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GEORGE REED INC.
GENERAL ENGINEERING CONTRACTORS

OFFICE AND YARD:
140 EMPIRE AVENUE
MODESTO, CALIFORNIA 95354
1-877-823-2305
WWW.GEORGEREED.COM

State Contractor's License No. 211337-A

June 16, 2015

California Department of Transportation
Division of Engineering Services
Office Engineer, MS-43
P.O. Box 168041
Sacramento, CA 95816-8041
Phone: (916) 227-6280
Fax: (916) 227-6282

Attention: John McMillan, Deputy Division Chief

RE: Contract 10-0K1404
Bid Opened June 3, 2015
Bid Protest of Teichert Construction

Dear Mr. McMillan:

Please consider this letter to be a formal protest of the bid submitted by A. Teichert & Son Inc. DBA Teichert Construction (Teichert) on the above referenced project. George Reed, Inc. (GRI) contends that Teichert improperly submitted required DBE forms and improperly listed a subcontractor on their DBE Commitment Form therefore making their bid non-responsive.

In submitting their DBE paperwork Teichert did not submit all required forms. The DBE confirmation sheet that each subcontractor/supplier must fill out and sign was not included. This form is included in the DBE package available online (See Attachment A for all that is included in the file provided by Caltrans). Teichert was aware that this file existed online since the DBE – Commitment form has the proper Contract Number at the bottom of the page.

The revision to the DBE Program in March 2105 states the following (see Attachment B for entire text):

DBE Commitment Submittal

2-1.12B(2) DBE Commitment Submittal
2-1.33D(2)(b) Contracts with a DBE Goal

- **All bidders must submit**, no later than 4 p.m. on the 4th business day after bid opening, **the following information**:
  - DBE Commitment form.
  - Quote from each listed DBE that describes the type and amount of work shown on the DBE Commitment form.

- **DBE Confirmation form for each listed DBE to establish that the DBE has agreed to participate in the type and amount of work shown on the form.**
- If the contract goal is not met, good faith efforts documentation. Good faith efforts documentation submitted outside of the specified timeline will not be considered as part of Caltrans' evaluation of good faith efforts.

- Caltrans has modified its DBE Commitment and DBE Good Faith Efforts Documentation forms based on changes in 49 CFR 26.

This section specifically states that all bidders ***must*** submit these items. By not submitting the DBE Confirmation form for each subcontractor/supplier Teichert has failed to comply with the requirements and must be deemed non-responsive. Ignorance of the new requirement cannot be an excuse as other contractors, including GRI, have complied with the requirement.

In addition, Teichert improperly used Flores Sweeping Service, Inc. (Flores) as a subcontractor on the DBE Commitment Form since Flores was not listed as a subcontractor on Teichert's subcontractors list. Flores is list shown for $38,740 of participation. This amount represents 1.21% of the total bid and is above the 0.5% or $10,000, whichever is higher, threshold for listing subcontractors. Without this amount of participation Teichert does not meet the 7% DBE goal on this project.

On Caltrans' Contractor's Corner web page under the bidding column there is an item marked as new titled "Subcontracting Fair Practices Act". The link is titled "Subletting and Subcontracting Fair Practices Act – Listing" and essentially outlines how the act reads and how Caltrans interprets this act. Under item 2 it states "A company that is providing equipment rental with operator is required to be listed" (See Attachment C). The act does not differentiate as to whether or not the company subcontracted must be a licensed contractor but only that the equipment be operated.

Due to these facts, it is respectfully requested that Caltrans deem Teichert non-responsive and award this project to George Reed, Inc., the lowest responsive/responsible bidder.

Thank you for your consideration.

Please call with any questions,

Respectfully,

Stacy Case
Chief Estimator
George Reed Inc.

Attachments: A, B and C

ATTACHMENT A

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Caltrans

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

FORMS FOR
BID

FOR CONSTRUCTION ON STATE HIGHWAY IN STANISLAUS COUNTY NEAR OAKDALE FROM STANISLAUS COUNTY LINE TO 0.2 MILE WEST OF STANISLAUS RIVER BRIDGE

In District 10 On Route 120

Under

Notice to Bidders and Special Provisions dated May 4, 2015	*Standard Specifications* dated 2010
Project plans approved January 26, 2015	*Standard Plans* dated 2010

To be submitted conjointly with
Electronic *Bid* book dated May 4, 2015
Identified by
Contract No. 10-0K1404
10-Sta-120-0.0/4.1
Project ID 1013000051

