Simmons
Western Division Manager

Via FedEx to the address above
Via Facsimile to (916) 227-6282

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

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

Aug 21 2013 04:30pm

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
912092630123	Normal	21:04:27pm	2' 47"	8	O K	

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

MILMUNIG, MCKOWN Jr., Governor

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!*

August 21, 2013

Facsimile: (209) 263-0123

Shawn N. Simmons, Western Division Manager
Chester Bross Construction Company
39 California Street PMB 118
Valley Springs, CA 95252

08-0K3104
08-SBD-95-51.2/51.6
B.O. 07/11/2013

Dear Mr. Simmons:

The Department of Transportation (Caltrans) received the attached letters from Chester Bross Construction Company (Chester Bross) for Contract No. 08-0K3104 on July 26 and August 9, 2013, protesting the Subcontractor List form submitted by Las Vegas Paving Corporation (LVP). The protest alleges that LVP did not adequately describe the work to be performed by each subcontractor in column 4; that Bid Item 5, Traffic Control System, was listed as work to be performed for more than one Subcontractor; and that LVP omitted Bid Item 43, Thermoplastic Traffic Stripe. Chester Bross requests that Caltrans find the bid submitted by LVP nonresponsive and award the contract to Chester Bross.

After further review of the bid documents and the protest submitted by Chester Bross, Caltrans finds that the description of work to be performed in column 4 of the Subcontractor List is acceptable and further finds that Bid Item 5, Traffic Control, was listed by two separate contractors, but the total work to be performed was less than 100 percent of the bid item. As such, LVP has met the requirements for submission of the bid and cannot be found nonresponsive on the basis of which Chester Bross is asserting.

Therefore, Caltrans finds that Chester Bross' protest lacks merit and will proceed to award this contract to the lowest responsible bidder.

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

Sincerely,


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

Attachments