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November 19, 2014

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER, MS 43  
1727 30<sup>th</sup> STREET  
P.O. BOX 168041  
SACRAMENTO, CA. 95816-8041  
PHONE (916) 227-6280  
FAX (916) 227-6282

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

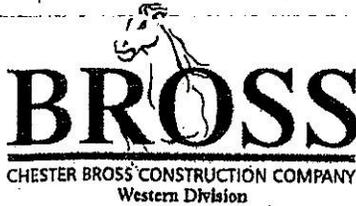
Dear Mr. McMillan,

Please consider this letter to be a formal protest of the bid submitted by PAVETECH, the apparent 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. Chester Bross Construction Company is the 3rd lowest bidder on this project.

**The PAVETECH bid impermissibly changed the scope of work to be performed by its subcontractors**

Upon review of the bid summary listings as provided on the Caltrans website, it is clear that PAVETECH has in fact, changed the percentage, and scope of work to be performed by Cal Stripe Inc., with respect to its subcontractor listed on its bid day Subcontractor list form and the 24 hour Subcontractor list form.

The Caltrans Bidder Subcontractor List form states very clearly, and with no ambiguity 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," continuing "The Bidder must submit within 24 hours of the bid opening, the bid item numbers with percentages of the portion of work subcontracted."*

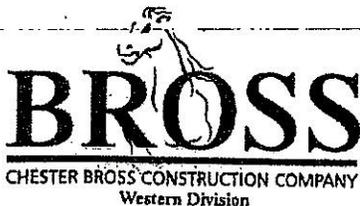
There are two distinct errors evident in review of the bid day and 24 hour subcontractor listings provided by PAVETECH. The first error on its bid day Subcontractor's List form listed Cal Stripe Inc. for "Striping & Markers" alone. Bid item #4, Traffic Control, is an item that is not considered a Striping or Marker item and was therefore not included in the initial "Description of Portion of Work" submitted at time of Bid Opening as Striping or Markers. It is noted however, that PAVETECH did include the bid item #4 on bid day under the Bid Item Numbers section for Cal Stripe Inc.

The second error on the Subcontractor List form submitted with the bid, PAVETECH identified Cal Stripe, Inc. to perform work listed as 100 percent for bid item #4, (notwithstanding the previously discussed description error). However, on the 24-hour Subcontractor List form, PAVETECH changed the percentage of work to be performed from 100 percent to 29%, a reduction in scope to partial for that bid item. The change from 100% to partial reduces the scope of work to be performed by Cal Stripe Inc., is inconsistent with the original Subcontractor List, is a material error and renders the bid nonresponsive.

Caltrans has and continues to enforce its strict compliance with governing policies, regulations and law with respect to improper changes and or errors to the Subcontractors List form. Two clear recent examples of this can be noted with the attached Caltrans letters (attached) outlining and justifying these very same contentions though pertaining to Contracts 04-2G8604, and 04-1SS024. Both Caltrans non responsive validation letter carries with them the same impermissible change in scope, inconsistency errors and the clear consequences of such an impermissible change.

The attached letters from Caltrans are clear and without ambiguity lending favor to clear and decisive action in deeming the Contractor's bids nonresponsive for the same improper change to the Subcontractor's List form. As such, and in Caltrans own words, the changes in scope "*constitutes an improper change to the Subcontractor's List form.*" Therefore, Caltrans, enforcing its strictly enforced bidding requirements, policies and governing applicable Federal and State Regulations informs the Contractor that "*its bid is nonresponsive*" and "*Based on the above, Caltrans will proceed to award the contract to the lowest responsible bidder.*"

As a matter of clear fact, Caltrans has, clarified that by listing any work as "*partial*", the contractor has committed to utilizing that subcontractor for only a portion of the work described, moreover, Caltrans has clarified with irrefutable clarity, that without utilization, or reference to



"partial", "portion" or any descriptive word of like and kind, the description itself stand alone, establishes 100 percent of the work. The fact is, Caltrans is clear, that without the reference to a portion of work, or partial, the work referenced by description is considered 100 percent. As such, substantiated by the attached letter, governing requirements and pertinent law, it is an impermissible and improper change to the Subcontractor's List form to list a subcontractor for a given item of work, then reduce the portion of work to be performed by the subcontractor on the 24 hour Subcontractor List form.

