

December 22, 2015

State of California
Department of Transportation
1727 30th Street, Bidder Exchange, MS 43
Sacramento, CA 95816

Attn: John C. McMillan, Deputy Division Chief, Office Engineer.

RE: Contract No. 05-0F7004

Route 68 Near Salinas from .2 mile east of Reservation Road UC to Spreckles Blvd. UC.
Protest letter #2.

Mr. McMillan,

Please consider this letter a second formal protest of the bid submitted by Viking Construction Company (Viking) in connection with Contract No. 05-0F7004. This second protest letter is also in reference to Viking's response to GSB's first protest.

Revised Standard Specification Section 2-1.33 Bid Document Completion and Submittal Subsection 2-1.33A states "Failure to submit the forms and information as specified may result in a non-responsive bid".

Revised Standard Specification Section 2-1.10 Subcontractor List states in part "for each subcontractor listed, the Subcontractor List MUST show:

4. Portion of work it will perform; show the portion of work by:
 - 4.1 Bid item numbers for the subcontracted work.
 - 4.2 Percentage for the subcontracted work.
 - 4.3 Description of the subcontracted work of the percentage of the bid items listed is less than 100 percent.

Viking's subcontractor list is incorrect and Non-Responsive.

With regard to Viking's listing of Malcolm Drilling for bid items 79 and 81 (Furnish 36" Cast in Steel Shell Concrete Piling, and Furnish 48" Cast In Steel Shell Concrete Piling respectively), Viking identified that Malcolm would be performing 40% of item 79 and 40% of Item 81. Viking goes on to describe the portion of the work that Malcolm will perform as "Drill Piles, Set Cages, Place Concrete" for each item.

Viking's response to GSB's first protest includes a proposal (exhibit A in Viking's response) from Malcolm Drilling that they indicate was received on bid day. Viking further represents that they indeed used this quote in preparing their bid and that they listed Malcolm to perform 40% of bid items 79 and 81 respectfully. Malcolm's quote clearly identifies a scope of work that encompasses portions of 5 bid items on this project. Malcolm's quote clearly identifies Malcolm's scope of work as:

1. Machine drill and clean the inside of the CISS.

2. Furnish and place seal coarse.
3. Place rebar cage. Material furnished by others.
4. Furnish and place concrete.
5. Furnish concrete pump as required.

The above scope is taken directly from Malcolm's proposal. This scope includes substantial portions of 5 bid items on this project including Item's 79 and 81 (from Malcolm's description of their Item 4 above); Items 80 and 82 (from Malcolm's description of their items 1, 3, and 5 above); and Item 84 (from Malcolm's description of their item 2 above). At bid time, Malcolm was only listed for portions of item 79 and 81.

Regardless of Malcolm's quote only identifying Item 79 and 81 as their quoted items, clearly Malcolm's scope includes portions of bid items 80, 82, and 84 as well. It is not the responsibility of Malcolm to submit a responsive bid to the State. Viking must, in order to comply with specification section 2-1.10 clearly identify the bid items of work subcontracted, the percentage of work to be subcontracted, and a description of work to be subcontracted. Viking's bid to the State does not remotely achieve the requirements of section 2-1.10 as Malcolm's proposal includes portions of 5 bid items.

Further, Viking's assertion that "regardless of which items Malcolm was listed for, the description of their work is clearly and accurately described on the sub listing...."; This statement is not an accurate statement by any measure, as a simple review of Malcolm's proposal shows that in addition to the work that Viking described Malcolm to be performing – namely "drill piles, set cages, place concrete"; Malcolm's quote clearly also includes furnishing pile concrete, and furnishing and placing seal coarse concrete, which are portions of different bid items and or descriptions of work different from those for which Malcolm was listed to perform; namely portions of bid items 79 and 81 (furnishing concrete which was not in the original description) and bid item 84 (Seal Coarse Concrete) an item for which Malcolm was not listed at bid time.

Viking also asserts that listing Malcolm for Item 79 and 81 rather than 80 and 82 is inconsequential, in affect admitting the error; however what is clear is that Malcolm is performing portions of bid items 79, 80, 81, 82, and 84; and that the percentage listed for Malcolm's work was 40% of only items 79 and 81. It should be also noted that 40% of bid items 79 and 81 would equal a dollar amount of \$1,270,795.20; but Malcolm's bid shows a proposed subcontract amount of \$1,379,500.00 (which would increase by \$75,000.00 as two seasons are required for this work). These dollar amounts are not inconsequential.

Viking's response to the question of an unbalanced bid is simply that the third and fifth bidders sum total of bid items 79, 80, 81 and 82 is somehow "in line" with Viking's total for those bid items. This statement fails to include bid item 84 (which clearly is a portion of work contained in Malcolm's proposal), lumps together four bid items where Malcolm was only listed for two, and acknowledges that Viking indeed "should have" listed Malcolm for the additional bid items of work that Malcolm quoted. Viking's admission that they listed (in error) Malcolm for items 79 and 81 is definitive of an unbalanced bid. Malcolm's scope is inclusive of five different and distinct bid items, with differing payment methods by the Caltrans Engineers estimate (the engineers estimate for the five items includes payment by the Each, LF, and CY for the various items affected) potentially creating greatly increased cost to the State. It should be noted further that the third and fifth bidders listed Sacramento Drilling for items 80 and 82 correctly, and none of the other bidders listed Malcolm Drilling for this project. Again, in accordance with Specification 2-1.10 – it is the responsibility of Viking to accurately list and

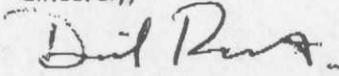
describe the portions of work to be subcontracted and percentages thereof (this responsibility is not that of their listed Subcontractors) – clearly by Viking's own admission this was not done.

Viking's statement that this was an inadvertent error is also without merit, as an inadvertent error must be reported by the bidder within 48 hours of a bid opening, and not as a response to another bidder's protest.

The judgement of inadvertent errors in a bid by an awarding agency is subjective, what is not subjective is that Viking's bid fails to accurately provide a description of work that matches the work involved in the listed subcontracted bid items (Malcolm as listed only for Items 79 and 81) that is performing a substantial portion of the work, fails to list a subcontractor for items of work that clearly are a part of the subcontractor's work as proposed by the subcontractor (Malcolm) in their written proposal – in this case significant portions of items 80, 82, and 84. While Viking may not have engaged in bid shopping on this bid as they represent, Viking's bid clearly does not comply with the intent of the Subcontracting Fair Practices Act, nor does it comply with the requirements of Standard Specification section 2-1.10.

For the reasons listed above, Golden State Bridge, Inc. respectfully requests that Viking's bid be rejected as non-responsive, and that the project be awarded to Golden State Bridge, Inc. the lowest responsive bidder on this project.

Sincerely,



David Riccitiello, President

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Fax

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Pages: 4

Phone: _____

Date: 12-22-2015

Re: OS-OF 7004

cc: _____

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PLEASE FIND ATTACHED LETTER OF PROTEST (#2).