Stockton District
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(209) 983-2300 - FAX (209) 983-2375

TEICHERT CONSTRUCTION
Established 1887

July 8, 2014

VIA FACSIMILE (916) 227-6282 AND U.S. MAIL

John C. McMillan
Deputy Division Chief
Office Engineer
Division of Engineering Services
State of California
Department of Transportation (Caltrans)
1727 30th, Bidder Exchange, MS 43
Sacramento, CA 95816-8041

Subject: Contract No. 10-0V6804
10-Sta-120-6.1/11.3
Bids Opened: June 04, 2014
Response to Bid Protest Letter

Dear Mr. McMillan:

This letter is in response to your letter dated July 01, 2014 on the above referenced project.

Teichert Construction ("Teichert") is the lowest responsive and responsible bidder on Caltrans Contract No. 10-0V6804. Teichert has reviewed a copy of George Reed Inc.'s ("GRI") protest letter of June 24, 2014. GRI's protest alleges Teichert did not meet the 10 percent DBE participation goal and didn't submit accurate good faith effort documentation.

Teichert made adequate good faith efforts despite not meeting the established goal. Special Provision Section 2-1.12B(1) states to "Meet the DBE goal shown on the Notice to Bidders or demonstrate that you made adequate good faith efforts to meet this goal."

Teichert followed the guidance pertaining to Good Faith Effort (GFE) in Part 26 of the DBE Regulations (49 CFR Part 26et al.), as demonstrated in Teichert's submitted GFE documentation on June 10, 2014. Teichert advertised in multiple publications requesting DBE participation. Teichert utilized Caltrans Database to query for certified DBE's, and solicited them using multiple methods and attempts. Teichert made sufficient work available to DBE firms to meet the goal including, where appropriate, breaking down of the contract work items. Both the advertisements and the solicitation letters addressed efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work. Both the advertisements and the solicitation letters addressed efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance and services. Teichert contacted multiple agencies, organizations, or groups to provide assistance in using DBE firms.

While the reasons for rejecting portions of quotes from a few DBEs were inadvertently not stated in Teichert's submitted GFE quote analysis; the inclusion of these DBE scopes of work, specifically the traffic control and shoulder backing scopes GRI has specified in their protest letter, would not have been significant enough to meet the DBE goal. It should also be noted that GRI failed to identify and address rejecting KRC for traffic control in their GFE submittal. By in large Teichert accounted for the DBE quotes submitted directly to Teichert.

Both GRI and Bay Cities Paving & Grading ("BCPG"), the apparent 3rd low bidder, utilized Asphalt Oil Supply for the majority of their stated DBE participation. Caltrans' letter (and included memorandum) to RGW Construction ("RGW") on Contract No. 04-2A6204 disallowed the use of Black Diamond towards the DBE goal, but did not result in a non-responsive bid. Caltrans determined that RGW would only be allowed to claim DBE participation of 2.3% (contract goal was 11%).[1] In consideration of Caltrans' finding in the letter addressed to RGW, Teichert did not include the additional cost to use a 2nd tier asphalt oil supplier for DBE participation. If the stated DBE participation for Supply Oil is subtracted from GRI's and BCPG's DBE commitment forms, the resulting DBE commitment is 1.09% for GRI and 3.55% for BCPG. Teichert's stated commitment is in line with both those figures.

Teichert made adequate good faith efforts despite not meeting the established goal. Teichert's bid is **$184,509** less than GRI's bid; thus GRI's bid protest not only lacks merit, but would require an additional unnecessary expense for the taxpayers of the state of California. For the reasons stated above and Caltrans' consistent practice, Teichert respectfully requests Caltrans reject GRI's bid protest and proceed with the award of this contract to Teichert. Should you need any additional information, I can be reached at 916-645-4855

Sincerely,

Eric Stannard
Director of Public Procurement

eb
Attachment

cc: T Corvello – Teichert Construction

[1] A copy of the Caltrans' 04-2A6204 letter to RGW is attached to this letter for your facility of reference.

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
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Flex your power!
Be energy efficient!

January 23, 2014

Facsimile: (925) 961-1925

William S. Stewart, President
RGW Construction, Inc.
550 Greenville Road
Livermore, CA 94550

04-2A6204
04-Sol-12-Var
B.O. 11/6/2013

Dear Mr. Stewart:

The Department of Transportation (Caltrans) received the attached Disadvantaged Business Enterprise (DBE) Commitment form for Contract No. 04-2A6204 from RGW Construction, Inc. (RGW) on November 12, 2013. Caltrans established a Disadvantaged Business Enterprise (DBE) goal of 11 percent for this project. RGW initially claimed DBE participation of $802,775, or 11.8 percent of the total bid amount.

