

**DEPARTMENT OF TRANSPORTATION**  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER, MS 43  
1727 30<sup>th</sup> 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!*

October 2, 2013

Facsimile: (925) 961-1925

Mr. Robert W. Purdy, Vice President/Secretary  
RGW Construction Inc.  
550 Greenville Road  
Livermore, CA 94550

10-0T1604  
10-SJ-26-18.5/19.0  
B.O. 7/23/2013

Dear Mr. Purdy:

The Department of Transportation (Caltrans) received the attached letter from RGW Construction (RGW) protesting the rejection of its bid on project 10-0T1604 due to unbalancing. The protest states in part;... "that RGW analyzed the plans and determined there would not be a need for imported borrow, i.e. the site balances with nominal consideration for shrink. RGW factored this into the bid and passed the savings on to the State of California by virtue of our submitting the least cost bid". RGW requests Caltrans to rescind its bid rejection letter and award the contract to the lowest responsive and responsible bidder, RGW.

As you are aware, the Engineering decisions must be made by and are the responsibility of the engineer in responsible charge of the project. Caltrans relies on its Civil Engineers for both the design and quality assurance needs for all projects, including materials. Ultimately, Caltrans makes all final decisions on its projects as it relates to the relevance of plans, specifications and or materials used. As with all highway construction contracts, Caltrans strives to obtain the lowest bid; and at the same time assure fair and equitable evaluation of all bids. As such, regardless of the bidder's expertise, the bidder must submit a bid in accordance with the projects plans and specifications. In this case, RGW pre-determined that there would not be a need for imported borrow and submitted its bid for Bid Item 40 (imported borrow) for \$0.01 or \$130.00 for 13,000 cubic yards. While Caltrans agrees that some portion of the work may be adjusted, the State would ultimately pay a higher overall total price for the contract.

Therefore, Caltrans stands by its original decision that the bid submitted by RGW is both materially and mathematically unbalanced and will proceed to award this contract to the lowest responsible and responsive bidder.

Mr. R. Purdy  
October 2, 2013  
Page 2

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

Sincerely,



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

Attachment



**RGW CONSTRUCTION, INC.**

August 29, 2013

John C. McMillan  
Mullssa Smith  
State of California – Department of Transportation  
1727 30<sup>th</sup> Street  
P.O. Box 168041  
Sacramento, CA 95816-8041

RE: Bid Rejection – Contract 10-OT1604 8/28/13

Dear Mr. McMillan and Ms. Smith:

RGW is in receipt of your letter dated August 28, 2013, rejecting RGW's bid due to unbalancing. Specifically, Cal Trans alleges that RGW both materially and mathematically unbalanced its bid because it submitted a price of \$.01/cy for 13,000 of import borrow. RGW does not agree with Cal Trans' determination. RGW is the lowest responsive and responsible bidder.

Cal Trans has awarded an enormous number of contracts that include nominally priced bid item work that would qualify as mathematically unbalanced. We could include this detail; however, we do not believe it is necessary. The reason that Cal Trans does so is because these contracts are not materially unbalanced.

As Cal Trans states, "A materially unbalanced bid is a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the State". This contract provides a very simple analysis for Cal Trans to determine whether or not RGW's bid will result in the lowest ultimate cost to the State, which it did.

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**Analysis:**

<u>Bidder</u>	<u>Total Bid</u>	<u>Bid Item 40 Import Borrow Unit Price</u>	<u>Bid Item 40 Extended Price</u>	<u>Total Bid Without Bid Item 40</u>
RGW	\$1,898,538	\$.01/cy	\$130	\$1,898,408
Teichert	\$1,925,294.50	\$.01/cy	\$130	\$1,925,164.50
George Reed	\$1,937,538.10	\$1/cy	\$13,000	\$1,926,538.10
Bross	\$2,099,445	\$15/cy	\$195,000	\$1,904,445

If Bid Item 40 – Import Borrow doesn't exist i.e. 0 cy, then RGW remains the low bidder and Cal Trans receives the lowest bid price for the work. If the quantity of import borrow under-runs the engineer's estimate by more than 25%, the contractor is entitled to be paid up to 75% of the bid quantity at the bid unit price albeit at force account. In this case, RGW would only be paid up to 75% of 13,000 cy x \$.01/cy = \$97.50. If all the other bid items are paid as anticipated by the estimate, Cal Trans' cost for this project would be:

	<u>Total Bid w/o BI 40</u>	<u>75% of BI 40</u>	<u>Total Bid/ Cost to Cal Trans</u>
RGW	\$1,898,408	\$97.50	\$1,898,505.50
Teichert	\$1,925,164.50	\$97.50	\$1,925,262
George Reed	\$1,926,538.10	\$9,750	\$1,936,288.10
Bross	\$1,904,445	\$146,250	\$2,050,695

