



August 9, 2013

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
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ATTN: Mr. John C. McMillan
Deputy Division Chief

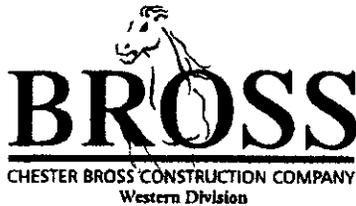
Subj: 08-0K3104 STATE HIGHWAY ROUTE 95 IN SAN BERNARDINO COUNTY FROM 13.9 MILES NORTH
OF HAVASU LAKE ROAD TO 5.5 MILES SOUTH OF ROUTE 40/95 SEPERATION
FEDERAL PROJECT NO. ACSTP-P095(024)E

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

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 whereto LVP will self-perform the Thermoplastic Traffic Stripe work.

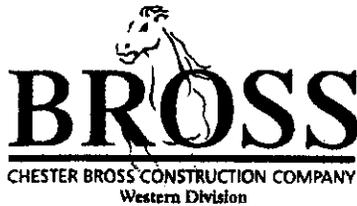


In review of the response letter provided by LVP, LVP has effectively admitted that the column 4 information provided on the LVP Subcontractor Listing is incorrect as submitted, but should be allowed because in LVP's opinion, they have found a better way regardless of the fact that using bid item numbers is in fact incorrect and not in keeping with strict requirements. The Subcontractor List form states **very clearly** 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.** The Caltrans Standard Specifications dated 2010, Section 2-1.33C, second paragraph states clearly, with no ambiguity... "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.**" This cannot be any clearer, cannot be interpreted differently, offers or allows for no ambiguity and must be strictly adhered to or the bid provided will be deemed nonresponsive. This fact has been continually adhered to and enforced by the department.

The facts are clear, irrefutable, and effectively reaffirmed by LVP in its own admission to incorrectly filling out the subcontractor list form by utilizing bid item numbers opposed to a description in column 4. LVP's opinion that this is more accurate, eliminates common errors etc. carries with it no relevancy whatsoever. LVP filled out the Subcontractor List form incorrectly, incompletely and admits to doing so. This fact is in direct violation of the express requirements of the bid documents. 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.

The letter provided by LVP truly holds no merit, and provides no effective rebuttal to the CBC contentions that the bid provided by LVP is nonresponsive. LVP has tried to cloud the facts with nothing more than opinions and speculation. LVP has made futile attempts at discrediting the CBC bid documents by again providing opinions and speculation based on no facts whatsoever. LVP goes on to make assumptions with regards to the CBC estimate, sub-quotes etc. that are complete assumptions and unfounded speculations.

The so called "failings of the second bidder", as it was put by LVP, are complete speculation as the department knows, LVP does not know anything about the CBC bid other than the information as



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, 04-153204 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