

24207 County Road 100A  
Davis, CA 95616  
(530) 406-4200 - FAX (530) 406-4299

## Teichert / RNR, a Joint Venture

VIA FACSIMILE (916) 227-6282 AND HAND-DELIVERY ON December 5, 2013

John C. McMillan  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services  
State of California  
Department of Transportation (Caltrans)  
1727 30<sup>th</sup>, Bidder Exchange, MS 43  
Sacramento, CA 95816-8041

Subject: Contract No. 04-0A5344  
04-SOL-80-11.3/12.9  
04-SOL-12-2.5/2.6  
Federal-Aid Project: ACNHP-X095(025)N  
Bids Opened: November 20, 2013

RE: Bid Protest of Teichert/RNR, a Joint Venture to Award of Contract to Desilva Gates – Viking, a Joint Venture of Desilva Gates Construction LP and Viking Construction Company, Inc.

Dear Mr. McMillan:

Please consider this letter to be a formal protest of the bid submitted by Desilva Gates – Viking, a Joint Venture of Desilva Gates Construction LP and Viking Construction Company, Inc. ("DGC-V"), the apparent low bidder, in connection with Contract No. 04-0A5344 ("Project"). Teichert / RNR, a Joint Venture ("Teichert / RNR") is presently the Second (2<sup>nd</sup>) lowest bidder on the project. The bid turned in by DGC-V is nonresponsive and therefore must be rejected based on the State's bidding requirements, strictly enforced policies, and governing applicable Federal Regulations. DGC-V failed to comply with these requirements in at least six ways:

### 1. Desilva Gates – Viking, a Joint Venture's bid is Mathematically Unbalanced

The State received a total of seven bid proposals and upon review of the bid unit prices from the Final Bid Summaries (provided on the Caltrans website), it is clear that DGC-V has submitted a mathematically unbalanced bid proposal. 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 cost plus a reasonable proportionate share of the bidder's anticipated profit, overhead cost, and other direct cost". The bid submitted by DGC-V is mathematically unbalanced to

John C. McMillan  
Deputy Division Chief  
December 5, 2013  
Page 2 of 6

even the most casual review. Primary importance should be sited on the unbalancing of bid item 79 Imported Borrow (CY) (which DGC-V bid at \$0.01 for 464,000 CY for a total cost of \$4,640.00). The fact is the unit price submitted for bid item 79 does not reflect the contractor's reasonable cost, let alone a reasonable proportionate share of the bidder's anticipated profit, overhead cost, and other direct costs. A bid of \$0.01 is not reflective of the critical nature of bid item 79, particularly when compared to the Engineer's Estimate developed by the Department, and the other bidders' bids. Additionally, certain unit prices submitted by DGC-V (as demonstrated in the table below regarding just a few unit prices) are clearly inflated numbers most likely utilized to conceal wrongly allocated profits, costs, etc. This practice demonstrates a blatant unbalancing of their bid.

In the table below please find HIGH unit prices (all submitted by DGC-V) along with the low units and the average unit prices of the other bidders:

ITEM	DESCRIPTION	DSG-V	OTHER BIDDERS			DELTA	UNBALANCED
		"Unbalanced Unit"	LOW	HIGH	AVERAGE		TOTAL
		[ A ]	[ B ]	[ C ]	[ D ]	[ A - D ]	[ Delta x Item QTY ]
66	Clearing & Grubbing	\$ 250,000.00	\$71,400.00	\$170,000.00	\$106,566.67	\$143,433.33	\$ 143,433.33
68	Roadway Excavation	\$ 15.00	\$ 7.50	\$ 10.00	\$ 9.50	\$ 5.50	\$ 610,500.00
90	Imported Biofiltration Soil	\$ 90.00	\$ 42.00	\$ 82.40	\$ 73.07	\$ 16.93	\$ 21,844.00
94	Class 4 Aggregate Subbase	\$ 35.00	\$ 17.00	\$ 35.00	\$ 21.93	\$ 13.08	\$ 228,812.50
125	Structure Concrete (Footings)	\$ 600.00	\$ 185.00	\$ 400.00	\$ 290.00	\$ 310.00	\$ 430,280.00
127	Structure Concrete (Retaining Wall)	\$ 525.00	\$ 340.00	\$ 480.00	\$ 395.83	\$ 129.17	\$ 240,766.67
128	Structure Concrete Barrier Slab	\$ 650.00	\$ 385.00	\$ 600.00	\$ 472.50	\$ 177.50	\$ 149,810.00
153	12" Alternate Pipe Culvert	\$ 80.00	\$ 35.00	\$ 75.00	\$ 52.00	\$ 28.00	\$ 14,000.00
							\$ 1,839,446.50

