

March 13, 2015

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
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PHONE (916) 227-6280
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ATTN: Mr. John C. McMillan
Deputy Division Chief

Subj: 10-0Y9404 RT 88 IN AMADOR COUNTY 8 MILES WEST OF PIONEER FROM .2 MILE WEST OF
SHAKE RIDGE ROAD TO .9 MILE EAST OF CAT CREEK ROAD
PROJECT ID: 1014000062

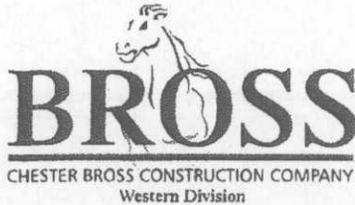
Re: FORMAL PROTEST OF BID SUBMITTED BY GEORGE REED INC. (GRI)

Dear Mr. McMillan,

Please consider this letter to be a formal protest of the bid submitted by GRI, the apparent low bidder. The bid turned in by GRI is nonresponsive and therefore must be rejected based on the Department's bidding requirements, strictly enforced policies and governing applicable Federal Regulations. Chester Bross Construction Company is the 2nd lowest bidder on this project.

The GRI bid is Mathematically Unbalanced

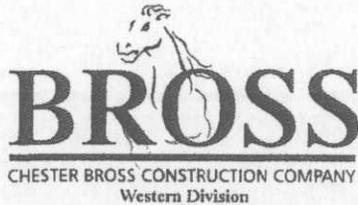
Upon review of the bid summary listings as provided on the Caltrans website, it is clear that GRI has submitted a mathematically unbalanced bid. Title 23 of the Code of Federal regulations, Section 635.102 provides that a bid is mathematically unbalanced if the bid contains "*lump sum or unit bid items* which do not reflect reasonable costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other direct costs." The bid submitted by GRI is mathematically unbalanced to even the most casual review. Primary emphasis should be placed on the unbalancing evident on bid



item 3 Traffic Control. The fact is that the Lump Sum price submitted for bid item 3 does not reflect the contractor's reasonable costs. Moreover, bid item number 3 on the bid sheet submitted by GRI is grossly inflated thereby demonstrating blatant unbalancing.

The bid item 3 Lump Sum price submitted by GRI of \$534,000.00 is grossly inflated to the most casual review. The magnitude of the inflated price submitted by GRI can begin to be substantiated best by GRI's own admittance with respect to the DVBE participation submittal. More specifically, the GRI DVBE submittal includes the quote and attached workup for justification regarding Sambrano Traffic Control, Inc. GRI's own workup demonstrates the need for 30 days of traffic control at \$3,175.00 per shift for a total of \$92,250.00. The project only provides for 35 working days to complete the work as outlined and required through acceptance. The 30 days and \$92,250.00 as submitted by GRI are reasonable and check very closely with the Chester Gross submittal of the same for Titan DVBE for the same work. Through additional review, bid item 3 for Chester Gross was \$100,000.00, the third place bidder's price for bid item 3 was \$130,460.00, the fourth place bidder's price for bid item 4 was \$128,740.00 all very reasonable considering the number of work days required and allowed on this contract. The mean average of the second, third and fourth place bidders is \$119,733.33, not so different than the \$95,250.00 GRI states it has as cost to Sambrano to perform the work in 30 shifts. When compared to the bid price submitted by GRI of \$534,000.00, it is more than evident that GRI has wrongly unbalanced bid item 3 by not less than \$414,000.00 when compared to the mean average of the next three bidders. Moreover, GRI's bid price for bid item 3 is \$438,750.00 higher than GRI claims is its cost as submitted on the Sambrano DVBE workup. Clearly, \$534,000.00 as a Lump Sum price is much higher than can be justified or substantiated in strict compliance with Section 635.102 of Title 23 in the Federal regulations and the Department's bidding requirements.

It should also be noted that upon review, it is also clear that the unit price GRI submitted for bid item 19 Rubberized HMA (G) is clearly underbid at \$80.00 per ton. When the \$80.00 GRI price is compared not only to the mean average of the next four bidders of \$118.09, but when compared to numerous other Caltrans bid prices from various contractors for the same product and application, \$80.00 is simply underbid and does not reflect reasonable costs, profit, overhead and anticipated direct costs. In fact, GRI has just provided the Department with a bid for the same exact product, Rubberized HMA (G) for the 10-OW5604 project on Rt 12 at a unit price of \$100.00 per ton on bid item 34. The Rt 12 project has 32.6% more quantity placed in twice the overall thickness giving cause for the Rt 12 Rubberized HMA (G) to be lower than the price provided by GRI for the Rt 88 project. Point of fact, the price GRI provided for bid item 19 is \$20.00 lower than the price it provided on Rt 12 or 20% less than the price it provided for the same product on 10-OW5604. It could be also noted that the Rt 88 bid item



19 price is 20% less than the Rt 12 price even though the delivery price alone is substantially higher for Rt 88. Again, it is clear that GRI has unbalanced it's price for bid item 19 when compared to averages, other bid prices for the same project, or GRI's pricing for the same product on other bids.