PAVETECH, as outlined above, has wrongfully, and effectively changed the scope of work for Cal Stripe Inc. by reducing the scope of work for bid item 4 on its 24 hour subcontractor list. And again, this impermissible change in and of itself is notwithstanding the error PAVETECH made with respect to incorrectly neglecting to list Traffic Control under its "Description of Portion of Work".

**Conclusion**

Based on the clear facts, references and information presented herein, governing regulations, specifications, law, and Caltrans enforcement precedence, the bid provided by PAVETECH must be rejected as nonresponsive.

The facts are clear and irrefutable, the changes PAVETECH has made from its bid day Subcontractor List to its 24 hour Subcontractor List constitute an improper change to the Subcontractor's List form. As such, there is no alternative other than to notify PAVETECH that its bid is nonresponsive and proceed to award the contract to the lowest responsible bidder.

Based on the information presented herein, it is respectfully and formally requested that the Department uphold and validate Chester Gross 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

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES

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"Without Strength,  
Help save water."

November 14, 2014

Facsimile: (925) 838-5915

Hal Stober, President  
Gordon N. Ball, Inc.  
333 Camille Avenue  
Alamo, CA 94507

02-1SS024  
04-Ala-13-8.3  
B.O 10/21/2014

Dear Mr. Stober:

The Department of Transportation (Caltrans) received a letter dated November 4, 2014, from Gordon N. Ball, Inc. (Gordon Ball) in response to a nonresponsive bid determination on the above contract. Gordon Ball requested Caltrans reconsider that determination. Based on that request, Caltrans re-examined Gordon Ball's bid. During this examination, Caltrans found additional material errors in the Subcontractor List/24-Hour Submittal Form. These errors further support a finding that Gordon Ball's bid is nonresponsive. The errors are as follows:

Caltrans's findings:

With Bid: Subcontractor Description of Work	24 Hour Subcontractor List submittal w/ Bid Item(s) number and %.
Bayside Stripe & Seal (Bayside)	Bayside
• Striping	Bid Items #3-#5 - 100% Bid Items #25, #28, #29 - 100% Bid Items #106-109 - 100% Bid Item #127 - 34% Bid Item #128(P) 1.7%
Bid Item #4, Channelizer (Surface Mounted), Bid Item #5, Temporary Pavement Marker, and Bid Item #29, Remove Pavement Marker are all items that are not considered Striping items and were therefore not included in the initial "Description of Portion of Work" submitted at time of Bid Opening as Striping. These items were added on the 24 Hour Subcontractor List thus expanding the work to be performed by Bayside. The addition of Bid Items #4, #5, and #29 on the 24 Hour Subcontractor List is inconsistent with the original Subcontractor List, is a material error, and renders the bid nonresponsive.	
RMT Landscape (RMT)	RMT
• Erosion Control (Partial)	Bid Items #69-#72 - 100%
The change from partial to 100% expands the scope of work to be performed by RMT, is inconsistent with the original Subcontractor List, is a material error and renders the bid nonresponsive. Gordon Ball alleges that there are other Erosion Control items that are not included in the work for RMT landscape. Upon further examination of the Bid Item List, it is Caltrans' response that Bid Items #69-#72 are part of Erosion Control as described in the initial "Description of Portion of Work" but Bid Items #10-#23 are in fact part of Water Pollution Control not Erosion Control.	

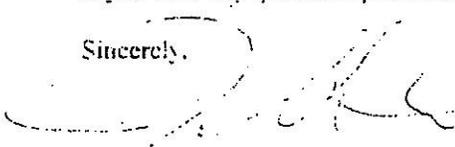
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Hal Stober  
Page Two  
November 14, 2014

Based on the above, Caltrans will proceed to award this contract to the lowest responsible bidder, provided that all requirements have been met.

If you have any questions, please contact Irene Beckham, Contract Award Analyst, at (916) 227-6284.

Sincerely,



JOHN C. McMILLAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

DEPARTMENT OF TRANSPORTATION  
 DIVISION OF ENGINEERING SERVICES  
 OFFICE ENGINEER  
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 www.dot.ca.gov/hq/esc/oe



Serious drought  
 Help save water!

