



CONSTRUCTION COMPANY

P. O. BOX 1508, RANCHO CORDOVA, CA 95741-1508 (916)852-5530 FAX (916)852-5533

VIA CERTIFIED MAIL
November 24, 2015

John C. McMillan, Deputy Division Chief
California Department of Transportation
Division of Engineering Services
Office Engineer
P.O. Box 168041, MS-43
Sacramento, CA 95816-8041

Caltrans Contract: 03-0G0304
Subject: ACC Bid Protest

Dear Mr. McMillan:

I represent Viking Construction Company, Inc. [hereinafter "Viking"] in connection with the Bid Protest submitted on behalf of American Civil Constructors West Coast [hereinafter "ACC"]. ACC contends Viking's bid is nonresponsive because IRB Construction [hereinafter "IRB"] was not identified on Viking's subcontractor list. Because the polyester volumetric mixer truck rental included an operator, ACC contends IRB is acting as a subcontractor and should have been included on Viking's subcontractor list. For reasons stated below, ACC's contention is without merit and the Contract should be awarded to Viking as the lowest responsive bidder.

IRB IS NOT A SUBCONTRACTOR

IRB Construction [hereinafter "IRB"] was not included on Viking's subcontractor list because IRB is not furnishing services or work that requires a contractor's license. Attached as Exhibit A is IRB's proposal submitted to Viking for the Project. As stated in its proposal, IRB will be furnishing a polyester volumetric mixer truck and an operator. IRB personnel operate the equipment for the sole purpose of mixing the polyester concrete for use on the Project. IRB will not place the polyester concrete or provide any other work or services that would require a contractor's license. ACC asserts that Viking has attempted to circumvent the Subcontractor Listing law by not including IRB in its list of subcontractors because IRB is performing subcontract work. IRB is not performing any subcontract work as indicated in IRB's quote. IRB is only renting the mixing equipment and providing a mixing crew. In fact, the IRB quote attached as Exhibit A identifies the crew cost for operation of the mixer and

makes clear that production rates by the prime contractor crew in placing the polyester concrete is unknown and that the prices in the quote are based on approximately two loads per shift.

The operator of the mixer truck and the truck rental are within the material supply chain whose activity involves only the mixing of material and not the placement of material. Identical to the services provided by the operator of a truck supplying portland cement concrete, the operator or driver mixes the concrete prior to placing the material. The IRB operator and driver of the concrete truck essentially perform the same function and service. Neither of these services require a contractor's license nor are they be required to be listed as a subcontractor.

California Code of Regulations, Title 16, Division 8, Article 3 identifies a C-8 Concrete Contractor as follows: "A concrete contractor forms, pours, places, finishes and installs specified mass, pavement, flat and other concrete work; and places and sets screeds for pavements or flat work." As stated in IRB's Proposal attached hereto as Exhibit A, IRB will not place any polyester concrete material on the Project, but will only mix the material prior to being poured.

The California Subletting and Subcontracting Fair Practices Act is codified in the California Public Contract Code commencing at Section 4100. Section 4104 states in pertinent part as follows:

"Any officer, department, board, or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offered to perform the work, shall, in his or her bid or offer, set forth:

- (a)(1) The name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to the prime contractor....
- (2) An inadvertent error in listing the California contractor license number provided pursuant to paragraph(1) shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected contractor's license number is submitted to the public entity by the prime contractor within 24 hours after the bid opening... ."

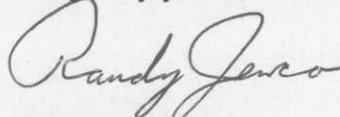
The clear intent of the California Subcontractor Listing Law is to require prime contractors to only identify licensed subcontractors who perform work on a project. Given the fact that IRB will not be furnishing labor or services requiring a contractor's license, Viking was not required to identify IRB in its list of

subcontractors.¹ ACC attaches to its protest, Caltrans' determination of a bid protest involving A. Teichert & Sons, Inc. The bid protest involving A. Teichert & Sons involved a different set of circumstances and Caltrans found in connection with that Project that the subcontractor involved was required to possess a contractor's license and the contractor did not. There is no question in our situation, Viking will not exercise any control over the services performed by IRB's mixing truck operator and IRB is not required to possess a contractor's license for the scope of work to be performed.

Furthermore, the Caltrans electronic bidding process will not allow a bidder to submit a Subcontractor List without inserting the license number for each subcontractor listed. The Caltrans electronic bidding process further indicates the intent of the law and the requirement that only licensed subcontractors need to be listed.

For each of the reasons stated above, Viking was not required to list IRB as a subcontractor since IRB will not be furnishing labor or any other services requiring a contractor's license. Accordingly, we request that Caltrans award the contract to Viking as the lowest responsive bidder.

Very truly yours,



RANDY JENCO
President

Enclosure

¹ California Business and Professions Code Section 7052 clearly states that license requirements do not apply to any individual or entity who "only furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of the contractor."

IRB Construction, Inc.

DBE Firm #42290
 CSLB Lic. 995040

Polyester Volumeric Mixer Truck Rental

725 6th Street
 Marysville, CA 95901
 DBE Cert #42290
 Contractor's License 995040

Contacts:
Rodney Spencer
 Cell Phone: (916) 612-6406
 irbconstructioninc@gmail.com

Contract Information

Submitted: Rodney

Contract:
 Attn: Estimator
 Description: Polyester Truck Rental
 Project 03- 0G0304

Equipment/Cost				
Item	Description	Estimated Qty	Unit Rates	Estimated Ext
	Polyester Mobile Mixer (Maximum Shift 8 Hours) Daily Rate		6,800.00	-
	Polyester Mobile Mixer (Overtime - After 8 Hours/Per Hour)		565.00	-
	Polyester Mobile Mixer (Overtime - After 10 Hours/Per Hour)		850.00	-
	Polyester Mobile Mixer (Saturdays 1 1/2 Times Daily Rate)		850.00	-
	Polyester Mobile Mixer (Sundays Double Added to Daily Rate)		1,200.00	-
	Polyester Mobile Mixer (Mobilization) Each Way		12,000.00	-
	Total Equipment Cost			\$ -
Crew/Cost				
	Polyester Mobile Mixer (Minimum Shift 8 Hours) Hourly Rate		475.00	\$ -
	Polyester Mobile Mixer (Overtime - After 8 Hours/Per Hour)		550.00	\$ -
	Polyester Mobile Mixer (Overtime - After 10 Hours/Per Hour)		550.00	\$ -
	Polyester Mobile Mixer (Saturdays 1 1/2 Time)		550.00	\$ -
	Polyester Mobile Mixer (Sundays Double Time)		750.00	\$ -
	Polyester Mobile Mixer Crew (Mobilize/Demobilize)		500.00	\$ -
	Total Crew Cost			\$ -
Above prices based on approx 2 loads per shift				See Below

Actual Production rates by Prime crew are unknown

12'x6' PCC base used for Polyester Trial Slab by others if required by Department
 Removal of Trial Slab and PCC base by others

$$\$6800 + (475 \times 8) = \$10,600 / \text{SHIFT}$$

$$\$10,600 / \text{SHIFT} \times 3 \text{ SHIFTS} = \$31,800 -$$