

**OLES MORRISON****OLES  
MORRISON  
BINKER  
BAKER LLP**

Robert L. Leslie  
[leslie@oles.com](mailto:leslie@oles.com)

February 26, 2016

Office Engineer, Construction Contract Awards  
Attention: Jeff Defevere, Office Chief  
California Department of Transportation  
1727 30th Street, MS-43  
Sacramento, California 95816-8041

Via facsimile: 916-227-6282 & US Mail

Re: Colfax Truck Climbing Lane, Caltrans Contract No. 03-1F4004  
Protest of Award to A. Teichert & Son, Inc. dba Teichert Construction, and  
Request for reconsideration of Caltrans position that Granite did not perform good  
faith efforts

Dear Mr. Defevere:

This is in reply to Teichert Construction's letter dated February 19, 2016, responding to my letter on behalf of Granite Construction Company of February 19, 2016; and with respect to the bid protest letter of DeSilva Gates Construction, LP dated February 23, 2016.

Teichert' bid is not the lowest bid, its bid is \$570,918.32 higher than Granite, the low bidder, and Teichert's bid is nonresponsive and must be rejected.

1. **Granite's bid is the lowest responsive bid; it is \$570,918.32 lower than the next bid.**
  - a. The second bidder, Teichert, did not meet the 11% DBE Goal

The second bidder proposed meeting the majority of its DBE participation through trucking with Double M Trucking. The second bidder submitted only a trucker's bid day quote to Caltrans. The trucker's quote included per ton hauling rates from respective commercial plant material sites. The quote also listed an hourly rate for off-haul generated from the project. The quote designated that the rates provided were for non-Prevailing Wages which conflicts with the off-haul. Nowhere does the quote suggest that the rates were for DBE trucks. Lastly the quote was not signed and did not provide total quantities, or dollar amounts. The quote submitted had been modified by others to include proposed (but uncertified) quantities and dollar amounts. The second bidder did not provide the required DBE Confirmation, or required DBE Certification. For comparison, Caltrans Contract No. 03-4F0204 Hwy 65 bid on November 17, 2015, the day before this job bid. On the Hwy 65 bid, the proposed DBE trucks were properly submitted with both the DBE Commitment and DBE Certification (enclosed). For Colfax they did not. Double-M trucking cannot be counted toward meeting the second bidder's DBE goal.

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Teichert's letter of February 19, 2016 states that they did submit the required DBE Confirmation, however this has not been substantiated by Caltrans that this was received within the 4 business day requirement; Caltrans should be able to provide date-stamped documentation. It appears that this information was requested by Caltrans and received with the DMV registrations sometime in December 2015. Caltrans typically rejects late bid documents, which includes submittals that are part of the bid and required to be submitted until 4 days after bid opening. (See e.g., Caltrans letter dated May 26, 2010 to Coffman Specialties, Inc. re Contract No. 11-2T0404; Caltrans letter dated July 3, 2015 to Coffman Specialties, Inc. re Contract No. 11-288814 (copies of both enclosed).)

This is not about the second bidder, who is a respected competitor. This is about maintaining a fair and consistent playing field for all bidders, including subcontractors and suppliers. When rules are changed, unclear, or ambiguous, the program and everyone involved suffers. As stewards of the taxpayer's money, Caltrans has an obligation to provide the best value for each transportation dollar spent. Awarding projects to the second bidder, or often times third, or even fourth bidder, over self-inflicted, or perceived formalities is not in the best interest of the taxpayers of California. It's troubling that Caltrans took two months to review the Colfax bids, yet made a Good Faith Effort Reconsideration decision in two days. It's equally troubling how Caltrans expects the low bidder to make 308 follow up phone calls (which the low bidder did accomplish) to prospective DBE's, yet Caltrans can't seem to make just one phone call to the second bidder's proposed trucker to verify their full DBE Confirmation in question.

b. Granite's Good Faith Effort

Caltrans' Good Faith Effort Reconsideration Committee deemed that Granite did not demonstrate a good faith effort, because in Caltrans' opinion, "Granite made a business decision to follow up on their solicitations just two days prior to the bid opening, believing that the DBE's would be more responsive." Neither the CFR nor Caltrans specifies the number of days ahead of the bid date required for follow up. Caltrans' statements here are conflicting. In one sentence it says Granite did not demonstrate a good faith effort, and in the next says that Granite believed that the DBE's would be more responsive. Granite's business decision was accurate and the DBE's were in fact "more responsive." This fact was verified by the number of DBE quotes that Granite received, as well as the number of DBE firms utilized by Granite. Twice as many as any of the other bidders.