November 14, 2014

Facsimile: (925) 838-5915

Hal Stober, President  
 Gordon N. Ball, Inc.  
 333 Camille Avenue  
 Alamo, CA 94507

04-2G8604  
 04-Ala-580-R33.4  
 B.O 10/16/2014

Dear Mr. Stober:

The Department of Transportation (Caltrans) received the attached letter dated November 4, 2014, from Gordon N. Ball, Inc. (Gordon Ball) in response to a nonresponsive bid determination on the above contract. Gordon Ball requested Caltrans reconsider that determination. Based on that request, Caltrans re-examined Gordon Ball's bid. During this examination, Caltrans found additional material errors in the Subcontractor List/24-Hour Submittal as well as the DBE Commitment Form. These errors further support a finding that Gordon Ball's bid is nonresponsive. The errors are as follows:

Caltrans' Findings:

With Bid: Subcontractor/ Description of Work	24 Hour Subcontractor List submittal w/Bid Item(s) number and %.
Chrisp • Striping.	Chrisp Bid Item 1(P) 50% (note: this is the lead compliance plan and is not considered subcontracted work, but is included in the total of the amount provided to the subcontractor) Bid Items #5-#7, #23, #29-#30, #104-#106 - 100% Bid Item #112(P) - 5% (note: this item is mobilization)
Bid Item #7, Channelizer (Surface Mounted) - 100%, was not described in the initial "Description of Portion on Work", submitted at time of Bid Opening, but added on the 24 Hour Subcontractor List thus expanding the work to be performed by Chrisp. The addition of Bid Item #7 is inconsistent with the original Subcontractor List, and is a material error: therefore, renders the bid nonresponsive.	
Selby's Soil Erosion Control (Selby's) • Erosion Control (Partial)	Selby's Bid Item #14, Temporary Hydraulic Mulch (Water pollution control) - 100% Bid Item #71, Fiber Rolls, (Erosion control) - 100% Bid Item #71 was the sole erosion control item on the project.
Bid Item #14, Temporary Hydraulic Mulch (Water pollution control) - 100% is not part of Erosion Control as described in the initial "Description of Portion of Work" but is in fact part of Water Pollution Control. Since Selby's was only to do work described as Erosion Control (Partial) as stated on the form submitted at time of Bid Opening, the addition of Bid Item #14 relating to Water Pollution Control on the 24 Hour Subcontractor List expanded the work to be performed by Selby's. The addition of Bid Item #14 is inconsistent with the original	

Hal Stober  
Page Two  
November 14, 2014

Subcontractor List, and is a material error and therefore renders the bid nonresponsive. Bid Item #71 is the only Erosion Control Bid Item for the Project. At the time of Bid Opening the work to be performed by Selby's for Erosion Control is listed as (Partial), however on the 24 Hour Submittal Bid Item #71 is listed as 100%. Since Bid Item #71 is the only Bid Item relating to Erosion Control for the Project, increasing the percentage of work to 100% is inconsistent with the original Subcontractor List, and is a material error and therefore renders the bid nonresponsive.

JJ Nguyen  
• Landscaping

JJ Nguyen  
Bid Items #44-#70  
Bid Item #110 - 100%  
Bid Item #112(p) - 3% (note: this item is mobilization)

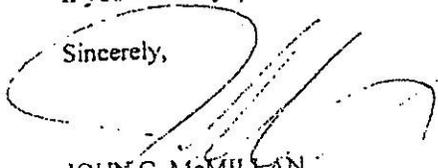
Bid Item #28, Remove Irrigation Facility, was not listed on the Subcontractor List, but listed on the DBE Commitment form. The DBE Commitment form instructions states: "If applicable under Pub Cont Code § 4100 et. sec., the names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontractor List". The omission of Bid Item #28, is inconsistent with the original Subcontractor List, is a material error and therefore renders the bid nonresponsive.

*"Public Contract Code 4104 (a) (1) The name and the location of the place of business 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 . . ."*

Based on the above, Caltrans upholds its determination that Gordon Ball's bid is nonresponsive and will proceed to award this contract to the lowest responsible bidder, provided that all requirements have been met.

If you have any questions, please contact Irene Beckham, Contract Award Analyst, at (916) 227-6284.

Sincerely,

  
JOHN C. McMILLEAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

**BROSS**

**Chester Gross Construction**

120 Pine St Valley Springs 95252

Phone: 209-920-3595

Fax: 209-263-0123

**FAX**

To:

DEWISE/CALTRANS

Fax:

916-227-6280

Date:

11/19/14

Re:

PER OUR PREVIOUS  
CONVERSATION / FAX

From

SHAWN SIMMONS

Fax:

Phone:

Cc:

Comments:

3 RD ATTEMPT TO  
FAX.



THANK YOU  
DEWISE.

Pages:

8

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