RGW listed (for credit towards the DBE goal) Black Diamond Asphalt (Black Diamond) to provide Hot Mix Asphalt for the amount of $609,305. Based on the information outlined in the attached memorandum from the Office of Business and Economic Opportunity, Contract Evaluation Branch (CEB), Black Diamond's participation has been disallowed because Black Diamond will not be responsible for negotiating price, determining quality and quantity and ordering of the asphalt oil. Therefore, the commitment amount of $609,395 listed for Black Diamond cannot be counted towards the DBE goal. As a result, the total dollar amount counted towards the DBE goal has been adjusted to $181,680, or 2.3 percent of the total bid amount.

CEB staff determined that RGW demonstrated a good faith effort towards meeting the DBE participation goal for this contract.

The Resident Engineer will receive a copy of this letter for contract administration compliance.

If you have any questions, please contact John Myers, Contract Evaluation Analyst, at (916) 324-0988.

Sincerely,

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

Attachments

State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Memorandum

Flex your power!
Be energy efficient!

To: EARL SEABERG
Chief
Office of Contract Awards & Services
Office Engineer (OE)

Date: December 18, 2013

From: DEPARTMENT OF TRANSPORTATION (CALTRANS)
Contract Evaluation Branch (CEB)
Office of Business and Economic Opportunity

Contract Number: 04-2A6204
Contract Goal: 11.0%
Bid Advertising Date: August 26, 2013
Bid Opening Date: November 6, 2013
Type of Work: Widen Shoulders and Intersections
Bid Amount: $6,790,317.85

Subject: **Evaluation of Good Faith Effort**

Introduction
The evaluation of RGW Construction Division (RGW Construction) good faith effort (GFE) is in accordance with "*Guidance Concerning Good Faith Efforts*" contained in *49 Code of Federal Regulation (CFR) Part 26, Appendix A*.

After considering all the information provided by RGW Construction as discussed herein, the Contract Evaluation Unit (CEB) has concluded that RGW Construction demonstrated a good faith effort to meet the Disadvantaged Business Enterprise (DBE) contract goal for the reasons set forth below.

DBE Participation
After reviewing RGW Construction Construction's DBE Commitment form, the CEB determined that Black Diamond Asphalt will not be responsible for negotiating price, determining quality and quantity and ordering of the asphalt oil. Therefore, the dollar amount ($609,395) listed for Black Diamond Asphalt to provide asphalt oil was not counted towards the DBE goal.[1]

After the subtraction of the dollar amount from Black Diamond Asphalt, RGW Construction's DBE attainment is 2.3%.

According to the Caltrans Project Database, on August 26, 2013, RGW Construction obtained the project plans for contract #04-2A6204, thus giving RGW Construction 72 calendar days to solicit DBE participation.

[1] 49 CFR § 26.55(c): "Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract... the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality, and quantity, ordering the material, and installing (where applicable) and paying for the material itself."

EVALUATION OF GOOD FAITH EFFORT DOCUMENTATION

1. **Work the bidder made available to DBE firms**

   A. **Claimed by bidder**
   Value of Items of Work Made Available: $4,071,500
   Percentage of Items of Work claimed: 39.8%

   On page 1 of 3, of the Good Faith Efforts Documentation RGW Construction listed the bid items it claimed to have made available to DBE firms.

   The amount of work made available is not the claimed amount. When properly dividing the amount of work made available by the total bid amount the correct percentage is actually 59.9%.

   B. **Calculated by CEB**
   Value of Actual Items of Work Made Available: $4,155,959
   Percentage of Actual Items of Work: 61.2%

   The CEB cross-referenced the work that RGW Construction claimed was made available to DBE firms with the solicitations for DBE participation. The contract bid items made available in the solicitations for DBE participation totaled $4,155,959 or 61.2% of the total bid amount – see ATTACHMENT A.

   The CEB finds that RGW Construction made an adequate amount of work available to show a good faith effort to meet the goal.

2. **Publication efforts placed by the bidder to increase DBE participation**

   Prime Ad Used: Yes
   Prime Ad Placement Date: September 30, 2013
   Other Ads Used: Yes

   Advertisement Method: Daily Construction Service
   Advertisement Date: October 7, 2013
   Advertisement End Date: October 22, 2013

   RGW Construction provided a publication proof from the Daily Construction Service, a newspaper publication.

   Advertisement Method: Small Business Exchange
   Advertisement Date: October 7, 2013
   Advertisement End Date: October 24, 2013

   RGW Construction provided publication proofs from Daily Construction Service, a newspaper and internet publication.

   The CEB finds that RGW Construction advertised in such a manner as to show a good faith effort to meet the goal.