## 2. Desilva Gates – Viking, a Joint Venture's bid is Materially Unbalanced Due to the Risk Caltrans will Pay Unreasonably High Prices for Contract Performance

In determining whether a bid is materially unbalanced, Caltrans is required to consider the risks to the State associated with the unbalanced pricing in making the award decision, and whether a contract will result in unreasonable high prices for contract performance. FAR § 15.404-1(G)(2). A bid should be rejected if the State determines that the unbalancing bid poses unacceptable risk to the State. FAR § 15.404-1(G)(3).

The risk the State will have to pay for work not completed is extremely high on this project as a direct result of the unbalanced bid submitted by DGC-V. This can be clearly noted by extremely low, unit prices, extremely high lump sum prices, and higher than expected prices on final pay items. DGC-V did not bid according to the plans and specifications provided by Caltrans as they are required to do. Instead, they identified items that they believed would not need to be performed according to the plans, under said bid items. This is evident on the carefully camouflaged final pay or lump sum items. This ensures that if the work is not performed, as DGC-V anticipates, they will avoid sharing the cost savings with Caltrans.

John C. McMillan  
Deputy Division Chief  
December 5, 2013  
Page 3 of 6

The State must ask itself, for bid items grossly underbid, did the bidding contractor actually bid according to the plans and specifications. The answer is clearly no. There is no way for the State to evaluate the supposed imported borrow amounts per the bid submitted by DGC-V when \$0.01 per CY is bid. The seriousness of this is clear when one considers what happens if the opposite occurs, if the actual amount of this item exceeds the 125% provision of the Standard Specifications, DGC-V would be entitled to their actual cost and the State would have no ability to analyze the actual cost incurred, because a reasonable value was not used for this bid item.

The State must further ask itself, if item 79 is reduced in the course of the work, how does the State benefit? The most glaring issue of the price bid by DGC-V for item 79 is the lack of the State's ability to avail themselves of any cost saving for this item. If the assumption made by DGC-V is correct, then the proper method would be to place the reasonable value of the cost of this item in the bid, and not mask this item with an unbalanced bid, allowing for the State to share in any cost savings by the way of a Cost Reduction Incentive Plan (CRIP) which would be in the best interest of the State and in keeping with State specifications.

The regulations are enacted to protect the State and consequentially other bidders to avoid unbalanced methods of bidding when a contractor determines construction omissions or quantity errors have been made by the agency. DGC-V will most likely try and convince the State that the unbalancing will not carry with it a negative impact to the State, and in fact the State was able to realize the incredible savings on bid day. Teichert / RNR will concede some savings to the State were most assuredly realized by Caltrans on bid day, but in fact there is no true way for Caltrans, or any entity, to validate, quantify, or identify said savings. This fact then becomes speculation based savings provided by a nervous bidder, most likely going on to outline minimal risk increases on the part of the State. If questioned by the State, DGC-V will most likely also point out percentage differentials as a means of justification as if to say that they are permitted to violate the restriction for unbalanced bids on some of the items as long as it does not become too high of an amount or percentage of the overall bid.

3. **Desilva Gates – Viking, a Joint Venture bid is Materially Unbalanced Due to the Reasonable Doubt that their bid will Result in the Lowest Overall Cost to the State**

A bid is materially unbalanced if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid FAR § 52.214-19(D). As previously noted, DGC-V significantly underbid bid item 79 which they believed could be completed without performing all of the work called for by the State's plans and specifications. Thus, it is reasonable to assume that it hid the full amount, or a greater portion of the work in other bid items. Therefore, if a portion of the work is not performed, they would effectively avoid sharing the cost savings with the State.

