



March 5, 2014

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

Subj: 10-0Y2604 STANISLAUS COUNTY IN AND NEAR PATTERSON FROM WARD AVENUE TO ROGERS
ROAD ON ROUTE 33

Re: RE-AFFIRMATION OF FORMAL PROTEST OF BID SUBMITTED BY KNIFE RIVER CONSTRUCTION
AND CLARIFICATION OF BID SUBMITTED BY SIERRA NEVADA CONSTRUCTION

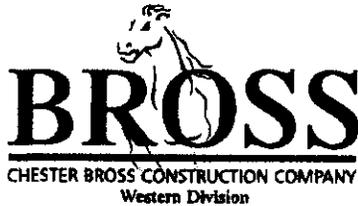
Dear Mr. McMillan,

In reviewing the bid protest response letters provided by both Knife River Construction (KRC), and Sierra Nevada Construction (SNC), Chester Bross Construction (CBC), submits the following.

In reviewing the response letter provided by KRC, it is clear that KRC did not clearly address any of the protest contentions outlined in the initial protest letter submitted by CBC.

Please consider this letter as second notification and re-affirmation of our protest of the bid submitted by KRC. Detailed contentions outlined in our initial protest have not changed and carry with them our strongest support.

In brief review of the CBC contentions with regards to KRC, the bid provided by KRC is non-responsive as KRC effectively changed initial bid day submitted documents, and this is not allowed by Caltrans and is strictly enforced. More specifically, section 2-1.18C 2. Of the Standard Specifications states in part, "You may submit this information with your bid. ***if you do not***, submit it such that it is received at the Office Engineer no later than 4:00 p.m. on the 2nd business day after bid opening." KRC did in fact submit the non-small business participation request, information, given percentages etc. complete and final on bid day. As such, the initial and only applicable non-small business submittal is the submittal provided on bid day complete and final in its entirety. KRC then made an attempt to ***change*** the submittal which in an attempt to achieve the necessary 25% minimum that was not achieved by the bid day submittal. For these reasons, the bid submitted by KRC is non-



responsive based on the attempt to change the initial non-small business documentation. Should for any reason, Caltrans deem the KRC bid as responsive, Caltrans must utilize the bid day submittal of the non-small business preference as submitted by KRC on bid day. Any decision otherwise by the Department would be in direct conflict with the express, clear requirements previously provided herein with respect to section 2-1.18C 2. of the Standard Specifications. As such and in the unlikely event, that Caltrans allow the KRC bid as responsive, KRC did not meet the required minimum 25% small business participation goal, and cannot receive the bid ranking credit adjustment as re-affirmed as follows.

The CBC contentions with regards to KRC listing a materials supplier that is clearly an extra participant in the transaction of purchasing asphalt, Janet Simas Paving, Inc. DBA Spirit Road Oils (SRO), are again reaffirmed herein. SRO is clearly not performing a commercially useful function and is indeed acting as a pass through or extra participant. As such, and for any reason, if Caltrans were to allow a change after bid day submittal, KRC cannot utilize the SRO dollars allocated towards the 25% non-small business participation goal as SRO is clearly not performing a commercially useful function and is indeed acting as a pass through or extra participant.

In summation with regards to the bid submitted by KRC, the bid is non-responsive based on the fact that KRC changed and or modified a bid day final submittal of the non-small business participation documents. Notwithstanding this attempted change, KRC has utilized SRO as a futile attempt at reaching the required minimum of 25% bid total to receive the bid ranking adjustment. SRO is an extra participant in the transaction of purchasing asphalt and is not performing a commercially useful function. As such, KRC did not meet the 25% non-small business participation goal and cannot receive the respective bid ranking credit.

The original contention by CBC that SNC was non responsive based on the failure to present or meet the minimum required DVBE goal is incorrect. The OVBE submittal provided by SNC was not posted prior to CBC filing the initial protest. As such, CBC concedes that SNC is indeed a responsive bidder. However, SNC did not request non-small business participation, as such, SNC cannot receive the bid ranking adjustment as it did not necessary 25% minimum small business participation. As such, after required bid rank adjustments, CBC is the lowest responsive and responsible bidder.

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. 10-0Y2604.

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 Facsimile to (916) 227-6282