C. Opt-in efforts

Number of DBE firms that used Opt-in: 51
Number of Opt-in DBE firms solicited by bidder: 4

There were a total of 51 opt-in records; 33 firms claimed DBE status. Of the 33 firms that claimed DBE status, 15 were certified as DBE and could have reasonably participated on this project. Those DBEs are:

- Pruitt Trucking (solicited)
- Vintage Paving (solicited)
- R & S Trucking (solicited)
- AC Dike Company (solicited)
- Western Traffic Supply (solicited)
- CMC Traffic Control Specialists (solicited)
- Austin Enterprise (solicited)
- Roby Trucking (solicited)
- Pacific Coast Water Truck
- Triumph Geosynthetics
- KRC Safety Company (solicited)
- A.J. Vasconi General Engineering (solicited)
- Maneri Traffic Control (solicited)
- Water Components Building Supply (solicited)
- R&S Trucking (solicited)

D. Independent Searches by CEB

Work Code and License: C1201 and C-31
Description: Traffic Control (work items 4,5,10-13)
Number of DBE firms in the CUCP: 8
Number Traffic Control DBEs Solicited: 8

RGW Construction will self-perform traffic control bid items.

The CEB performed an independent search of the California Unified Certification Program (CUCP) database for DBE firms that indicated they could work in Caltrans District 4 and provide traffic control as a normal part of their business function; this search located 8 DBEs. RGW Construction sent an invitation to bid to all of these DBE firms.

Work Code and License: C5100 and A, C-8
Description: Structural Concrete (work items 81-82)
Number of DBE firms in the CUCP: 17
Number Traffic Control DBEs Solicited: 17

RGW Construction will self-perform structural concrete bid items.

3. Documentation of Solicitation Efforts

Type of Solicitation	Method	Date	# of Firms
Initial	E-Mail	October 8, 2013	396
Initial	Fax	October 9, 2013	396
Follow Up	E-mail and Fax	November 4, 2013	396

A. Search for DBE firms and initial solicitation efforts

Number of firms identified by bidder: 396
Number of DBE firms solicited by bidder: 396

RGW Construction provided a copy of the search of the California Unified Certification Program (CUCP). According to the documentation provided, this search was conducted on October 3, 2013, and identified 396 individual DBE firms for solicitation.

RGW Construction provided copies of the invitation to bid sent to DBEs, fax transmissions, e-mail transmissions and a DBE contact log. According to the log, a total of 396 individual DBEs were e-mailed and faxed an invitation to bid.

The CEB reviewed the invitations to bid that were e-mailed and faxed at least 28 calendar days prior to the bid opening date and confirmed the documentation contained the contract number, contact information, and items of work made available.

B. Follow-up solicitation efforts

Follow-up solicitation date: November 4, 2013
Number of DBE firms interested in bidding: 10

RGW Construction provided copies of returned faxes and returned e-mails. According to the documentation provided, the follow up to initial solicitation resulted in the following outcome:

Yes	No	Maybe	No Answer
10	11	0	375

Therefore, by November 4, 2013, two days prior to the bid opening date, RGW Construction could have reasonably expected to have met the goal. For a list of bid items that could be performed by the 10 DBEs that indicated they would be bidding, see ATTACHMENT B.

The CEB performed an independent search of the CUCP database for DBE firms that indicated they could work in Caltrans District 4 and provide structural concrete as a normal part of their business function; this search located 17 DBEs. RGW Construction sent an invitation to bid to all of these DBE firms.

Contract Evaluation Unit Analysis of RGW Construction Solicitation Efforts

On October 3, 2013, RGW Construction searched the CUCP for the purpose of identifying DBEs for solicitation.

RGW Construction actively and aggressively solicited DBEs that could have reasonably participated. This solicitation effort resulted in receiving quotations from 13 individual DBEs, which totaled is sufficient to meet the goal.

The CEB finds that RGW Construction solicited in such a manner as to show a good faith effort to meet the goal.

4. Rejected DBE information

DBE Bids Rejected:

According to the documentation provided, RGW Construction received quotations from 12 DBE firms; 2 were accepted and 10 were rejected. The following table lists the 10 DBEs and the reason for rejection:

Work Item	Selected Firm & Quotation	Rejected DBE & Quotation	Reason	Amount Difference
Erosion Control	Marina Landscape $140,525	Nitta Erosion Control	Price	$178,130	$37,605
19,20,24,58,60,61-66	Marina Landscape $323,478	J&M Land Restoration	Price	$350,387	$26,909
Trucking	Undetermined	Roby Trucking	N/A	N/A	N/A
A.C. Dike	RGW Construction $3,652	A.C. Dike Company	Self-Performance	$3,815	($164)
Crack Treatment	RGW Construction $17,400	Austin Enterprise	Self-Performance	$19,668	$2,268
Fencing	Frank Medina General Engineering	Oliveira Fence	Other DBE	N/A	N/A
Guard Railing	Frank Medina General Engineering	PC&N Construction	Other DBE	N/A	N/A
SWPPP	RGW Construction $1,500	S. Kwok Engineers	Self-Performance	$1,500	($0.00)
Signage	RGW Construction $22,865	Schotka Construction	Self-Performance	$20,513	$2,352
Water Quality	RGW Construction $10,800	Tully Consulting Group	Self-Performance	$85,100	$74,300

Of the 10 DBE quotations that were rejected, 8 were rejected for valid reasons 2 were not.

