

June 30, 2015

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

Subj: 10-0Q2204 AMADOR COUNTY NEAR HAMS STATION RT 88
FEDERAL PROJECT NO. ACNHP-P088(066)E

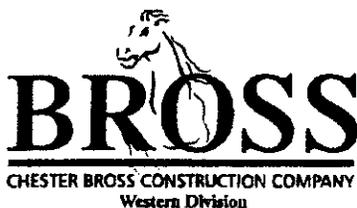
Re: FORMAL PROTEST OF BID SUBMITTED BY GEORGE REEO INC. (GRI)

Dear Mr. McMillan,

Please consider this letter to be a formal protest of the bid submitted by GRI, the apparent low bidder. The bid turned in by GRI is nonresponsive and therefore must be rejected based on the Department's bidding requirements, strictly enforced policies and governing applicable Federal Regulations. There are numerous contributing factors necessitating cause for the Department to consider the bid provided by GRI be non-responsive. Chester Gross Construction Company is the 2nd lowest bidder on this project.

The GRI bid is Mathematically Unbalanced

Upon review of the bid summary listings as provided on the Caltrans website, it is clear that GRI has submitted a mathematically unbalanced bid. Title 23 of the Code of Federal regulations, Section 635.102 provides that a bid is mathematically unbalanced if the bid contains "lump sum or unit bid items which do not reflect reasonable costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other direct costs." The bid submitted by GRI is mathematically unbalanced



to even the most casual review. Primary emphasis should be placed on the unbalancing evident on bid item number 27 Tack Coat. The fact is that the unit price submitted for bid item 27 does not reflect the contractor's reasonable costs. Moreover, bid item number 27 on the bid sheet submitted by GRI is clearly grossly inflated thereby demonstrating blatant unbalancing.

The bid item 27 unit price submitted by GRI of \$3,000.00.00 is grossly inflated to the most casual review. The magnitude of the inflated price submitted by GRI can begin to be substantiated best by GRI's own admittance with respect to its price for bid item 22 Asphaltic Emulsion Membrane (BWC). More specifically, the GRI price for bid item 22 reflects pricing much more in keeping with actual and expected costs for emulsions. Although there are slight differences between the two emulsion products, the products are extremely similar in character and price as provided by numerous suppliers. Clearly, \$3,000.00 per ton is much higher than can be justified or substantiated in strict compliance with Section 635.102 of Title 23 in the Federal regulations and the Department's bidding requirements.

The GRI bid is Materially Unbalanced Due to the Risk Caltrans will Pay Unreasonably High Prices for Contract Performance

In determining whether a bid is materially unbalanced, Caltrans is required to consider the risks to the government associated with the unbalanced pricing in making the award decisions, and whether a contract will result in unreasonably high prices for contract performance. FAR § 15.404-1(G)(2). A bid should be rejected if Caltrans determines that the unbalanced bid poses an unacceptable risk to the government. FAR § 15.404-1(g)(3).

The risk that the government will pay excessively high prices for necessary final tack coat quantities and or for work not completed is extremely high on this project as a direct result of the unbalancing prevalent and so very obvious with respect to the GRI bid. This can be clearly noted by extremely high, unit price for item 27. GRI did not bid according to the plans and specifications provided by Caltrans as they are required to do. Instead, GRI identified items that they believed would require much more quantity than stated in the bid documents and according to the plans, grossly inflated the bid unit price for said items, and reduced other items to balance the overall total bid price. This is clearly evident on the GRI unit price for the item 27 tack coat. GRI stands to gain substantial additional dollars by materially unbalancing this item as they have, causing an unreasonably high price for the bid item and the project lending favor to the fact that the Department would be taking on an unacceptable risk. This fact can be substantiated with quick rough calculations. Utilizing the plans, more specifically, sheet 15 Q-1 and sheet 2 X-1 it can be ascertained that the total area to receive HMA-A and require tack



coat material by specification is 186,849. To achieve the required and specified residual application rate, an average shot rate of 0.10 gallons per SY of tack utilizing 240 gallons per ton (typical average), it is clear that conservatively, 77.9 tons of tack will be required for the placement of the HMA-A. It is clear that the bid quantity for item 27 is understated by no less than 66.9 tons. At the inflated unit price provided by GRI, the total cost increase to the government is \$200,700.00. This equates to a known and real 3.1% total bid price increase to the GRI bid total before contracts have even been signed. As such, the Department must make a calculated assessment that the true total bid price for GRI is substantially higher than the apparent bid submitted by GRI.

The Department must ask itself, for bid items grossly inflated or overpriced, did the bidding contractor actually bid according to the plans and specifications. The answer is clearly no. Caltrans can however, evaluate the bids as outlined herein, confirm assumptions through plan calculation and quantity review to thereby substantiate the facts. Though rhetorical, we must again state that Caltrans is required to consider the risks to the government associated with the unbalanced pricing in making the award decisions, and whether a contract will result in unreasonably high prices for contract performance. FAR § 15.404-1(G)(2). A bid should be rejected if Caltrans determines that the unbalanced bid poses an unacceptable risk to the government. FAR § 15.404-1(g)(3).

GRI may try make the argument that other bidders have all shown inflated prices for item 27, some drastically higher than the unit price provided by GRI in an ill-fated effort to justify the GRI price in comparison. GRI may try to argue that the SAMI negates the need for tack coat on the SAMI prior to overlay with HMA-A, this simply does not work in most instances and therefore, considerable additional tack will in fact be required, hence, the stated bid day quantity of 11 tons for bid item 27 is grossly understated. These arguments simply validate the contention put forth by Chester Gross who provided a reasonable and justifiable price on bid day. Additionally, once the Department verifies the quantity will in fact overrun substantially, applies the known economics as we have in the chart above, it is clear that the Department must deem the GRI bid as non-responsive in the best interests of the State and in keeping with all applicable governing law.