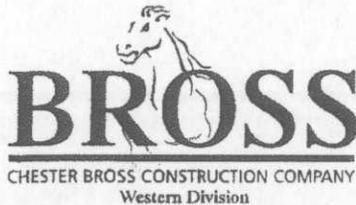
It is the belief of Chester Bross that GRI, in knowing the bid item 19 Rubberized HMA (G) will most likely underrun substantially, elected to effectively unbalance its pricing. In so doing, GRI bid down the unit price for bid item 19 and wrongfully placed or protected a substantial amount of these dollars in the lump sum item 3 Traffic Control, thusly, if the item in fact underruns, Caltrans does not recognize the benefit while GRI capitalizes on a situation thereby receiving payment for materials and services not provided. This can be substantiated as follows;

GRI TOTAL PRICE FOR BID ITEM 3	=	\$534,000.00
GRI TOTAL PRICE FOR BID ITEM 19	=	\$1,208,000.00
TOTAL FOR BOTH	=	\$1,742,000.00
AVERAGE OF 2 THRU 4 TH BIDDER TOTALS FOR ITEM 3	=	\$119,733.33
AVERAGE OF 2 THRU 4 TH BIDDER TOTALS FOR ITEM 19	=	\$1,768,411.33
TOTAL AVG FOR BOTH	=	\$1,888,144.66

It is clear that when combining bid item totals for GRI and comparing the total against the average totals for the next three bidders, the totals are extremely close. It is our contention that GRI has clearly mathematically unbalanced bid items 3 and 19, there is no refuting the mathematical unbalancing so very present in the GRI bid as set forth herein. The fact that this mathematical unbalancing is in fact to the detriment of the State and for GRI gain will be addressed further below.

The GRI 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 government associated with the unbalanced pricing in making the award decisions, and whether a contract will result in unreasonably high prices for contract performance. FAR § 15.404-1(G)(2). A bid should be rejected if Caltrans determines that the unbalanced bid poses an unacceptable risk to the government. FAR § 15.404-1(g)(3).

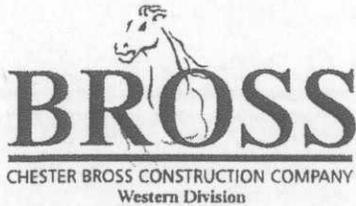


The risk that the government will pay excessively high prices for the Lump Sum Traffic Control bid item 3 and or for work not completed for the Rubberized HMA (G) bid item 19 is a clear fact as it pertains to bid item 3, and is extremely high as it pertains to bid item 19 on this project as a direct result of the unbalancing prevalent and so very obvious with respect to the GRI bid. This can be clearly noted by extremely high, unit price for item 3, and lower than easily expected unit price for item 19 as well. GRI did not bid according to the plans and specifications provided by Caltrans as they are required to do. Instead, GRI identified items that they believed would require much less quantity than stated in the bid documents and according to the plans, grossly underbid the unit price for those items, and drastically inflated other items to balance the overall total bid price. This is clearly evident on the GRI unit prices for bid items 19, and 3. GRI stands to gain substantial additional dollars by materially unbalancing these item as they have, causing an unreasonably high price for bid item 3 by protecting dollars from bid item 19 lending favor to the fact that the Department would be taking on an unacceptable risk.

The Department must ask itself, for bid items grossly inflated or overpriced, did the bidding contractor actually bid according to the plans and specifications. The answer is clearly no. Caltrans can however, evaluate the bids as outlined herein, confirm assumptions through plan calculation and quantity review to thereby substantiate the facts presented herein. The seriousness of this is clear. Though rhetorical, we must again state that Caltrans is required to consider the risks to the government associated with the unbalanced pricing in making the award decisions, and whether a contract will result in unreasonably high prices for contract performance. FAR § 15.404-1(G)(2). A bid should be rejected if Caltrans determines that the unbalanced bid poses an unacceptable risk to the government. FAR § 15.404-1(g)(3).

The facts are clear, GRI protected money by reducing the unit price for bid item 19, and placed the dollars into bid item 3. GRI did this knowing bid item 19 would underrun and as such, GRI will in fact get paid for work and materials not performed or provided if awarded this contract. This is clearly not in the best interests of the State and most definitely is unacceptable and cannot be allowed.