**2. Teichert admits its DBE Confirmation was untimely and thus its bid was nonresponsive.**

Teichert says in its letter that "Caltrans did indeed receive the form from Double M in December of 2005 . . ." This is after the time permitted and makes Teichert's bid nonresponsive.

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DBE Confirmations must be submitted "No later than 4 p.m. on the 4th business day after bid opening." (Contract No. 03-1F4004 Revised Standard Specifications, Section 2-1.33D(2)(b) on page 12 of 341.)

Bid opening was November 18, 2015 which made the deadline to submit DBE Confirmation forms not later than 4 p.m., November 24, 2015. Because Teichert did not submit a DBE Confirmation for Double M Trucking until December 2015, its bid is not responsive.

Caltrans has a history of rejecting late bids which includes submittals that are part of the bid but not required to be submitted until 2 and 4 days after bid opening. (See e.g., Caltrans letter dated May 26, 2010 to Coffman Specialties, Inc. re Contract No. 11-2T0404; Caltrans letter dated July 3, 2015 to Coffman Specialties, Inc. re Contract No. 11-288814 (copies of both referenced above and enclosed).)

**3. Teichert's bid is non-responsive because it fails to promise to comply with the contract terms.**

Teichert's bid was non-responsive because it fails to promise to pay prevailing wages, as the contract requires. The contract requires, among other things, that prevailing wages be paid for the trucking of the "Offhaul Excess Material," Item 63, for which Teichert claims DBE credit of \$1,832,000.00.

Teichert claims that it will enter into a subcontract with Double M Trucking pursuant to Double M's quote which expressly states that "Quoted rates are not prevailing wage."

Accordingly, Teichert's bid promises to enter into a contractual arrangement where prevailing wages are not being paid for work that the contract requires prevailing wages be paid. Thus, Teichert's bid fails to promise to the State that Teichert will perform the contract's terms. This is the classic definition of a non-responsible bid

**4. Teichert's bid is nonresponsive as it failed to list the scope of a subcontracted Item listed for less than 100%.**

This is addressed in the letter to Caltrans from DeSliva Gates Construction dated February 23, 2016.

**5. Granite has standing.**

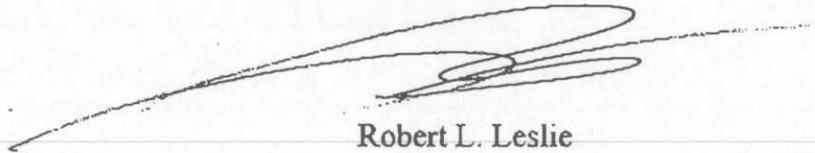
Granite has standing to protest because Caltrans improperly found Granite did not perform DBE good faith efforts based on Teichert's improper and non-responsive bid, and because any taxpayer can protest the wasting of half a million dollars of taxpayer money by awarding a contract to a bidder whose bid was nonresponsive.

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**Conclusion.**

We demand that Caltrans reject the non-responsive bid of Teichert, and ask Caltrans to reconsider its position as to Granite's good faith efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Leslie". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Robert L. Leslie

encls.

cc: Teichert Construction, Attn: Eric Stannard  
DeSilva Gates Construction, LP, Attn: Michael A. Kloos

**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) 227-6151

TTY 711



*Flex your power!  
Be energy efficient!*

May 26, 2010

Facsimile: (858) 536-3131

Colleen Coffman, President  
Coffman Specialties, Inc.  
9685 Via Excelencia Ste. 200  
San Diego, CA 92126

11-2T0404  
11-SD-805-R49.9/R51.7,42.6/46.5  
B.O. 4/30/10

Dear Ms. Coffman:

Coffman Specialties, Inc. (Coffman) submitted a bid on Contract 11-2T0404 on April 30, 2010. By this letter, the Department notifies Coffman that its bid is non-responsive because it failed to submit the Subcontractor List form on time.

In conformance with Section 2-1.12, "Bid Document Completion," of the Amendments to Standard Specifications, "On the Subcontractor List you may either submit each subcontracted bid item number and corresponding percentage with your bid or fax this information to (916) 227-6282 within 24 hours after bid opening (emphasis added). If you fail to submit this information within the time specified, your bid is non-responsive."

The Subcontractor List form states, "Complete columns 1 and 4 with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening (emphasis added). Failure to provide complete information in columns 1 through 4 within the time specified will result in a non-responsive bid."

The Subcontractor List was due at 2:00 pm on May 1, 2010. Attached are copies of Coffman's Subcontractor List submitted with your bid and your completed Subcontractor List form faxed on May 3, 2010 at 1:45 pm.

Based on the above, the Department finds your bid is non-responsive. The Department will proceed to award the contract to the lowest responsible bidder provided all requirements are met.