Caltrans has strictly interpreted and firmly enforced its bid balancing requirements. For example, on April 16, 2013, Caltrans rejected a bid by Sierra Nevada Construction Inc. ("SNC") on Contract No. 10-0X8504, because SNC bid items with unrealistic costs of only \$1.00.

In its letter dated April 16, 2013, Caltrans determined it could not ascertain whether SNC's bid was truly the lowest responsible bid, because SNC's unrealistic costs unbalanced their bid.

John C. McMillan  
Deputy Division Chief  
December 5, 2013  
Page 4 of 6

DGC-V has submitted the exact same type of bid, for which Caltrans found SNC's bid non-responsive on Contract No. 10-0X8504. Just as SNC bid items with unrealistic costs, DGC-V bid item 79 for an unrealistic cost of \$0.01, and thus Caltrans cannot ascertain whether their bid is truly the lowest responsible bid.

Similarly, on August 28, 2013, Caltrans rejected a bid submitted by Teichert Construction on Contract No. 10-0T1604, because Teichert Construction bid Imported Borrow at unit cost of \$0.01. Another example that is directly on point are Caltrans' letters dated August 28, 2013 and October 2, 2013, addressed to RGW Construction Inc. ("RGW") in connection with its bid for Contract No. 10-0T1604 (on which RGW was the apparent low bidder).<sup>1</sup>

In its letter dated August 28, 2013, Caltrans rejected a low bid submitted by RGW, because RGW's proposed cost for Imported Borrow was bid at a \$0.01/CY. Based on the item cost RGW listed for Imported Borrow, Caltrans' determined RGW's bid was both mathematically and materially unbalanced, because there is reasonable doubt that RGW's bid would result in the lowest ultimate cost to the State.

DGC-V has submitted the exact same type of bid, for which Caltrans found RGW's bid nonresponsive in Contract No. 10-0T1604. Just as RGW's (and Teichert Construction's) bid of \$0.01 for Imported Borrow was determined by Caltrans as unrealistic, DGC-V has attempted to bid an unrealistic unit cost of \$0.01 for bid item 79 Imported Borrow (CY). Consequently, DGC-V has generated reasonable doubt their unbalanced bid will result in the lowest ultimate cost to the State. Caltrans cannot accept the "unbalanced" bid submitted by DGC-V, as it would violate both the State and Federal contract approval process.

#### **4. Desilva Gates – Viking, a Joint Venture's bid is Materially Unbalanced Due to the Risk of Front End Loaded Payments**

A mathematically unbalanced bid may be found materially unbalanced when it results in advance payments to the contractor, FAR § 52.214-19(d). DGC-V's bid is unbalanced for a reason, we can make a plausible assumption that DGC-V unbalanced their bid for three primary reasons, to capitalize on cost and profit dollars for work not performed thereby turning these dollars into profit, front end loading the estimate to ensure positive cash flow through advance payments on work that has not yet and indeed may never be performed, and finally to ensure the lowest possible apparent bid total for comparison on bid day. The State cannot be sure where the excess amount of dollars was hidden and therefore, the risk Caltrans will make advance payments to DGC-V for work not yet performed is too great. As such, and in keeping with the governing regulations, specifications and Caltrans past precedence, the bid submitted by DGC-V should be rejected as materially unbalanced.

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<sup>1</sup>Copies of Caltrans' letters are attached to this letter for your facility of reference.

John C. McMillan  
Deputy Division Chief  
December 5, 2013  
Page 5 of 6

5. **Desilva Gates – Viking, a Joint Venture bid is Materially Unbalanced Due to the Threat they pose to the integrity of the Bidding Process**

The threat to the integrity of the bidding process is made clear when one asks, if DGC-V had made a calculation error for bid item 79 could they have declared a mathematical error and be relieved of their bid? DGC-V could have probably sustained a claim of error for bid item 79 had they determined they made a gross mistake with their methodology. This affects the competitiveness of the bidding process because, in essence, DGC-V was given a free look at the other bids *before* declaring an error. This emboldens the bidder who would adopt these methods. Teichert / RNR is in no way alleging that this was the motive of DGC-V, but just the potential being present in an unbalanced bid is enough to make the bid nonresponsive according to the regulations.