The regulations are enacted to protect the State and consequentially other bidders to avoid this method of bidding when a contractor determines construction omissions or quantity errors have been made by the agency. You will note that GRI will most likely not be able to cite a regulation or specification that supports their inflated pricing thereby not bidding according to governing regulation when they anticipate being able to wrongfully capitalize economically. They will however, most likely try and convince the Department that the clear unbalancing is justifiable and will not carry with it a negative impact to the State when in fact, this is the farthest from the truth and fact. When questioned



by the Department, GRI will most likely also point out percentage differentials as a means of desperate justification as if to say that they are permitted to violate the restrictions for unbalanced bids on some of the item as long as it does not become too high of an amount or a percentage of the overall bid. Fairness, integrity and honesty in the bid process while following all express requirements should not be replaced with manipulation, deception, and unreasonableness.

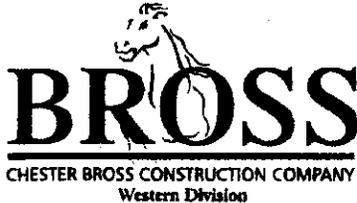
These facts can easily be verified in review of the GRI bids presented on the Caltrans website. Unbalancing and non-compliant bid documents to include grossly inflated tack pricing can be looked at historically with respect to GRI. 10-OW5604 RT 12 Flag City is a perfect example of GRI grossly over inflating the price of Tack Coat that will in fact be an economical detriment to the State. The Tack Coat item on the Flag City project will very likely overrun by 150%, this item was grossly overstated by GRI, and given the fact that the Department elected to allow this gross overpricing will cost the department considerably more than forecast or expected while affording GRI essentially unearned economic reward at the direct detriment to Caltrans.

The GRI bid is Materially Unbalanced Due to the Reasonable Doubt that their bid will Result in the Lowest Overall Cost to the Government

A bid is materially unbalanced if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid. FAR § 52.214-19(d). As previously noted, GRI significantly overbid certain bid items that they believed would run over substantially when calculated in accordance with the plans and specifications. Thus, it is reasonable to assume that GRI inflated bid item 27 by wrongfully placing additional dollars on the item from other items. Therefore, the bid day total represented by GRI is in fact much lower than anticipated thereby GRI stands to gain considerably while the Department effectively takes considerable risk in that the overall price for project delivery is in fact not the lowest price afforded the Government. As such, it is not in the best interests of the Department to accept the GRI bid.

In contrast, Chester Gross Construction bid these items according to the specifications and plans provided by Caltrans as all bidders are required to do.

Further, unbalanced bids can have a significant impact on both the administration of a project and a project's ultimate cost. Part of the bidding process is to allow the agencies to see the prices paid for materials and labor for various work items. This allows Caltrans to conduct the work, but more



importantly, it allows Caltrans to be flexible in modifying the work if changes in methods, conditions and scheduling are required. This is not possible based upon an unbalanced bid.

For Change Orders, all of the costs of the contractor will be submitted for these items with no reference to the original bid amounts and agency will see them for the first time far into the project. Thus, associated Change Orders for those items in which GRI has unbalanced the cost will result in lengthy negotiations, thereby delaying incorporation of the changed work with the owner likely paying an inflated price for the change. Therefore, a Change Order has the very real potential to result in Caltrans still paying an inflated price for the changed work associated thereto.

Ultimately, it is the project, the State and the traveling public that will suffer by delayed completion and increased cost from addressing these issues and their consequences, including the cost of litigation. As such, and based in no small part on the points brought forth herein, there is reasonable doubt that the bid submitted by GRI will result in the lowest overall cost to the Government. Therefore, the bid submitted by GRI should be rejected as both mathematically and materially unbalanced.

The GRI bid is Materially Unbalanced Due to the Threat it poses to the Integrity of the Bidding Process

The threat to the integrity of the bidding process is made clear when one asks, if GRI had made a calculation error for bid item, could GRI have declared a mathematical error and be relieved of their bid? GRI could have probably sustained a claim of error for any of these items had they determined that they made a gross mistake with their methodology. This affects the competitiveness of the bidding process because, in essence GRI was given a free look at the other bids *before* declaring an error. This emboldens the bidder who would adopt these methods. Chester Gross Construction is in no way alleging that this was the motive of GRI here, but just the potential being present in an unbalanced bid is enough to make the bid nonresponsive according to the regulations.

GRI did not correctly fill out the required Subcontractor List or DBE Commitment form

The Caltrans Bidder DBE commitment form states very clearly in part.. *"IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable, with the names and items of work in the "Subcontractor List" submitted with your bid."*



The DBE commitment form submitted by GRI claimed A.C. Dike Co. as a qualifying DBE subcontractor. GRI did not list A. C. Dike Co. on its Subcontractor listing. This is in direct violation of the instructions and Caltrans strictly enforced bidding regulations.

As such, A. C. Dike Co. cannot be utilized as or for DBE credit on this project.

GRI has clearly attempted to utilize a subcontractor for DBE credit in clear violation of the governing protocol and documentations. This is not allowed by Caltrans.

This fact does not in itself negate GRI's ability to achieve the required DBE goal for the project, but is utilized as yet additional support in the contention that GRI consistently provides the department incorrect or non-compliant bids.

Conclusion

Based on the considerable facts, references and information presented herein, governing regulations, specifications, and law, the bid provided by GRI should be rejected for being unbalanced both mathematically and materially as outlined 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. 10-0Q2204.

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

Sent Via Facsimile to (916) 227-6282