Sincerely,

JOHN MCMILLAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

**DEPARTMENT OF TRANSPORTATION**  
 DIVISION OF ENGINEERING SERVICES  
 OFFICE ENGINEER  
 1727 30th STREET, MS-43  
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 PHONE (916) 227-6299  
 FAX (916) 227-6282  
 TTY 711  
 www.dot.ca.gov



*Serious Drought.  
 Serious drought.  
 Help save water!*

July 3, 2015

Facsimile: (858) 536-3131

Colleen Coffman, President  
 Coffman Specialties, Inc.  
 9685 Via Excelencia  
 San Diego, CA 92126

11-288814  
 11-SD-11, 125, 905-Var  
 B.O. 06/11/2015

Dear Ms. Coffman:

The Department of Transportation (Caltrans) received a bid submitted by Coffman Specialties, Inc. (Coffman) for Contract 11-288814 on June 11, 2015. Caltrans notifies Coffman that its bid is nonresponsive because it failed to properly submit the Subcontractor List form.

Caltrans confirms that it received a 24 hour Subcontractor List form from Coffman on June 12, 2015 at 11:26am. However, on February 27, 2015, a revision was made to the 2010 Revised Standard Specifications requiring all bidders to submit the Subcontractors List form at time of bid.

Attached for your reference are excerpts from the Notice to Bidders and Special Provisions, the Revised Standard Specifications Sections 2-1.10 and 2-1.33 D.

**2-1.10 SUBCONTRACTOR LIST**

02-27-16

On the Subcontractor List form, list each subcontractor to perform work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.).

For each subcontractor listed, the Subcontractor List form must show:

1. Business name and the location of its place of business.
2. California contractor license number for a non-federal-aid contract.
3. Public works contractor registration number
4. Portion of work it will perform. Show the portion of the work by:
  - 4.1. Bid item numbers for the subcontracted work
  - 4.2. Percentage of the subcontracted work for each bid item listed
  - 4.3. Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent

**2-1.33D Bid Form Submittal Schedules**

**2-1.33D(1) General**

The Bid book includes forms specific to the contract. The deadlines for the submittal of the forms vary depending on the requirements of each contract. Determine the requirements of the contract and submit the forms based on the applicable schedule specified in section 2-1.33D.

Bid forms and information on the form that are due after the time of bid may be submitted at the time of bid.

cc: MK  
 CC  
 JTC

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**Bid Form Submittal Schedule for a  
Federal-Aid Contract with a DBE Goal**

Form	Submittal deadline
Bid to the Department of Transportation	Time of bid except for the public works contractor registration number
Copy of the Bid to the Department of Transportation as submitted at the time of bid with the public works contractor registration number	10 days after bid opening
Subcontractor List	Time of bid except for the public works contractor registration number
Copy of the Subcontractor List as submitted at the time of bid with the public works contractor registration number	10 days after bid opening
Small Business Status	Time of bid
Opt Out of Payment Adjustments for Price Index Fluctuations <sup>a</sup>	Time of bid
DBE Commitment	No later than 4 p.m. on the 4th business day after bid opening
DBE Confirmation	No later than 4 p.m. on the 4th business day after bid opening
DBE Good Faith Efforts Documentation	No later than 4 p.m. on the 4th business day after bid opening

<sup>a</sup>Submit only if you choose the option.

Bidders are required to follow the bidding instructions and to review the Notice to Bidders and Special Provisions of the Contract, which are made available to all persons who wish to bid on a project. A basic rule of competitive bidding is that bids must conform to the specifications of the contract and if a bid fails to conform to the specifications, it may not be accepted. Furthermore, it is the sole responsibility of the bidder to adhere to the requirements and specifications, in addition to any addendums issued subsequent to the advertisement of the project.

Concerning the Subcontractors List form, the electronic bidding documents for this contract contained a Subcontractors List form (DES-OE-0102.2C REV 2/2015) and in addition, also included instructions for submittal. No directions are provided to the bidder to use any other form of this bid document. Coffman's failure to timely submit the Subcontractor List form at the time of submission of the bid renders its bid nonresponsive.

*[Faded and mostly illegible text, likely bleed-through from the reverse side of the page.]*

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Based on the above, Caltrans will proceed to award the contract to the lowest responsible bidder provided all requirements are met.

Your attention is directed to Section 3-1.04 of the 2010 Standard Specifications. Caltrans is not obligated to offer an extension of the award period for a nonresponsive bid. Should you wish to extend your bid while resolving a nonresponsive finding, you must send your request to the Office Engineer no later than 4:00 p.m., two business days prior to the expiration of your bid,

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

Sincerely,



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