Federal-Aid Project
ACNHP-P120(057)E

Bids open Wednesday, June 3, 2015

Dated May 4, 2015
AADD

ATTACHMENT A

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
DBE - COMMITMENT
DES-OE-0102.10D (REV 12/2014)

CONTRACT NO:

BID AMOUNT:
$

BID OPENING DATE:

BIDDER'S NAME:

DBE GOAL FROM CONTRACT %:

DBE PRIME CONTRACTOR CERTIFICATION[1]	TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE)	TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE)

BID ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED[2]	WORK CATEGORY CODES[3]	NAME OF DBEs (Must be certified on the date bids are opened. Include Caltrans' certification no., DBE address, and phone number. Show 2nd and lower tier subcontractors)	AMOUNT ($)

Show all DBE firms being claimed for credit, regardless of tier. Attach written confirmation from each DBE shown stating that it will be participating in the contract to perform the specific work shown for the specific amount agreed to.

The names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontractor List (Pub Cont Code § 4100 et seq.).

[1]Each DBE prime contractor must enter its certification number and show all work to be performed by DBEs, including work performed by its own forces.

[2]If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be performed or furnished.

[3]Use Work Category Codes from the California Unified Certification Program database.

$

Total Claimed Participation

%

The bidder acknowledges that it is committed to use the DBEs shown on this form to meet the contract goal (49 CFR 26.53).

Signature of Bidder

Date

(Area Code) Tel. No.

Person to Contact

(Please Type or Print)

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

ATTACHMENT A

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION

DBE CONFIRMATION

DES-OE-0102.13 (NEW 3/2015)

Contract no.

Name of DBE business

Name of DBE representative

DBE certification number

Name of bidder

Name of prime contractor if different from the bidder

Name of representative of bidder or prime contractor

Date quote was provided to the bidder or prime contractor

Bid item number	Item of work and description of services to be subcontracted or materials to be provided[1]	Amount ($)
	Total	

[1] If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be performed or furnished.

As an authorized representative of a certified disadvantaged business enterprise, I confirm that my business was contacted by the bidder or prime contractor shown above regarding the contract shown above. If the bidder is awarded the contract, my business will enter into a contractual agreement with the bidder or prime contractor to perform the type and dollar amount of work shown on the DBE Commitment form.

I certify under penalty of perjury that the foregoing is true and correct.

Signature of DBE's authorized representative

Printed name of DBE's authorized representative

Title of DBE's authorized representative

Date

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-99, Sacramento, CA 95814.

ATTACHMENT A

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION

DBE GOOD FAITH EFFORTS DOCUMENTATION

DES-OE-0102,11A (REV 12/2014)

Bidder's Name: _____

Contract No.: _____

1. List items of work the Bidder made available to DBE firms. Identify items of work the Bidder might otherwise perform with its own forces, items that have been broken down into economically feasible units to facilitate DBE participation, and items for which the Bidder has established flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation. For each item listed, show the dollar value and percentage of the total contract. The Bidder must demonstrate that sufficient work to meet the goal was made available to DBE firms.

Item of Work Offered, Services Offered, or Materials Supplied	Bidder Normally Performs Item Yes/No	Item Broken Down to Facilitate Participation Yes/No	Established Flexible Timeframes for Performance and Delivery Schedules Yes/No	Amount ($)	Percentage of Total Bid
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO		

ATTACHMENT A

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
DBE GOOD FAITH EFFORTS DOCUMENTATION
OES-OE-0102.11A (REV 12/2014)

Bidder's Name: _____
Contract No.: _____

2. List the names of certified DBEs and all the dates on which they were solicited to bid on this project. Include the items of work offered and the dates and methods used for following up initial and follow-up solicitations to determine with certainty whether the DBEs were interested. Attach copies of solicitations, e-mail messages, telephone records, fax confirmations, etc.

Name of DBE Solicited	Date of Initial Solicitation	Items of Work Offered	Follow Up Methods and Dates

3. For each item of work made available, indicate whether the Bidder provided plans and specifications specific to the items of work being offered, list the selected firm and its status as a DBE, the DBEs that provided quotes, the price quote for each firm, and the price difference for each DBE if the selected firm is not a DBE. Provide copies of each DBE and Non-DBE quote submitted to the Bidder whenever a Non-DBE firm was selected over a DBE for work on the Contract.

