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May 20, 2015

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John C. McMillan
Office Engineer
Department of Transportation
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Re: Bid Protest Contract 10-0V9004

Dear Mr. McMillan:

We are counsel for George Reed, Inc. ("George Reed"), the second lowest bidder on contract 10-0V9004 ("Contract"), and we present this bid protest letter on its behalf.

A. Background

On April 29, 2015, the Department of Transportation ("Caltrans") opened bids on the Contract. Chester Bross Construction Company ("Chester Bross") was the apparent low bidder, and George Reed was the second low bidder.

Many of the listed subcontractors in Chester Bross' bid listed 100 percent of work and the bid item associated with that work. However, there are several instances where Chester Bross listed a subcontractor for less than 100 percent of the work, without a description of what work the subcontractors would actually do. Namely, Chester Bross listed some of its subcontractors as follows:

- AC Dike Co. was listed them for 73% of item 23;
- Chrisp Company was listed for 3% of item 03;
- Pavement Management Solutions Inc. ("PMSI") was listed for 35% of item 19; and
- Pavement Recycling Systems ("PRS") was listed for 30% of item 16.



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While item 03 (Traffic Control) and item 23 (Place Hot Mix Asphalt Dike (Type E)) can be described by the actual bid item number, items 19 (Prepave Grinding Day) and 16 (Cold Plane Asphalt Concrete Pavement) cannot be accurately described by doing so.

Both items 16 and 19 involve several processes to complete the work. Item 16 involves many processes that include grinding with a cold mill machine, loading trucks, hauling the material and sweeping to clean up during and after grinding. By saying that PRS is performing only a percentage of each of these two items Chester Bross acknowledges that they are not performing all of the processes mentioned. Without a description it cannot be known exactly what PRS is performing as its percentage of these items.

Similar to item 16, item 19 also involves many processes. Section 39-1.03C(5) of the Revised Standard Specifications states the "Prepaving grinding day includes correcting areas of localized roughness, taking profiles of the corrected areas, and submitting profile data as specified in Section 39-1.01C(13)(d)." As with item 16, without a description it cannot be known exactly which part of the process they are performing.

As outlined correctly in your May 13, 2015 letter to Chester Bross, its bid on the Contract was nonresponsive. Contrary to the bid requirements and the 2010 Standard Specifications, Chester Bross failed to give any descriptions for its listed subcontractors. Chester Bross was advised that Caltrans would award to the next lowest bidder, which would be George Reed.

On May 19, 2015, you transmitted another letter to Chester Bross, wherein Caltrans changed its position, determining that the deviation from bidding instructions was "immaterial to the bid." For the reasons outlined in more detail below, the deviations were material to the bid and Caltrans should not award the Contract to Chester Bross.

B. Argument

The Subletting and Subcontracting Fair Practices Act ("the Act") was intended to prevent prime contractors from bid shopping and bid peddling. Public Contract Code §4100 *et seq.* In order not to run afoul of the Act, Caltrans has long required prime contracts that submit bids for public work to list the description of each listed subcontractor's work:

On the Subcontractor List, list each subcontractor to perform work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Public Cont. Code § 4100 *et seq.*).



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The Subcontractor List must show the name, address, and work portions to be performed by each subcontractor listed. Show work portions by bid item number, *description*, and percentage of each bid item subcontracted.

Department of Transportation, Standard Specifications (2010) at 2-1.33C (emphasis added).

The purpose of this rule is to prevent the prime contractor from manipulating its financial arrangements with its subcontractors. Public Contract Code § 4101.

Here, Chester Bross' bid runs afoul of, not only the bid instructions, but the law as well. For the subcontractors listed in items 16 and 19, there is no description of what part of the work they will actually do. This would give Chester Bross the ability to manipulate the work and cost in a manner that prejudices the subcontractors. Therefore, it is a material deviation from the bid instructions, and the Contract should not be awarded to Chester Bross.

C. Conclusion

Chester Bross' failure to give descriptions of its subcontractors' work for line items 16 and 19 is a material deficiency. Not only is the bid nonresponsive, but it violations the Act and gives Chester Bross the ability to manipulate the situation with its subcontractors. George Reed requests that Caltrans not award the Contract to Chester Bross, and instead, award the Contract to George Reed, the lowest bidder with a responsive bid.

Sincerely,

Ryan C. Wood