6. **Desilva Gates – Viking, a Joint Venture bid should be rejected as nonresponsive, because it failed to use prevailing wages as required in the contract.**

As stated above, DGC-V bid item 79 Imported Borrow at \$0.01 per cubic yard, totaling \$4,640.00. Per the "Notice to Bidders" contractors were required to bid this contract using prevailing wages. DGC-V's labor and equipment will be utilized to place and compact imported borrow material on-site. As such, DGC-V cannot claim they are anticipating receiving free dirt from the public, and therefore would have no labor accrued against this item of work, thereby negating the need to pay prevailing wages, and warranting DGC-V's unbalanced bid unit. It is clear DGC-V cannot pay prevailing wages for the labor associated with the work in the imported borrow item for the cost of \$4,640.00 as shown in their bid.

Caltrans has previously determined bids materially unbalanced in regards to the use of prevailing wage rates. For example, on July 7, 2010, Caltrans rejected a bid by DeSilva Gates Construction (DeSilva) on Contract No. 04-253764, because Caltrans determined DeSilva used wage rates below the required prevailing wages rates.<sup>2</sup>

Furthermore, Item 1 of the Good Faith Efforts Documentation – DBE Form (DES-OE-0102.11A) requires bidders to list items of work made available to DBE firms, and show the dollar value and percentage of the total contract for each item listed. DGC-V has themselves acknowledged in their own assessment that bid item 79 Imported Borrow (CY) has a potential value of more than \$4.6 MILLION. As evidence, Attachment "A" of DGC-V's DBE Good Faith Effort lists bid item 79 for the descriptions of Trucking, Water Trucks, and Imported Borrow Material. In DGC-V's Commitment Form they listed West Coast Water & Trucking Inc. as performing work in bid item 79. It can only be assumed that the labor and equipment needed for placing and compacting the imported borrow will be provided by DGC-V, and it is clear DGC-V cannot pay prevailing wages for the labor associated with the work in the imported borrow item for the cost of \$4,640.00 as shown in their bid.<sup>3</sup>

<sup>2</sup> A copy of Caltrans' letter is attached to this letter for your facility of reference.

<sup>3</sup> A copy of DGC-V's DBE Commitment Form and Attachment "A" is attached to this letter for your facility of reference.

John C. McMillan  
Deputy Division Chief  
December 5, 2013

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**Conclusion**

Based on the information presented herein, governing regulations and specifications, the bid of DGC-V must be rejected as nonresponsive along with its bid being mathematically and materially unbalanced. Therefore, we respectfully and formally request that the State uphold and validate Teichert / RNR's bid protest and award the contract to our Joint Venture, which submitted the lowest most responsive and responsible bid for Contract 04-0A5344

Should you have any questions or need additional information with respect to any aspect of Teichert / RNR's bid protest, please do not hesitate to contact me at (530) 867-1477.

Sincerely,  
Teichert / RNR, a Joint Venture



Eric Stannard  
Director of Public Procurement of Teichert Construction and Representative of the Joint Venture

cc: R. Garner, A. Catellier - RNR Construction  
T. Griffith, J. Thomassen, R. Czuleger, J. Theriault - Teichert Construction  
Bid file 13-037

**\*\* MESSAGE \*\***

[RECEIVER]

Fax:2276282

[SENDER]  
TEICHERT CONSTRUCTION  
Fax:916-645-4801

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[MESSAGE]  
01

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24207 County Road 100A  
Davis, CA 95616  
(530) 406-4200  
FAX (530) 406-4299

## Teichert/RNR, a Joint Venture

### FAX COVER SHEET

To: Office Engineer

COMPANY: State of California-Dept. of Transportation

FAX NUMBER: (916) 227-6282

PHONE NUMBER: N/A

FROM: Teichert/RNR, a Joint Venture

DATE: December 5, 2013

PAGES: 18, including Cover Sheet

Subject: Contract No. 04-0A5344  
04-SOL-80-11.3/12.9  
04-SOL-12-2.5/2.6  
Federal-Aid Project: ACNHP-X095(025)N  
Bids Opened: November 20, 2013

RE: **Bid Protest of Teichert/RNR, a Joint Venture to Award of  
Contract to Desilva Gates – Viking, a Joint Venture of Desilva  
Gates Construction LP and Viking Construction Company, Inc.**

