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CONTRACTORS LICENSE NO. 704195A

December 20, 2013

VIA FACSIMILE TRANSMISSION – (916) 227-6282 and U.S. MAIL

John C. McMillan
Deputy Division Chief
Division of Engineering Services
State of California, Department of Transportation
1727 – 30th Street
P.O. Box 168041
Sacramento, CA 95816

Re: Caltrans Contract No. 04-OA5344, 04-Sol-80, 12-Var
Bids Opened: 11/20/13
Response to Bid Protest of Teichert/RNR, a Joint Venture

Dear Mr. McMillan:

This letter responds to the protest filed by Teichert/RNR, a Joint Venture ("T/RNR"), and addresses each of the six points in T/RNR's protest letter dated December 5, 2013. As discussed below, T/RNR's protest is completely without merit.

1. T/RNR Claims That DGC-V's Bid is Mathematically Unbalanced.

As stated previously in the letter DeSilva Gates Construction and Viking Construction, a Joint Venture ("DGC-V") sent to Caltrans dated December 2, 2013, DGC-V's bid is not unbalanced as claimed by T/RNR.

T/RNR's protest is premised on the mistaken assumption that DGC-V's price of \$0.01/cy for Bid Item 79 (Imported Borrow) is not a reasonable price for the imported borrow work. Yet, as set forth in DGC-V's letter dated December 2, 2013, DGC-V had a benefit not available to other bidders which allows it to have the imported borrow work performed without cost.

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There is no designated borrow pit set forth in the specifications for the imported borrow. Accordingly, each bidder was required to locate its own source for this material. DGC-V has a SMARA approved site that requires reclamation work to be performed. As a result, DGC-V can have the imported borrow for this project delivered and placed without cost. This not only gave DGC-V a significant advantage over other bidders, but also benefitted Caltrans because it allowed DGC-V to submit a lower bid to Caltrans.

T/RNR also identifies eight bid items which it speculates may be higher than what could have been estimated for these items: Bid Items 66, 68, 90, 94, 125, 127, 128 and 153. T/RNR's speculation is without merit.

DGC-V is an item Joint Venture, and each joint venture partner compiled its own estimate of costs independently of the other partner. DeSilva Gates Construction was responsible for Bid Item Nos. 66, 68, 90, 94 and 153, and Viking Construction, Inc., was responsible for Bid Item Nos. 125, 127 and 128. DGC-V's prices for each of these bid items reflects good faith estimates of the true and accurate costs of each item.

In its table on the second page of its protest letter, T/RNR cherry-picked eight bid items out of the 346 bid items in DGC-V's bid to show that DGC-V's prices for these items were higher than other bidders. This is a meaningless comparison. Each bidder has its own cost parameters and performed its own independent estimate of the costs for the various bid items. Accordingly, there will of course be disparities between the pricing of the various bidders. Indeed, a similar table could be made for each of the other bidders showing that its prices for certain bid items were higher than estimated by other bidders.

2. T/RNR's Speculates That Because DGC-V's Bid Is Unbalanced, Caltrans May Pay Unreasonably High Prices For Contract Performance.

T/RNR speculates that Caltrans may pay higher prices because DGC-V's bid is allegedly unbalanced. This speculation is based on the false assumption that DGC-V's bid is unbalanced. Yet, as discussed above, it is not unbalanced as claimed by T/RNR.

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Moreover, Bid Item Nos. 66, 125, 126 and 127 are lump sum or final pay quantity items, and so DGC-V can see no risk to Caltrans with these bid items. Bid Item Nos. 90 and 153 are negligible amounts, involving a total of only \$156,100 of DGC-V's total bid price of approximately \$45,000,000. As for Bid Item Nos. 69 and 94, these items would be subject to adjustment for underruns and/or overruns in quantities in accordance with the Contract, which is the same for all bidders. As discussed above, Caltrans has realized a substantial savings with regard to Bid Item No. 79 because of the special circumstances involving the SMARA-approved site that DGC-V has available. Again, Bid Item No. 79 was not "grossly underbid" as claimed by T/RNR, but was bid at DGC-V's estimated true and actual cost. Although T/RNR claims that bidding that bid item for a nominal amount would not allow the State to share in cost savings by way of a Cost Reduction Incentive Plan (CRIP), CRIPs are assessed based upon a force account cost analysis before a change and a force account cost analysis after a change. The bid prices have no bearing on the calculated cost savings of a CRIP.