The regulations are enacted to protect the State and consequentially other bidders to avoid this method of bidding when a contractor determines construction omissions or quantity errors have been made by the agency. You will note that GRI will most likely not be able to cite a regulation or specification that supports its blatant mathematical and material price unbalancing. GRI did not provide a responsive bid according to governing regulation when they anticipate being able to wrongfully capitalize economically by wrongfully unbalancing. They will however, most likely try and convince the Department that the clear unbalancing is justifiable and will not carry with it a negative impact to the



State when in fact, this is the farthest from the truth and fact. When questioned by the Department, GRI will most likely also point out futile justification differentials as a means of desperate justification as if to say that they are permitted to violate the restrictions for unbalanced bids on its items as long as it does not become too high of an amount or a percentage of the overall bid. Fairness, integrity and honesty in the bid process while following all express requirements should not be replaced with manipulation, deception, and unreasonableness.

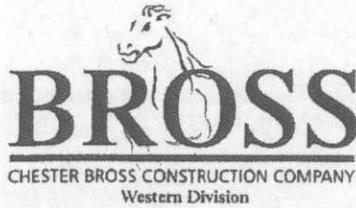
The Teichert bid is Materially Unbalanced Due to the Reasonable Doubt that their bids will Result in the Lowest Overall Cost to the Government

A bid is materially unbalanced if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid. FAR § 52.214-19(d). As previously noted, GRI significantly underbid bid item 19 as it believed this item would run under substantially when calculated in accordance with the plans and specifications. Thus, it is reasonable to assume that GRI inflated bid item 3 by wrongfully placing additional dollars on the item from item 19. Therefore, the bid day total represented by GRI is in fact much lower than anticipated thereby GRI stands to gain considerably while the Department effectively takes considerable risk in that the overall price for project delivery is in fact not the lowest price afforded the Government. As such, it is not in the best interests of the Department to accept the GRI bid.

In contrast, Chester Bross Construction bid these items according to the specifications and plans provided by Caltrans as all bidders are required to do.

Further, unbalanced bids can have a significant impact on both the administration of a project and a project's ultimate cost. Part of the bidding process is to allow the agencies to see the prices paid for materials and labor for various work items. This allows Caltrans to conduct the work, but more importantly, it allows Caltrans to be flexible in modifying the work if changes in methods, conditions and scheduling are required. This is not possible based upon an unbalanced bid.

For Change Orders, all of the costs of the contractor will be submitted for these items with no reference to the original bid amounts and agency will see them for the first time far into the project. Thus, associated Change Orders for those items in which GRI has unbalanced the cost will result in lengthy negotiations, thereby delaying incorporation of the changed work with the owner likely paying an inflated price for the change. Therefore, a Change Order has the very real potential to result in Caltrans still paying an inflated price for the changed work associated thereto.



Ultimately, it is the project, the State and the traveling public that will suffer by delayed completion and increased cost from addressing these issues and their consequences, including the cost of litigation. As such, and based in no small part on the points brought forth herein, ***there is more than reasonable doubt that the bid submitted by GRI will result in the lowest overall cost to the Government.*** Therefore, the bid submitted by GRI should be rejected as both mathematically and materially unbalanced.

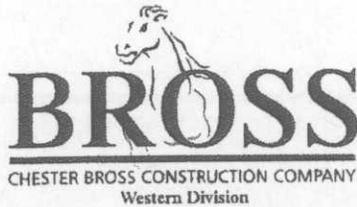
The GRI bid is Materially Unbalanced Due to the Threat it poses to the Integrity of the Bidding Process

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

It can also be noted that GRI has had bids deemed non-responsive by Caltrans in the past for unbalancing. Just one such example of GRI being disqualified for submitting an unbalanced bid would be on 10-OT1604 where Caltrans disqualified GRI for submitting a bid containing pricing deemed both mathematically and materially unbalanced. This magnifies the contention that GRI seemingly continues the incorrect practice of providing Caltrans with unbalanced bids. It could be assumed, and as apparent with the subject bid that GRI continues the practice of unbalancing bids.

Conclusion

Based on the considerable facts, references and information presented herein, governing regulations, specifications, and law, the bid provided by GRI should be rejected. The facts are clear and irrefutable, GRI wrongfully and impermissibly unbalanced its bid both mathematically and materially to the detriment of the State. GRI stands to recognized considerable un-earned dollars should the Department elect to disregard the facts outlined herein.



Therefore, it is respectfully and formally requested that the Department uphold and validate Chester Bross Construction's bid protest and award the contract to our company, which submitted the lowest responsive and responsible bid for Contract No. 10-OY9404.

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

Sent Via Facsimile to (916) 227-6282