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July 26, 2013

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER, MS 43  
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P.O. BOX 168041  
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PHONE (916) 227-6280  
FAX (916) 227-6282

ATTN: Mr. John C. McMillan  
Deputy Division Chief

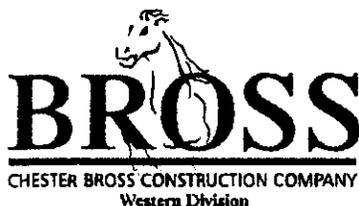
Subj: 08-OK3104 STATE HIGHWAY IN SAN BERNARDINO COUNTY FROM 13.9 MILES NORTH OF  
HAVASU LAKE ROAD TO 5.5 MILES SOUTH OF ROUTE 40/95 SEPERATION  
FEDERAL PROJECT NO. AC5TP-P095(024)E

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.*

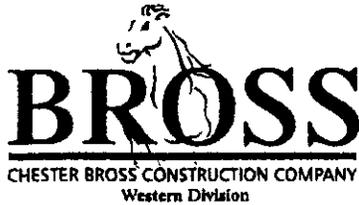


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The Caltrans Standard Specifications dated 2010, Section 2-1.33C, second paragraph states with definitive clarity... "The *Subcontractor List* **must** show the name, address, and **work portions** to be performed by each subcontractor listed. **Show 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 contracts 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 Bross Construction.



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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 Cross 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 Cross Construction.

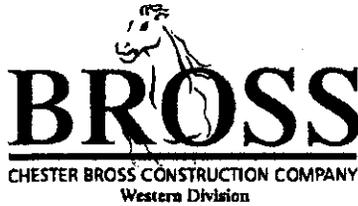
One last point of interest would be that LVP neglected to list bid item 43 Thermoplastic Traffic Stripe (spray able) on the Subcontractor List under the Striping Subcontractor Pacific Coast Markings or any other subcontractor for that matter. As such, were LVP to receive an award notification on this 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

From:

07/26/2013 17:48

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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, 10-0A8404, 10-0a8724, 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 Cross 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