

October 2, 2014

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

Subj: 10-0W1904 SAN JOAQUIN COUNTY ON RT 99 IN AND NEAR LODI FROM HAMMER LANE OC TO
SACRAMENTO COUNTY LINE
FEDERAL PROJECT NO. ACNHP-P099(579)E

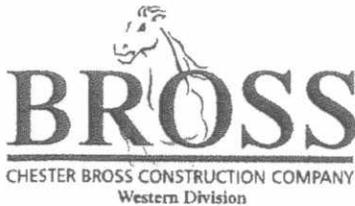
Re: RESPONSE TO THE PROTEST REBUTTAL SUBMITTED BY A. TEICHERT & SON, DBA TEICHERT
CONSTRUCTION (TEICHERT)

Dear Mr. McMillan,

Please consider this letter to be reaffirmation of the formal protest of the bid submitted by Teichert, the apparent low bidder. The bid turned in by Teichert is nonresponsive and therefore must be rejected based on the Department's bidding requirements, strictly enforced policies and governing applicable Federal Regulations. The facts brought forth in the initial protest are clear, irrefutable, and carry with them no ambiguity. It is noted that contrary to past precedence in review of previous Teichert self-written protest involvement, Teichert has elected to retain legal counsel most likely given the merit brought forth in the protest.

The Teichert bid is Mathematically and Materially Unbalanced

The original contentions brought forth are valid, the bid provided by Teichert is both, mathematically and materially unbalanced. More specifically, Bid item 45 Tack Coat is unbalanced to



the detriment of the State. 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." Contrary to the rebuttal contentions, factual support was provided, and is again provided in the next paragraph. The math calculations can be verified by Caltrans and will be verified as having distinct validity.

Utilizing the plans, for the necessary calculations (provided in the initial protest but not listed for redundancy), the following quantities can be accurately ascertained:

HMA-SP PLACEMENT AREA	475,146.00 SY
TACK COAT SHOT RATE	.06 GAL/P SY
TOTAL GALLONS NEEDED	28,508.76
TOTAL TONS @ 240 GAL/PTON	118.79

RUBBERIZED HMA PLACEMENT AREA	1,118,618.00 SY
TACK COAT SHOT RATE	.05 GAL/P SY
TOTAL GALLONS NEEDED	55,930.90
TOTAL TONS @ 240 GAL/PTON	233.05

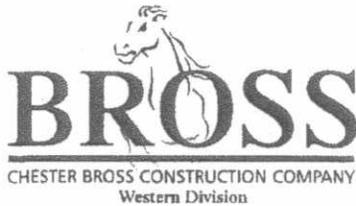
TOTAL TACK NECESSARY: 351.84 TONS

TOTAL TACK BID QTY: 150.00 TONS

EXPECTED OVERRUN QTY: 201.84 TONS

The calculations given above are accurate and conservative. It is clear that the bid quantity for item 45 is understated by no less than 201.84 tons. At the inflated unit price provided by Teichert, the total cost increase to the government is \$373,404.00.

The Teichert rebuttal states "There is no factual support for this argument." The facts are clear, the tack coat will overrun. Teichert, being a prudent and responsible bidder, certainly verified these quantities prior to the bid close, recognized the fact, and unbalanced the unit price for bid item 45 to capitalize on the same. To have not calculated necessary quantities would be considered irresponsible.



In review of countless other Caltrans bid submissions by Teichert, it is clear that the \$1,850.00 unit price for tack coat on this bid is grossly inflated when compared to numerous past Teichert bids. The supply price for the materials has not increased substantially over the past referenced timeframes, though contrary to Teichert past pricing, this bid seems to require exponentially higher pricing.

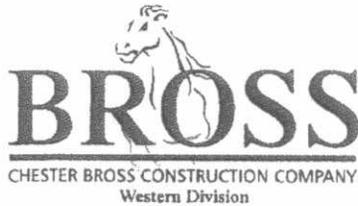
The Teichert rebuttal, goes on to provide a justification summary for the \$1,850.00. Though not common practice, Teichert, for justification has now included the delivery and spread charges as a means to try and substantiate the high price in what appears to be a futile effort at generating justification.

The Teichert rebuttal refers to the calculations provided as justification in the initial protest as erroneous. The facts are clear, the tack item will overrun not less than 202 tons. This will change each bidders initial bid price by a considerable amount. When applied accordingly, the bid ranking changes, the re-ranking is accurate, real, and provided again:

<u>RANKING</u>	<u>COMPANY</u>	<u>BASE BID</u>	<u>% ABOVE LOW</u>
LOW	CHESTER BROSS CONST	\$23,382,375.00	
2	TEICHERT	\$23,403,380.00	0.1%
3	O.C. JONES	\$23,651,480.00	1.2%
4	DESILVA-GATES	\$24,181,777.00	3.4%
5	GRANITE	\$24,428,631.36	4.5%
6	BAY CITIES	\$24,698,637.51	5.6%
7	GEORGE REED	\$24,839,959.20	6.2%
8	GHILOTTI BROS	\$25,917,329.00	10.8%

Teichert, to the detriment of the State, stands to gain substantial additional dollars by mathematically and materially unbalancing this item as they have, causing an unreasonably high price for the bid item total and the project lending favor to the fact that the Department would be taking on an unacceptable risk.