Items of Work	Provided Plans/ Specifications for Work Offered Yes/No	Name of Selected Firm	DBE or Non-DBE	Name of Rejected Firm	Quote ($)	Price Difference ($)
	☐ YES ☐ NO					
	☐ YES ☐ NO					
	☐ YES ☐ NO					
	☐ YES ☐ NO					
	☐ YES ☐ NO					
	☐ YES ☐ NO					
	☐ YES ☐ NO					
	☐ YES ☐ NO					
	☐ YES ☐ NO					

If the firm selected for the item is not a DBE, provide the reasons for the selection on a separate sheet and attach names, addresses, and phone numbers for the firms listed above. Provide evidence as to why additional agreements could not be reached for DBEs to perform work.

ATTACHMENT A

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
DBE GOOD FAITH EFFORTS DOCUMENTATION
DES-OE-0102.11A (REV 12/2014)

Bidder's Name: _____
Contract No.: _____

4. Describe the Bidder's outreach efforts to identify and solicit the interest of all certified DBEs that have the capability to perform the work of the Contract. Provide copies of supporting documents.

Description of Outreach	Dates	Location (if applicable)	Results

6. Describe the Bidder's efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the Contract to assist them in responding to a solicitation. Identify the DBEs assisted, the type of information provided, and the date of the contacts. Provide copies of supporting documents.

6. Describe the Bidder's efforts made to assist interested DBEs in obtaining bonding, lines of credit, or insurance. Identify the DBEs assisted, the type of assistance offered, and the dates. Provide copies of supporting documents.

7. Describe the Bidder's efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE purchases or lessees from the prime contractor or its affiliate. Identify the DBEs assisted, the type of assistance offered, and the dates. Provide copies of supporting documents. List efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or lessees from the prime contractor or its affiliate. Identify the DBE assisted, the assistance offered, and the date. Provide copies of supporting documents.

8. List the names of agencies and the dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.

9. Include additional data to support a demonstration of good faith efforts.

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814

ATTACHMENT B

CALIFORNIA DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REVISIONS
MARCH 2015

On October 2, 2014, the United States Department of Transportation published revisions to the Disadvantaged Business Enterprise (DBE) program regulations found in Title 49 of the Code of Federal Regulations, Part 26 (49 CFR 26). The DBE regulations in 49 CFR 26 form the basis for the California Department of Transportation's (Caltrans) DBE program.

As a result of the changes to 49 CFR 26, Caltrans has completed significant revisions to the following sections of its Standard Specifications:

- Section 2: Bidding
- Section 5: Control of Work

Following is a summary of changes:

Counting DBE Participation

2-1.12B(1) General

- To count toward meeting a DBE goal, each listed DBE, at bid opening, must possess the work category code(s) applicable to the type of work they will perform on the contract.
- If a DBE leases trucks from a non-DBE truck leasing company, it must use its own employees as drivers in order to be eligible to receive credit for the total value of the hauling services.

DBE Commitment Submittal

2-1.12B(2) DBE Commitment Submittal

2-1.33D(2)(b) Contracts with a DBE Goal

- All bidders must submit, no later than 4 p.m. on the 4th business day after bid opening, the following information:
  - DBE Commitment form.
  - Quote from each listed DBE that describes the type and amount of work shown on the DBE Commitment form.
  - DBE Confirmation form for each listed DBE to establish that the DBE has agreed to participate in the type and amount of work shown on the form.
  - If the contract goal is not met, good faith efforts documentation. Good faith efforts documentation submitted outside of the specified timeline will not be considered as part of Caltrans' evaluation of good faith efforts.
- Caltrans has modified its DBE Commitment and DBE Good Faith Efforts Documentation forms based on changes in 49 CFR 26.

ATTACHMENT B

CALIFORNIA DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REVISIONS
MARCH 2015

Evaluation of Good Faith Efforts

2-1.12B(3) DBE Good Faith Efforts Submittal

- Appendix A to 49 CFR 26, "Guidance Concerning Good Faith Efforts," has been revised. Highlights include:
  - Additional emphasis on a bidder's efforts to identify and solicit DBEs.
  - Additional emphasis on a bidder's efforts to negotiate in good faith with interested DBEs, including evaluation of quotes provided by DBEs.
  - Caltrans must consider the performance of other bidders in meeting the contract goal as part of an evaluation of good faith efforts.