3. T/RNR Speculates That DGC-V's Bid May Not Result in the Lowest Overall Cost To the State.

In this section of T/RNR's letter, T/RNR points out that there have been situations in which Caltrans has rejected bids containing nominal bid item prices on the grounds that they were materially unbalanced. These are distinguishable from the present situation because, as discussed above, DGC's bid is not mathematically and materially unbalanced.

For example, in Caltrans' letter dated April 16, 2013, Caltrans rejected a bid from Sierra Nevada Construction, Inc. ("SNC"), where "SNC by its own admission submitted an unbalanced bid." Similarly, in each of the other situations, cited by T/RNR, Caltrans determined that the bid was mathematically and materially unbalanced. Here, on the other hand, DGC-V's bid was not mathematically and materially unbalanced.

Of course, the fact that a bidder submits a nominal bid price for a bid item does not mean that the bid is mathematically or materially unbalanced. Indeed, as shown by the enclosure to DGC-V's letter dated December 2, 2013, Caltrans routinely awards contracts to contractors who have bid a nominal price for an individual bid item. Indeed, Caltrans has made such awards to Teichert.

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As discussed above, DGC-V bid a nominal amount for Bid Item No. 79 because, due to special circumstances, it can have that work performed at no cost. Indeed, if DGC-V had bid some other amount for Bid Item No. 79, this would not have represented DGC-V's true estimated cost for Bid Item No. 79, and would have resulted in an unbalanced bid.

4. T/RNR Speculates That There is a Risk of Front-End Loaded Payments.

T/RNR speculates that there may be a risk to Caltrans because DGC-V may receive "front-end payments" for "work not performed." This is clearly mistaken. Caltrans pays according to the quantity of work performed as the work is completed.

Moreover, the Import Borrow work is one of the first items of work to be performed on the project. Yet, DGC-V bid only a nominal amount for this bid item. Accordingly, DGC-V, by bidding a nominal amount for this item, which is performed early in the project, DGC-V obviously would not be front-end loading its payments.

Most significantly, T/RNR's argument is again premised on its unfounded speculation that DGC-V's bid is mathematically and materially unbalanced.

5. T/RNR Claims That DGC-V Could Have Claimed A Bid Mistake.

T/RNR claims that DGC could have claimed a mathematical mistake in bid with regard to its price for Bid Item No. 79. This claim is false. DGC-V made no mathematical mistake. It bid what it intended, and what it believed reasonably reflects what its cost will be given the special circumstances involved that allow it to have this work performed without cost.

6. T/RNR Claims That DGC-V Will Not Pay Prevailing Wages.

DGC-V will pay prevailing wages on this project. Any speculation by T/RNR to the contrary is untrue. DGC-V jointly and separately have constructed billions of dollars of projects for the State and have paid prevailing wages on all of them. In fact, the Contract requires the payment of prevailing wages.

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7. Conclusion.

DGC-V's bid is the lowest bid received by Caltrans. Its bid is approximately \$436,000 lower than the next low bid. It would certainly amount to a disservice to Caltrans and taxpayers if DGC-V's low bid were rejected in order to award the project to a bidder whose bid is approximately \$436,000 higher.

Moreover, it would be improper and illegal for Caltrans to reject DGC-V's low bid. As discussed above, contrary to T/RNR's speculation, DGC-V's bid is not mathematically and materially unbalanced.

DGC-V respectfully requests that Caltrans reject the bid protest submitted by T/RNR, and award the contract to DGC-V, the low responsive and responsible bidder.

Sincerely,

DESILVA GATES-VIKING, a Joint Venture
By DeSilva Gates Construcion



Richard B. Gates,
President