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April 7, 2014

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER, MS 43  
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P.O. BOX 168041  
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ATTN: Mr. John C. McMillan  
Deputy Division Chief

Subj: 06-0Q8104 IN KERN COUNTY NEAR DELANO ON ROUTE 155 AND IN BAKERSFIELD ON ROUTE  
204

Re: FORMAL RESPONSE TO YOUR LETTER DATED APRIL 1, 2014 REQUESTING CHESTER BROSS  
CONSTRUCTION RESPOND TO THE PROTEST SUBMITTED BY GRIFFITH COMPANY

Dear Mr. McMillan,

Please consider this as formal response to the bid protest submitted by Griffith Company (Griffith) dated March 31, 2014. The bid turned in by Chester Bross Construction (CBC) is the lowest responsive and responsible bid in keeping with all of the Department's bidding requirements and strictly-enforced policies.

The bid protest submitted by Griffith carries with it no merit whatsoever and must be discredited as such.

The protest provided by Griffith contends that the bid submitted by CBC is "*materially unbalanced*" "*to the detriment of Caltrans*". Point in fact, this contention is incorrect, unfounded and speculative. Griffith makes a futile attempt to justify its contention with its own calculations and older averages that do not reflect the subject project or the bid submitted by CBC on bid day. Additionally, and interestingly enough, Griffith has isolated bid item 13 alone though the CBC bid pricing for bid item 18 carries with it the same unit price and justification for said price.

The facts are this, the emulsion quantity Caltrans has provided for bid item 13 is overstated, thus, CBC elected to purchase the necessary quantity of emulsion to construct the project in keeping with all applicable governing provisions and plans. The actual dollars necessary to procure and place the emulsion in conjunction with bid item 14 HMA (BWC-DG) are included in the pricing for bid item 14 as is evident in the CBC price for item



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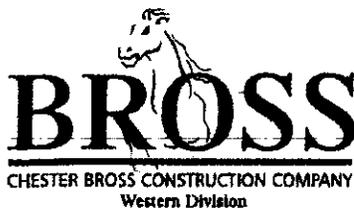
14. It is the opinion of CBC that both bid item 13 and 14 may well run under the quantities stated by Caltrans given our vast experience with constructing BWC projects across the United States.

As such, the bid item price for bid item 13, though mathematically unbalanced at face value, is in no way materially unbalanced nor does it carry with it any negative aspects to the department. In fact, a mathematically unbalanced unit price in this instance, reduces risk to the department by transferring any related risk to CBC. Moreover, by doing so, CBC has effectively provided the Department with the true discount for the overstated quantity on bid day. In so doing, CBC has provided the complete bid package as aggressively and responsibly as possible while ensuring that all governing protocol, specifications and requirements have been met at no detriment or disadvantage to Caltrans in any way.

CBC makes every effort to stay within all necessary parameters and guidelines when bidding and contracting with Caltrans and all other Government agencies. In fact, our earliest printed record on file pertaining to unbalanced bids and guidelines affiliated thereto, is a Memorandum from John C. McMillan to all of the Deputy District Directors, Kris Kuhl, R. Buckley, J. Davis, and all District Office Engineers dated June 11, 2002. This initial memorandum has been used by CBC as a stepping stone in our continued effort to maintain strict adherence to and with the Caltrans guidelines etc. as they pertain to unbalanced bids. This memorandum and all other Caltrans relevant guidelines and requirements clearly states that mathematically unbalanced bids may be accepted. Caltrans has, does and is continuing to accept bids priced in this exact same manner. CBC currently has contracts in place with Caltrans where the BWC emulsion and or the tack material is bid at \$1.00 for the exact same reason. Even casual review of past, and present awarded or pending award contracts will reveal that for the reasons stated herein, Caltrans accepts this practice as it is in fact not mathematically or materially unbalanced to the detriment of Caltrans. A couple of current or recent Caltrans District 6 projects that carried with them the exact same pricing would be 06-0N1504 and 06-0P6104. Numerous additional CBC upholding examples can be provided upon request though they are readily available on the Caltrans website.

In review of the bids submitted by both CBC and Griffith, it is clear that neither bid demonstrates material unbalanced pricing according to the Caltrans strictly enforced guideline requirements and set precedence. In fact, the Griffith protest, though contains no merit, actually could be re-directed at Griffith by its own contention. The Griffith unit price for bid item 18 Tack Coat is \$100.00 per ton. It could be said that Griffith provided an unbalanced bid by pricing the Tack Coat at \$100.00 per ton according to the Griffith contentions. Tack Coat material cannot be purchased for \$100.00 per ton let alone delivered to a specific location in most cases. Point being, if the Griffith protest contained any merit, Griffith has effectively made a case that its own bid should be deemed non-responsive. Fortunately for both CBC and Griffith, neither bids are materially unbalanced. Interestingly enough, the Griffith effort to somewhat camouflage its mathematical unbalanced unit price of \$100.00 for bid item 18 may well have cost them the job as the Griffith price was only \$3,186.00 above CBC for this project.

Caltrans is very strict and consistent with regards to contractors unbalancing bids, and we are confident that the Griffith protest holds no merit whatsoever. CBC could provide pages of documentation where CBC and numerous other contractors have been awarded projects demonstrating mathematically unbalanced prices for both emulsion and tack coat bid items. In keeping with the governing criteria, Caltrans will also note that there is



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no front loading, up scaling etc. of any other CBC bid items that would give cause to CBC's overall project delivery price increasing upon complete project delivery. CBC's bid as provided does not lend favor to any known materially unbalanced descriptions, projections or apparent misallocations that would result in a price increase, negative impact or detriment to the State.

It is clear that Griffith, by submitting the protest, may not have a clear understanding of the governing criteria as it pertains to unbalanced bids, or has presented Caltrans with an unfounded protest carrying with it no merit in hopes of possibly receiving award of a project on which they were not the lowest responsive and responsible bidder.

The bid protest submitted by Griffith has no merit and must be discredited as such. Caltrans has consistently found bidders, including CBC to be responsive for pricing provided exactly like the unit price addressed in the protest. These projects have and continue to be delivered with no negative impact or detriment to the State.

The Department has and continues to dutifully enforce its bid requirements in a fair and uniform manner consistent with set precedence, and in keeping with the governing Subletting and Subcontracting Fair Practices Act of the Public Contract Code.

Based in no small part on the facts presented herein, it is respectfully and formally requested that the Department uphold and validate Chester Bross Construction's contention that the bid protest submitted by Griffith holds no merit, and award the contract to our company, which submitted the lowest responsive and responsible bid for Contract No. 06-0Q8104.

Thank you for your attention to this matter and please feel free to contact me if you have any questions.

Very truly yours,

Shawn N. Simmons  
Western Division Manager

Via Facsimile to (916) 227-6282