

November 13, 2014

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER, MS 43
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SACRAMENTO, CA. 95816-8041
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ATTN: Mr. John C. McMillan
Deputy Division Chief

Subj: 08-1C3704 RT 95 IN RIVERSIDE COUNTY NEAR BLYTHE FROM 0.2 MILES SOUTH OF ROUTE 10/95
TO 0.7 MILE SOUTH OF LYE ROAD
FEDERAL PROJECT NO. ACSTP-P095(027)E

Re: FORMAL PROTEST OF BID SUBMITTED BY PAVE-TECH INC. (PAVETECH)

Dear Mr. McMillan,

Please consider this letter to be a formal protest of the bid submitted by Pavetech, the second low bidder on the subject project. The bid turned in by Pavetech is nonresponsive and therefore must be rejected based on the Department's bidding requirements, strictly enforced policies and governing applicable Federal Regulations. There are two primary factors necessitating cause for the Department to consider the bid provided by Pavetech be non-responsive. Chester Gross Construction Company is the 3rd lowest bidder on this project.

The Pavetech bid is Mathematically Unbalanced

Upon review of the bid summary listings as provided on the Caltrans website, it is clear that Pavetech 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



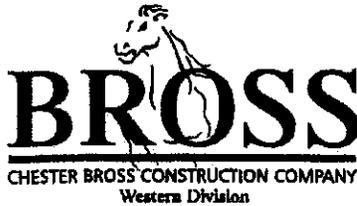
anticipated profit, overhead costs, and other direct costs." The bid submitted by Pavetech is mathematically unbalanced to even the most casual review. Primary emphasis should be placed on the unbalancing evident on bid item number 20 Tack Coat. The fact is that the unit price submitted for bid item 20 does not reflect the contractor's reasonable costs. Moreover, bid item number 20 on the bid sheet submitted by Pavetech is clearly grossly inflated thereby demonstrating blatant unbalancing.

The bid item 20 unit price submitted by Pavetech of \$1,295.00 is grossly inflated to the most casual review and minimal research with respect to current valuation for tack coat as well as past Caltrans history data which is not provided here for simplicity of review. Clearly, \$1,295.00 per ton 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:

The Pavetech bid is Materially Unbalanced Due to the Risk Caltrans will Pay Unreasonably High Prices for Contract Performance

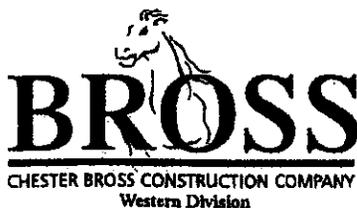
in determining whether a bid is materially unbalanced, Caltrans is required to consider the risks to the government associated with the unbalanced pricing in making the award decisions, and whether a contract will result in unreasonably high prices for contract performance. FAR § 15.404-1(G)(2). A bid 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 necessary final tack coat quantities and or for work not completed is extremely high on this project as a direct result of the unbalancing prevalent and so very obvious with respect to the Pavetech bid. This can be clearly noted by the extremely high, unit price for item 20, and higher than expected prices on LS items as well. Pavetech did not bid according to the plans and specifications provided by Caltrans as they are required to do. Instead, Pavetech identified items that they believed would require much more quantity than stated in the bid documents and according to the plans, grossly inflated the bid unit price for said items, and reduced other items to balance the overall total bid price. This is clearly evident on the Pavetech unit price for the item 20 tack coat. Pavetech stands to gain substantial additional dollars by materially unbalancing this item as they have, causing an unreasonably high price for the bid item and the project lending favor to the fact that the Department would be taking on an unacceptable risk. This fact can be substantiated with quick rough calculations. Utilizing the plans, it is clear that the tack coat will be required, at the very least, over the entire cold planed surface in no less than one application as the project is in essence a mill and fill job given the clear applicable specifications as outlined in Section 15-