Reporting

5-1.13B(1) General

- Caltrans must begin collecting and reporting DBE payment data for all ongoing contracts. This is in addition to the collection and reporting of DBE final utilization upon acceptance of contract work.
- Prime contractors must submit by the 15th of each month a Monthly DBE Payment form documenting payments made to DBEs during the previous month. Failure to submit this form each month by the specified due date will result in withholds pursuant to section 9-1.16E(3), Performance Failure Withholds, of the Caltrans Standard Specifications.

DBE Substitutions

5-1.13B(2) Performance of Disadvantaged Business Enterprises

- A substitute DBE, at the time of substitution, must possess the work category code(s) applicable to the type of work the substitute DBE will perform on the contract.
- The prime contractor must submit good faith efforts documentation for DBE substitutions within 7 days; the timeline may be extended an additional 7 days at the contractor's request.
- A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding of good faith efforts to replace the original DBE.

This summary was prepared by the Office of Business and Economic Opportunity (OBEO) to promote awareness of changes to the DBE regulations at 49 CFR 26. The information provided in

ATTACHMENT B

CALIFORNIA DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REVISIONS
MARCH 2015

this document is not intended to supplement or replace contract documents that contain information regarding contract-specific requirements.

Caltrans encourages bidders and DBEs to review on a contract by contract basis all bid documents, including but not limited to, standard specifications and standard plans, forms, and addenda to identify, understand, and comply with contract requirements.

For more information about the Caltrans' DBE program, please visit the OBEO's web site at http://www.dot.ca.gov/hq/bep/.

For questions regarding:	Please contact:
DBE Policy and Reporting	OBEO Policy and Reports Branch business.support.unit@dot.ca.gov
DBE Training and Outreach	OBEO Training and Outreach Branch smallbusiness.advocate@dot.ca.gov
DBE Compliance	OBEO Compliance Branch marylee.miglino@dot.ca.gov
DBE Certification	OBEO DBE Certification Branch dbe.certification@dot.ca.gov
Performance of Work (e.g., Substitutions, Commercially Useful Function)	Division of Construction http://dot.ca.gov/hq/construc/
Award of Minor A, Major Construction, and Maintenance Contracts	Division of Engineering Services-Office Engineer http://www.dot.ca.gov/hq/esc/oe/
Award of Minor B, Architectural & Engineering, and Service Contracts	Division of Procurement and Contracts http://caltrans-opac.ca.gov/
Local Public Agency DBE Program	Division of Local Assistance http://www.dot.ca.gov/hq/LocalPrograms/

ATTACHMENT C

SUBLETTING AND SUBCONTRACTING FAIR PRACTICES ACT -- LISTING

Under Public Contract Code section 4104, a subcontractor who will perform work or labor or render service to the prime contractor or a subcontractor licensed by the State of California who fabricates and installs a portion of the work, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars ($10,000), whichever is greater must be listed.

Pursuant to Business and Professions Code section 7026, "Contractor," for the purposes of this chapter, is synonymous with "builder" and, within the meaning of this chapter, a contractor is any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, or the cleaning of grounds or structures in connection therewith, or the preparation and removal of roadway construction zones, lane closures, flagging, or traffic diversions, or the installation, repair, maintenance, or calibration of monitoring equipment for underground storage tanks, and whether or not the performance of work herein described involves the addition to, or fabrication into, any structure, project, development or improvement herein described of any material or article of merchandise. "Contractor" includes subcontractor and specialty contractor. "Roadway" includes, but is not limited to, public or city streets, highways, or any public conveyance.

Pursuant to Business and Professions Code section 7052, This chapter does not apply to any person who only furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of the contractor.

Caltrans interprets these sections to mean:

1) **A company that is providing equipment rental service is not required to be listed as a subcontractor**
2) **A company that is providing equipment rental with operator services is required to be listed**

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P.O. BOX 4760, MODESTO, CA 95352
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GEORGE REED INC.
GENERAL ENGINEERING CONTRACTORS

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MODESTO, CALIFORNIA 95354
1-877-823-2305
WWW.GEORGEREED.COM

State Contractor's License No. 211337-A

FAX TRANSMITTAL

Date: June 16, 2015

To: John McMillan, Deputy Chief
Company: State of California, Department of Transportation
Phone:
Fax: 916-227-6282

From: Stacy Case
Company: George Reed, Inc. – Modesto
Phone: (209) 523-0734
Fax: (209) 523-4927

Pages Faxed: 13

Project Name: 10-0K1404

Comments: George Reed, Inc. protest of Teichert.

ORIGINAL TO FOLLOW BY US MAIL

Thanks, *Stacy Case*