RGW Construction rejected the quotation from AC Dike Company to place hot mix asphalt dike (bid items #75 and #76) and has elected to self perform this work. According to the documentation provided, the quotation from AC Dike Company was $164 cheaper than the bid amounts for contract items #75 and #76. RGW Construction did not provide a reason for rejecting the quotation from AC Dike Company.

RGW Construction rejected the quote from S. Kwok Engineers to provide a storm water pollution prevention plan. According to the documentation provided, the quotation from S. Kwok Engineers was the same price as the bid amount for contract bid item #15 prepare storm water pollution prevention plan. RGW Construction did not provide a reason for rejecting the quotation from S. Kwok Engineers.

While the reasons for rejecting the quotations from AC Dike Company and S. Kwok Engineers were not valid or not stated, the inclusion of these DBEs would not have been significant enough to meet the DBE goal.

The CEB finds that RGW Construction did not provide valid reasons for rejecting quotes from two DBEs.

5. **The names of agencies and the dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents**

In part 5 of the Good Faith Effort documentation, RGW Construction provided a statement "Attachment 5." The document entitled "Attachment 5" was the contact log. CEB staff could not find any instance of an agency that could have assisted in the recruitment of DBEs.

Other than accessing the CUCP, RGW Construction did not provide any documentation of the contact of agencies that for the specific purpose of recruiting DBEs.

The CEB finds that RGW Construction did not use recruitment agencies in such a manner as to show a good faith effort.

6. **Efforts to provide information about the plans, specifications, and contract requirements**

The advertisement in the *Small Business Exchange, Daily Construction Service*, and the invitation to bid sent to DBE firms included the following statement: "Plans and Specs are available to view and copy at office or Caltrans website... contact Dave Czech 925-606-2400."

The advertisement in the *Caltrans Prime Ad* included the following statement: "Plans and specs are available for review at our Livermore office, local plan rooms or builders exchange."

The CEB finds that RGW Construction adequately made plans and specifications available to show a good faith effort to meet the goal.

7. Assistance with bonding, lines of credit, insurance, equipment, supplies, materials, and/or services

The advertisement in the *Small Business Exchange, Daily Construction Service*, and the invitation to bid sent to DBE firms included the following statement: "Contact Dave Czech 925-606-2400 david.czech@rgwconstruction.com for any questions, including bonding, lines of credit, or insurance or equipment or material suppliers. For bonding and other assistance, please call."

The advertisement in the *Caltrans Prime Ad* included the following statement: "RGW can provide assistance with bonding (if required), lines of credit and/or insurance as well as any technical assistance. RGW can also provide assistance in obtaining any necessary equipment, supplies, or materials."

The CEB finds that RGW Construction did make an adequate attempt to make bonding, lines of credit, insurance, equipment, supplies, materials and/or services available to show a good faith effort to meet the goal

8. Additional data to support a demonstration of good faith efforts

RGW Construction did not provide any additional data.

Top Bidders' Claimed DBE Participation

Responsive Bidders :	Claimed DBE Commitment	Claimed DBE Participation	Percentage
RGW Construction	$6,790,317.85	$802,775	11.80%
O.C. Jones & Sons, Inc.	$6,794,237.75	$749,375	11.03%

FINDING OF CALIFORNIA DEPARTMENT OF TRANSPORTATION:

The CEB has determined that RGW Construction demonstrated a good faith effort to meet the DBE participation goal for this contract for the reasons cited in this evaluation report.

Prepared by:

JOHN MYERS
Analyst
Contract Evaluation Unit

Approved by:

SHERRI GASTINELL for
Chief
Program Operations Branch &
Contract Evaluation Unit

TEICHERT CONSTRUCTION

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FAX COVER SHEET

TO: Office Engineer

COMPANY: State of California - Dept. of Transportation

FAX NUMBER: 916-227-6282

FROM: Eric Stannard
Director of Public Procurement

DATE: July 8, 2014

PAGES: 11 including Cover Sheet

RE: Contract No. 10-0V6804
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