Enc: Protest Letter

STATE OF CALIFORNIA—BUSINESS TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

**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) 227-6282  
 TTY 711



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April 16, 2013

Tim Morgan  
 Sierra Nevada Construction, Inc.  
 P.O. Box 50760  
 Sparks, NV 89431

(775) 355-0535  
 Facsimile: (415) 466-6315

10-0X8504  
 10-Mer-59-R0.2/7.9  
 B.O. 03/19/2013

Dear Mr. Morgan:

The Department of Transportation (Caltrans) received a bid from Sierra Nevada Construction, Inc. (SNC) on the above referenced contract on March 19, 2013. By this letter, Caltrans notifies SNC that it will not be considered for award of this contract due to a determination that its bid is nonresponsive.

Caltrans performed a bid analysis to determine the significant differences between the Engineer's Estimate of the costs associated with this project and SNC's bid. The disparity of the between SNC's bid and Engineer's Estimate is related to the following:

1. Contract Items 8 through 13, and 17, were bid with a unit cost of only \$1.00 which is not a realistic unit cost for these items.
2. Contract Item 3, Traffic Control System was bid at \$1,189,459. This amount exceeded the Engineer's Estimate of \$96,000.

As you are aware, Caltrans receives many bids in response to its project delivery needs. In order to ensure the integrity of the bidding process, each bid is analyzed to determine its responsiveness. In this case, SNC by its own admission submitted an unbalanced bid and as a result of that action, Caltrans cannot ascertain whether the bid is truly the lowest responsible bid. Therefore, it is in the best interest of Caltrans to reject this bid, and award this contract to the next lowest responsible and responsive bidder, provided that all requirements have been met.

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

Sincerely,

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

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER, MS 43  
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April 29, 2013

Facsimile: (775) 355-0535

Kevin L. Robertson, President  
Sierra Nevada Construction, Inc.  
P.O. Box 50760  
Sparks, NV 89431

10-0X8504  
10-Mer-59-R0.2/7.9  
B.O. 03/19/2013

Dear Mr. Robertson:

The Department of Transportation (Caltrans) received the attached letter dated April 18, 2013 from Sierra Nevada Construction, Inc. (Sierra Nevada) protesting a non-responsive finding.

Sierra Nevada protest disputes the determination set forth in the April 16, 2013, correspondence from Caltrans stating that Sierra Nevada's bid was materially unbalanced and nonresponsive and that "it is in the best interest of Caltrans to reject the bid".

Caltrans has not changed its position concerning the finding of your bid being materially unbalanced and nonresponsive and will proceed to award this contract to the lowest responsible bidder, provided that all requirements are met.

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

Sincerely,

A handwritten signature in black ink, appearing to read "John C. McMILLAN".

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

**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) 227-6282

www.dot.ca.gov/hq/esc/oe

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August 28, 2013

Facsimile: (209) 983-2375

Mr. Daniel E. Brown, Estimating Manager  
Teichert Construction  
P. O. Box 1118  
Stockton, CA 95201

10-0T1604  
10-SJ-26-18.5/19.0  
B.O. 7/23/2013

Dear Mr. Brown:

The Department of Transportation (Caltrans) received the attached bid from Teichert Construction (Teichert) for project 10-0T1604 on July 23, 2013, at which time Teichert was the apparent second low bidder. By this letter Caltrans notifies Teichert that its bid has been rejected due to unbalancing.

As you are aware, Caltrans evaluates each bid to determine whether a bid meets the requirements of both the 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. Teichert's proposed cost for Bid Item 40, Imported Borrow, was \$0.01 for 13,000 CY for a total cost of \$130.00.

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.

Mr. D. Brown  
August 28, 2013  
Page 2

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

Sincerely,

  
per JOHN E. McMILLAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

Attachment

**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

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FAX (916) 227-6282

www.dot.ca.gov/hq/esc/oe

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August 28, 2013

Facsimile: (925) 961-1925

Mr. Robert W. Purdy, Vice President/Secretary  
RGW Construction Inc.  
550 Greenville Road  
Livermore, CA 94550

10-0T1604  
10-SJ-26-18.5/19.0  
B.O. 7/23/2013

Dear Mr. Purdy:

The Department of Transportation (Caltrans) received the attached bid from RGW Construction Inc. (RGW) for project 10-0T1604 on July 23, 2013, at which time RGW was the apparent low bidder. By this letter Caltrans notifies RGW that its bid has been rejected due to unbalancing.