If the quantity of Import borrow over-runs the engineer's estimate, the State of California pays at the bid unit price up to 125% of the bid item or in this case, 1.25 x 13,000 cy = 16,250 cy. The cost exposure to Cal Trans at this level is:

	<u>Total Bid w/o BI 40</u>	<u>125% of BI 40</u>	<u>Total Bid/ Cost to Cal Trans</u>
RGW	\$1,898,408	\$162.50	\$1,898,570
Teichert	\$1,925,164.50	\$162.50	\$1,925,327
George Reed	\$1,926,538.10	\$16,250	\$1,942,788.10
Bross	\$1,904,445	\$243,750	\$2,148,195

If the quantity of import borrow over-runs the engineer's estimate by more than 125% i.e. greater than 16,250 cy, then the quantity of work exceeding 125% will be paid for at an item adjustment to be analyzed at force account. At this point, all the bidder's costs for all import borrow would be marked up at forced account to determine the actual cost of the work. There is no differentiation or subjectivity here. It is an analysis of cost.

In all instances, RGW's bid price remains the lowest cost to the State of California when one adjusts the Import borrow pay quantity for all potential scenarios.

RGW analyzed the plans and determined there would not be a need for import borrow, i.e. the site balances with nominal consideration for shrink. We factored this into the bid and passed the savings on to the State of California by virtue of our submitting the least cost bid. We have not "front loaded" any bid items and given that the project is to be built in 100 working days, there would not be an opportunity to do so even if we wanted to – and we did not.

Cal Trans should rescind its bid rejection letter and award the contract to the lowest responsive and responsible bidder – RGW Construction, Inc. If you have questions, please contact me at 925/606-2400.

Sincerely,



William S. Stewart, President  
RGW Construction, Inc.

/cd

STATE OF CALIFORNIA - CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUNDO G. BICCHINI, Jr., Director

**DEPARTMENT OF TRANSPORTATION**  
DIVISION OF ENGINEERING SERVICES  
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www.dot.ca.gov/hq/csc/oe



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August 28, 2013

Facsimile: (925) 961-1925

Mr. Robert W. Purdy, Vice President/Secretary  
RGW Construction Inc.  
550 Greenville Road  
Livermore, CA 94550

10-0T1604  
10-SJ-26-18.5/19.0  
B.O. 7/23/2013

Dear Mr. Purdy:

The Department of Transportation (Caltrans) received the attached bid from RGW Construction Inc. (RGW) for project 10-0T1604 on July 23, 2013, at which time RGW was the apparent low bidder. By this letter Caltrans notifies RGW that its bid has been rejected due to unbalancing.

As you are aware, Caltrans evaluates each bid to determine whether a bid meets the requirements of both the State and Federal contract approval process. In this case, Caltrans Engineers evaluated the bid submitted by RGW and determined that RGW submitted a bid that was materially and mathematically unbalanced. RGW's proposed cost for Bid Item 40, Imported Borrow, was \$0.01 for 13,000 CY for a total cost of \$130.00.

A mathematically unbalanced bid is a bid containing lump sum or unit bid items that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs. A materially unbalanced bid is a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the State.

Caltrans receives many bids in response to its highway construction needs and strives to ensure the integrity of the competitive bidding process. Based on the item cost listed for Bid Item 40, it is Caltrans' determination that the bid is both mathematically and materially unbalanced as there is reasonable doubt that RGW's bid will result in the lowest ultimate cost to the State.

Based on the above the Department has determined that RGW is no longer eligible for award of this contract. Caltrans will proceed to award this contract to the lowest responsible and responsive bidder.

Mr. R. Purdy  
August 28, 2013  
Page 2

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

Sincerely,



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

Attachment



**RGW CONSTRUCTION, INC.**

**FAX TRANSMITTAL**

DATE: 8/29/13

TIME: 2:45

NAME: John C. McMillan & Melissa Smith

COMPANY: State of California - Dept of Transportation

FAX NUMBER: 916/227-6282

FROM: Bill Stewart

TRANSMITTING FROM: 925/606-2499

TOTAL NUMBER OF PAGES INCLUDING THIS SHEET: 6

ORIGINAL TO FOLLOW BY MAIL:

X YES        NO

If you do not receive all pages, please call us back as soon as possible -

NAME: Cindy

COMMENTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

THANK-YOU!

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

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CALTRANS CONTR AWARDS Fax 916-227-6282

Oct 2 2013 04:09pm

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
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STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

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DIVISION OF ENGINEERING SERVICES  
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