The Teichert rebuttal makes an effort to camouflage its unbalancing by referencing the other unit prices provided by the other bidders for this project. This effort, simply validates the fact that most other bidders were also responsible and calculated the necessary tack quantity. Once, realizing the



overrun they too unbalanced the tack unit price to try and capitalize to the detriment of the State. Granted, if the higher unit price providers were asked to justify their prices, they would most likely have to show that they were purchasing a new Distributor Truck in the item to account for extraordinarily high unit prices.

The Teichert rebuttal goes on to discuss speculation on the part of the initial protest. Again, the facts presented are real, clear and irrefutable. Specific speculative references and assumptions are presented simply in support of the dominating facts.

It can also be ascertained that Teichert has been deemed non-responsive for mathematically and materially unbalancing Caltrans bids in the recent past. One recent example would be on 10-OT1604. The Caltrans notification letter deeming the Teichert bid for that project states in part:

"As you are aware, Caltrans evaluates each bid to determine whether a bid meets the requirements of both State and Federal contract approval process. In this case, Caltrans Engineers evaluated the bid submitted by Teichert and determined that Teichert submitted a bid that was materially and mathematically unbalanced."

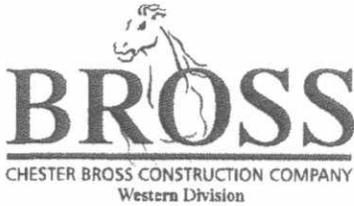
"A mathematically unbalanced bid is a bid containing lump sum or unit bid items that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs. A materially unbalanced bid is a bid which generates a reasonable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

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

Teichert did not achieve the 7.0% DBE goal for the project

The Teichert rebuttal states that the *"Chester's argument demonstrates a fundamental misunderstanding of the California subcontractor listing law and the Caltrans Standard Specifications."* This is speculation on the part of the rebuttal, nothing more. More specifically, Chester Bross Construction has a very clear understanding of the Public Contracts Code, California subcontractor listing law, and the Caltrans Standard Specifications.

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 Teichert rebuttal, in an attempt to justify the Teichert DBE listing inconsistency, has made effort to again, camouflage the error and provide the opinionated assumption that the portion "*where applicable*" entitles a bidder to disregard the rest of the direction outlined therein. As such, apparently, Teichert decided that listing A.C. Dike Co. was not applicable. Was this an incorrect decision on the part of Teichert, or merely and most likely an attempt after the fact to justify the error? The answer cannot be ascertained and would be speculative.

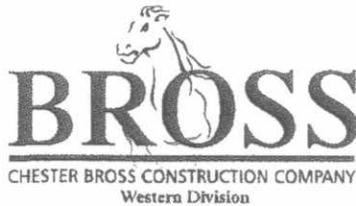
The facts are clear, the Teichert subcontractor listing and subsequent DBE Certification forms are not consistent.

Teichert did not meet the Subcontractor Listing Requirements

The Teichert rebuttal makes a futile attempt to justify its errors with respect to the strictly enforced subcontractor listing requirements.

The Teichert rebuttal goes on to effectively self-admit its error. Teichert admits in listing the items of work in question, as "*work as described in bid items: 59, 66, 74*". This statement and fact alone demonstrates and or brings clarity to the contentions brought forth in the initial protest. The listing as such, states with irrefutable clarity that the subcontractor in question will be performing the work as described in the respective bid items. This is clear that 100% of the work as described in the bid items will be performed. Teichert then changed the scope of work for subcontractors on its 24 hour subcontractor submittal by reducing the scope of work for given items as outlined in the initial protest. In effect, Teichert changed the percentage of given bid items between the bid day subcontractor listing and the 24 hour subcontractor listing, thereby changing the scope of work.

The Caltrans Subcontractor List form states in part... "*Under Public Contract code section 4100 et seq., the Bidder must set forth in the bid the name, the location of the place of business, the California contractor license number, and the portion of work of each subcontractor who will perform work or labor or render service to the Prime contractor in or about the construction of the work or improvement...*" The instruction on the Caltrans Subcontractor Listing form are clear, concise, and an essential part of the bid document. Failure to comply with these instructions renders a bid non-responsive. Additionally, the Act is clear that a contractor may not alter the initially subcontracted scope of work of a subcontractor between the Bid Day Subcontractor List and the 24 hour submittal.



Teichert failed to properly submit the Subcontractor List by implementing impermissible changes to the Subcontractor List. The Teichert Bid Day Subcontractor List and 24 Hour Submittal with respect to numerous subcontractors are materially inconsistent. On bid day, Teichert weather intentionally or not, listed bid item numbers with the clarification "work as described in bid items" which represents nothing other than 100% of the work. Teichert then changed the scope of work for numerous subcontractors for numerous items of work by reducing the participation amount from 100%.

The changes as brought forth and then validated by the Teichert rebuttal are impermissible changes to the Subcontractor List.

Caltrans has and continues to be very strict in its interpretation of materially changing the scope of work between the Bid day Subcontractor List and the 24 hour subcontractor listing.

Conclusion

Based on the considerable facts, references and information presented initially and herein, governing regulations, specifications, and law, the bid provided by Teichert should be rejected and deemed non-responsive.

Therefore, 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-OW1904.

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