As you are aware, Caltrans evaluates each bid to determine whether a bid meets the requirements of both the State and Federal contract approval process. In this case, Caltrans Engineers evaluated the bid submitted by RGW and determined that RGW submitted a bid that was materially and mathematically unbalanced. RGW's proposed cost for Bid Item 40, Imported Borrow, was \$0.01 for 13,000 CY for a total cost of \$130.00.

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.

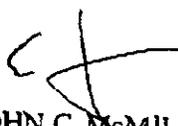
Caltrans receives many bids in response to its highway construction needs and strives to ensure the integrity of the competitive bidding process. Based on the item cost listed for Bid Item 40, it is Caltrans' determination that the bid is both mathematically and materially unbalanced as there is reasonable doubt that RGW's bid will result in the lowest ultimate cost to the State.

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

Mr. R. Purdy  
August 28, 2013  
Page 2

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

Sincerely,



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

Attachment

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER, MS 43  
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*Flex your power!  
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October 2, 2013

Facsimile: (925) 961-1925

Mr. Robert W. Purdy, Vice President/Secretary  
RGW Construction Inc.  
550 Greenville Road  
Livermore, CA 94550

10-0T1604  
10-SI-26-18.5/19.0  
B.O. 7/23/2013

Dear Mr. Purdy:

The Department of Transportation (Caltrans) received the attached letter from RGW Construction (RGW) protesting the rejection of its bid on project 10-0T1604 due to unbalancing. The protest states in part, "... that RGW analyzed the plans and determined there would not be a need for imported borrow, i.e. the site balances with nominal consideration for shrink. RGW factored this into the bid and passed the savings on to the State of California by virtue of our submitting the least cost bid". RGW requests Caltrans to rescind its bid rejection letter and award the contract to the lowest responsive and responsible bidder, RGW.

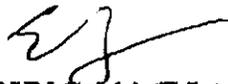
As you are aware, the Engineering decisions must be made by and are the responsibility of the engineer in responsible charge of the project. Caltrans relies on its Civil Engineers for both the design and quality assurance needs for all projects, including materials. Ultimately, Caltrans makes all final decisions on its projects as it relates to the relevance of plans, specifications and or materials used. As with all highway construction contracts, Caltrans strives to obtain the lowest bid; and at the same time assure fair and equitable evaluation of all bids. As such, regardless of the bidder's expertise, the bidder must submit a bid in accordance with the projects plans and specifications. In this case, RGW pre-determined that there would not be a need for imported borrow and submitted its bid for Bid Item 40 (imported borrow) for \$0.01 or \$130.00 for 13,000 cubic yards. While Caltrans agrees that some portion of the work may be adjusted, the State would ultimately pay a higher overall total price for the contract.

Therefore, Caltrans stands by its original decision that the bid submitted by RGW is both materially and mathematically unbalanced and will proceed to award this contract to the lowest responsive and responsive bidder.

Mr. R. Purdy  
October 2, 2013  
Page 2

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

Sincerely,

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

Attachment

Received

TEICHERT CONSTRUCTION Fax: 916-645-4801

Dec 5 2013 02:17pm

Dec 5 2013 03:12pm P016/018

Received

AUG-31-2012 FRI 12:15 PM Ghilotti Construction

AUG 31 2012 12:18pm  
FAX NO. 7075851601

P. 09


**DEPARTMENT OF TRANSPORTATION**  
 DIVISION OF ENGINEERING SERVICES  
 OFFICE ENGINEER, MS 43  
 1727 30<sup>TH</sup> STREET  
 SACRAMENTO, CA 95816  
 P.O. BOX 169841  
 SACRAMENTO, CA 95816-8041  
 PHONE (916) 227-6288  
 FAX (916) 227-6151

cc: M. Kloos  
 ✓ R. GATES  
 ✓ M. Willcoxson  
 ✓ T. GANTHER  
 ✓ G. Retodes  
 ✓ S. Archibald

  
 Please print your name on every official document  
 ✓ 7/7/10 J

FACSIMILE (925) 803-4263

July 7, 2010

Michael A. Kloos, Vice President  
 De Silva Gates Construction  
 P. O. Box 2909  
 Dublin, CA 94568

04-253764  
 04-AIA-680-4.85.2  
 B.O. 5/18/10

EXHIBITS

Dear Mr. Kloos:

The Department received the attached letter dated June 15, 2010 from De Silva Gates Construction (De Silva) protesting the Department's June 7, 2010 determination that De Silva's bid is materially unbalanced for bid item no. 43, Plant Establishment Work.