2.02B(3)(a) of the Special provisions. As such, utilizing the cold plane quantity as a baseline, bid item 12 Cold plane provides a quantity of 601,000 SY to be milled and paved over. Utilizing the typical 0.07 gallons per SY from the governing specifications, at an average tack weight of 240 gallons per ton, it is clear that no less than 175.29 tons of tack will be required. This alone is an increase of 35.29 tons of tack. Now then, given the typical sections, it can be ascertained that to construct the project in multiple lifts and ensuring no longitudinal vertical joints are left after the end of the shift, it can also be calculated that not less than 233,610 SY of the Southbound lane will be constructed in not less than 2 lifts. As such, this additional 233,610 SY of area to receive the second tack coat at a rate of 0.05 gallons per SY increases the tack requirement by an additional 48.67 tons. This equates to a minimum required total quantity of tack of 223.96 tons or an increase over the bid quantity of 83.96 tons. Given the strict cold plane and pave requirements, a prudent contractor would most likely have figured to perform the Southbound .35' cold plane and pave back as a first phase, with a second phase of .15' cold plane and pave back on the Northbound portion, with a third phase of overlaying the entire EP to EP with a .10' depth wearing course lift of ½" HMA-A. This sequence is about the only viable sequence allowing for compliance with all governing specifications and allowing for maximized productions to ensure completion within the tight work day allotment. Prudence dictates that the three phase outline discussed herein is most likely the best means to construct per plan, as such, it can be calculated that the entire 601,000 SY of area would require two complete coverages of tack coat materials. As such, utilizing 601,000 SY as our baseline, covering the area 2 times with an average shot rate of 0.06 gallons per SY and 240 gallons per ton, the actual tack coat required to construct the project is 300.50 tons. At the Pavetech bid price of \$1,295.00 per ton, this means that the Pavetech bid price final total dollar amount for bid item 20 would be \$389,147.50 or an increase over the Pavetech initial total bid of \$207,847.50.

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. 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).



Additionally, once the Department verifies the quantity will in fact overrun substantially, applies the known economics associated thereto, it is clear that the Department must deem the Pavetech bid as non-responsive in the best interests of the State and in keeping with all applicable governing law.

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 Pavetech will most likely not be able to cite a regulation or specification that supports their inflated pricing thereby not bidding according to governing regulation when they anticipate being able to wrongfully capitalize economically. 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, Pavetech will most likely also point out percentage differentials as a means of desperate justification as if to say that they are permitted to violate the restrictions for unbalanced bids on some of the item 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.

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 Pavetech 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 reasonable doubt that the bid submitted by Pavetech will result in the lowest overall cost to the Government. Therefore, the bid submitted by Pavetech should be rejected as both mathematically and materially unbalanced.

Pavetech failed to properly complete its subcontractor listing

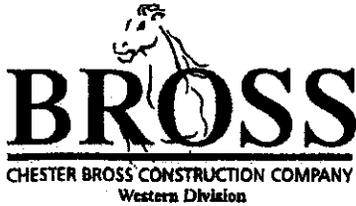
The Caltrans Bidder Subcontractor List form states very clearly in part.. *"the bidder must set forth in the bid the name, the location of the place of business, the California contractor license number, and the portion of work of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications,"*

The bid day subcontractor listing provided by Pavetech was incomplete and in error. The subcontractor listing submitted by Pavetech did not provide the required California contractor license number for any of the subcontractors listed on the bid day subcontractor listing. As such, Pavetech did not provide a complete subcontractor listing on bid day in keeping with the clear, express requirements. Additionally, and though not allowed for, Pavetech continued its failure to provide the required Caltrans Contractors license number on the 24 hour submittal as well.

Caltrans has been very consistent in its enforcing the strict compliance with the requirements set forth on and about the Subcontractor listing. Pavetech failed to meet the requirements. As such, Caltrans must reject the Pavetech bid as incomplete and nonresponsive.

Conclusion

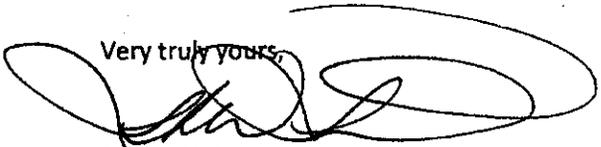
Based on the considerable facts, references and information presented herein, governing regulations, specifications, and law, the bid provided by Pavetech should be rejected for two primary reasons. The first reason is that the Pavetech bid is clearly mathematically and materially unbalanced. The second reason is that Pavetech made impermissible errors and incompleteness with respect to its subcontractor list.



Therefore, it is respectfully and formally requested that the Department uphold and validate Chester Bross Construction's bid protest and reject the bid submitted by Pavetech and proceed to award the contract to the lowest responsible bidder.

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