After reviewing your protest, the Department finds De Silva's prevailing wage rate used for plant establishment work is below the Plant Establishment work prevailing wage rate of \$35.64 per hour (per the Department of Industrial Relations).

Based on the above, the Department's initial determination that De Silva's bid is materially unbalanced is final. The Department therefore rejects De Silva's bid in conformance with Section 2-1.17, "Bid Rejection", of the Amendments to the Standard Specifications.

The Department will proceed to award this contract to the next lowest responsible bidder provided all requirements are met. If you have any questions, please call Kris Kuhl, Chief, Office of Contract Awards and Services, at (916) 227-6280.

Sincerely,

  
 JOHN McMULLAN  
 Deputy Division Chief  
 Office Engineer  
 Division of Engineering Services

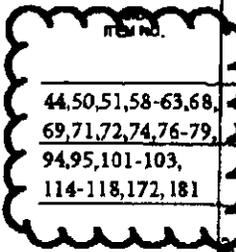
DESILVA GATES-VIKING

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
CALTRANS BIDDER - DBE - COMMITMENT  
DES-GE-010210C (NEW 08/2012)

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in section 2 of the specifications. Failure to submit the required DBE information will be grounds for finding the bid non-responsive.

CONTRACT NO:  
04-0A5344  
BID AMOUNT:  
\$ 45,812,551.00  
BID OPENING DATE:  
NOVEMBER 20, 2013  
BIDDER'S NAME:  
DESILVA GATES -VIKING  
DBE GOAL FROM CONTRACT, %:  
10%  
DBE PRIME CONTRACTOR CERTIFICATION:

ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED	FOR CALTRANS USE ONLY	NAME OF DBE (Must be certified on the date bid is opened - include Caltrans certificate #, DBE address and phone number) (Indicate 2nd and lower tier subcontractors)	DOLLAR AMOUNT DBE
44,50,51,58-63,68, 69,71,72,74,76-79, 94,95,101-103, 114-118,172, 181	AXLE 4,000 GAL WATER TRUCK		WEST COAST WATER & TRUCKING, INC. 3941 PARK DRIVE SUITE 20-231 EL DORADO HILLS, CA 95762 PH: 530/350-7323 CN: 37869	200,600.00
	3,360 HRS X \$85/HR = 200,600.00			



IMPORTANT: Identity of DBE firms being selected for work, regardless of tier. Names of the Firm Tier DBE Subcontractors and their respective location(s) of work listed above must be consistent, where applicable, with the names and home of work in the "Subcontractor List" submitted with your bid. Copies of the DBE quotes are required.

1. DBE prime contractors must enter their certification number and indicate all work to be performed by DBEs including work performed by its own forces.
2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished.
3. See section 2-1.12 of the specifications to determine the credit allowed for DBE firms.

Exhibit A:

MSC 43  
DPRICE ENGINEER  
DEPARTMENT OF TRANSPORTATION  
1727 30TH STREET  
SACRAMENTO, CA 95818-7025

Total Clearance Participation

SEE PAGE 1  
SEE PAGE 1

SEE FIRST PAGE FOR SIGNATURE

Signature of Bidder  
\*RICHARD B. GATES  
11/21/13 Date 925/829-9220 (Area Code) Tel. No.

MIKE GATES  
Person to Contact (Please Type or Print)  
dgcestimating@desilvagates.com

\*PRESIDENT OF DESILVA GATES CONSTRUCTION  
L.P. ITS JV SPONSOR

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-6888 or write Requests and Forms Management, 1120 N Street, MS-08 Sacramento, CA 95814.

DESILVA GATES CONSTRUCTION  
ESTIMATE NO.: 1110012

BID DATE: 10/28/2013  
BID TIME: 2:00 PM  
ESTIMATOR: Victor Lu

Contract - Route 12, 88  
Contract No. 04-0A0344  
Attachment A-1

DGC Bid Items

TOTAL BID: 358,000,000.00

Bid Item Nos.	Item of Work Offered	LICENSE TYPES	Bidder Normally Performs Item (Y/N)	Item Broken Down to Facilitate Participation (Y/N)	Amount (\$)	Percentage of Contract (Total Bid)
105-108	AC Dike	C12	N	Y	11,000.00	0.02%
88	Clearing and Grubbing		N	Y	70,000.00	0.14%
252-258, 245	Concrete Barrier		N	Y	560,000.00	1.12%
4	Construction Area Signs		N	Y	52,000.00	0.10%
251	Crush Curbs (Type CAT)		N	Y	10,000.00	0.02%
16	Job Site Management		Y	Y	20,000.00	0.04%
45, 228, 271-286, 340	Electrical		N	Y	1,400,000.00	2.80%
110	Erosion Supplier	C12	N	Y	30,000.00	0.06%
04-88, 288, 290, 294, 295, 307, 338	Erosion Control	C12	N	Y	1,000,000.00	2.00%
53, 229-238, 244	Fencing		N	Y	400,000.00	0.80%
30	Geomembrane Liner		N	Y	60,000.00	0.15%
34, 38, 242, 247-250	Guardrail		N	Y	117,000.00	0.23%
70	Ground Improvement	CB, D30	N	Y	370,000.00	0.74%
90, 201, 292, 296-309, 311-320, 328, 341-343	Landscape / Irrigation		N	Y	530,000.00	1.06%
1	Lead Compliance Plan		N	Y	2,000.00	0.00%
82-95	Lime Treatment	C12	N	Y	430,000.00	0.86%
182, 183, 185-182, 310	Minor Concrete	C12, CB	N	Y	475,000.00	0.93%
82, 56, 131, 185	Minor Concrete Structures	C12, CB	N	Y	360,000.00	0.70%
88, 87, 111, 112	MCB, Rapid Strength Conc, Jointed Plain Conc. Pavement	C12, CB	N	Y	3,800,000.00	7.20%
42, 98, 145-152, 238-241	Roadside Signs		N	Y	40,000.00	0.08%
40, 129, 142-144	Sign Structure		N	Y	780,000.00	1.52%
7, 8, 10, 32, 35-41, 240-270	Striping		N	Y	190,000.00	0.38%
33	Survey/Marking		N	Y	8,000.00	0.01%
18, 21	SWPPP		N	Y	5,000.00	0.01%
22, 28, 321, 344	Temporary Erosion Control	C27	Y	Y	140,000.00	0.28%
33, 36, 48-48, 57, 83, 153-165, 174-181, 184, 202, 208-220, 222, 223, 225-227, 292	Underground	CB	N	Y	3,700,000.00	7.40%
186-170	Underdrain		Y	Y	60,000.00	0.01%
243	Vegetation Control	C12, CB	N	Y	65,000.00	0.13%
44, 50, 51, 58-62, 88, 89, 71, 72, 74, 75, 79, 94, 95, 101-103, 114-118, 171, 172, 181	Trucking		Y	Y	2,700,000.00	5.40%
44, 50, 51, 58-62, 88, 89, 71, 72, 74, 75, 79, 94, 95, 101-103, 114-118, 171, 172, 181	Water Truck		N	Y	415,000.00	0.83%
79	Imported Borrow Material	C12	Y	Y	4,800,000.00	9.20%
94	Class 4 Aggregate Base Material	C12	Y	Y	305,000.00	0.61%
101	Hot Mix Asphalt (Type A) Material	C12	Y	Y	2,200,000.00	4.40%
102	Hot Mix Asphalt (Open Grade) Material		Y	Y	425,000.00	0.85%
103	Rubberized EMA (Gap Grade) Material		Y	Y	1,015,000.00	2.03%
						0.00%
						0.00%

Total Work Made Available for DBE Participation:

325,734,000.00 53.35%

Project DBE Goal

10.0%

3 6,000,000.00

Statewide 2013 DBE Goal

13.5%

3 8,750,000.00