



# DEPARTMENT OF TRANSPORTATION

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924 B Emerald Bay Road, South Lake Tahoe, CA 96150  
(530) 573-7900 / (530) 541-7049 Fax

### MAINTENANCE:

1121 Shakori Drive, South Lake Tahoe, CA 96150  
(530) 573-3180 / (530) 577-8402 Fax

**Sent Electronically via Facsimile or E-Mail to Distribution List  
3 pages, No Hard Copy to Follow**

September 9, 2022

To: Distribution List

**Subject: Bid Protest Response for the 2022 Caldor Fire Road Repair Project (Contract No. 6840, FEMA No. 660675)**

Dear Bidders:

We thank you for your interest and for bidding on the 2022 Caldor Fire Road Repair Project (Project). The Department of Transportation (Transportation) received a bid protest by George Reed, Inc. (George Reed) on September 8, 2022.

Transportation, along with our legal counsel, has reviewed the protest submitted by George Reed and find their protest has no merit for the following reasons:

- 1) *George Reed claims that Teichert Construction's (Teichert) bid is non-responsive because they failed to list a cold plane/grinding subcontractor on their Subcontractor List in the Proposal. George Reed further claims that Teichert listed Anrak as a chosen subcontractor in their Disadvantaged Business Enterprise (DBE) Good Faith Effort Documentation showing them as a chosen subcontractor.***

California Public Contract Code (PCC) Section 4106 states the following:

*If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.*

A bidder must list all subcontractors in excess of one-half of 1 percent or \$10,000, whichever is greater in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 on the Subcontractor Listing form in the Proposal. This form must be submitted at time of bid. This form was completed by Teichert showing Kent's Oil Service and Austin Enterprise as the only two subcontractors that will be performing work on the project in excess of one-half of 1 percent or \$10,000, whichever is greater. The DBE documentation showing Anrak as an "operated grinder rental" was listed in the Good Faith Effort documentation and is not contractually binding use of a subcontractor for purposes of the Subletting and Subcontracting Fair Practices Act.

Teichert did not list a subcontractor for Bid Item 4 – Cold Plane Asphalt Concrete Pavement. In accordance with PCC 4106, Teichert must either self-perform this item or rent only the grinding equipment and provide their own operator to run the equipment. The fact that Teichert chose to self-perform this item does not render the bid non-responsive.

- 2) ***George Reed claims that Teichert listed the Bid Item Description for Austin Enterprise on the Subcontractor List as “5 – Crack Treatment for Geosynthetic Reinforcing Pavement Fabric (Grindable)”, which is not the bid item description.***

Bid Item 5 as shown in the Proposal Pay Items and Bid Price Schedule of the Proposal is titled “Geosynthetic Pavement Reinforcing Fabric (Grindable).” Crack seal (crack treatment) is an item of work that is incorporated into bid item 5 per Sections 7.6.2 and 7.8 of Exhibit F. Teichert listed two separate subcontractors that will each be performing a portion of Bid Item 5. Adding additional written description in the “Bid Item Description” box is not grounds for finding a bid non-responsive.

- 3) ***George Reed Claims that Teichert’s bid is non-responsive because they did not check an option on the Iran Contracting Act Certification Form in the Proposal.***

The Iran Contracting Act of 2010 (Public Contract Code section 2200 et seq) prohibits any person who is on a list developed by the Department of General Services of the State of California as engaging in investment activities in Iran or engages in investment activities in Iran from submitting a proposal for, or to enter into or renew, a contract with a public entity for goods or services in excess of one million dollars (\$1,000,000) or more. Public Contract Code section 2204 goes on to require that the County to “require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars (\$1,000,000) or more to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable.” The County complied with this requirement by including the “Iran Contracting Act Certification” form.

The County agrees that Teichert did not check one of the three options on the “Iran Contracting Act Certification” form on page P-8 of the Proposal. The three options that could have been selected were (1) I'm not on the anti-contracting list; (2) this form isn't necessary because the contract value is less than \$1,000,000; or (3) the public agency has given Teichert a waiver. The only option Teichert could have selected was option 1 as this Contract is not less than \$1,000,000 and Teichert has not been granted a waiver by the County nor does the County have any record that they requested a waiver. Public Contract Code section 2203 authorizes the Department of General Services of the State of California maintains a List of Ineligible Businesses that it determines engage in investment activities in Iran for purposes of the Iran Contracting Act of 2010. Transportation verified that Teichert is not included on the Iran Contracting Act List. Teichert did sign the form, which shows they were aware of the form. Teichert also signed the Proposal on page P-18 which states “the Bidder’s execution on the signature portion of this Proposal shall constitute an endorsement and execution of those affidavits, declarations and certifications which are part of this Proposal.”

The Notice to Bidders and 48 CFR §14.405 allows Transportation to waive any irregularity found in a bid. It is well established law that a bid is responsive if it conforms to the public agency’s specifications to the contract. It is also well established that a bid that a public agency may award a bid that substantially conforms to the call for bids and may waive any irregularities so long as the irregularities do not affect the amount of the bid or give the bidder an advantage or benefit not allowed other bidder. (See *DeSilva Gates Construction, LP v. Department of Transportation* (2015) 242 Cal.App.4th 1409, 1422-1423.) Teichert’s failure to check an option on the “Iran Contracting Act Certification” form is an immaterial difference and does not “effect the price, quantity, quality, or delivery” of the Project. This irregularity in the bid also does not give Teichert an advantage offered to other bidders because Teichert did sign the Form and the County considers that in substantial compliance with the purpose of the intent of the Form. The County has no indication that Teichert is not in compliance with the Iran Contracting Act of 2010 and would enforce this certification against Teichert if the County subsequently learns that Teichert is not in compliance, just as the County would for any other bidder.

Transportation intends to recommend the following to the County of El Dorado Board of Supervisors at the September 13, 2022 Board of Supervisors’ meeting:


- 1) Reject the bid protest filed on September 8, 2022 by George Reed, Inc. for the reason's stated above; and
- 2) Find that A. Teichert & Son, Inc., dba Teichert Construction is the lowest, responsive, responsible bidder.

The decision of the Board of Supervisors on the bid protest will be final.

The Board meeting will begin at 9:00 a.m. and is currently being held in a hybrid format, both in-person and virtually. Information on how to view and attend the meeting can be found at the Board's website: <https://edcgov.us/Government/BOS>

The Board of Supervisors will take comment from the Bidders, staff, and members of the public who wish to speak on the item. In the event that the Bidder is not in attendance at that time, the bid protest may be dismissed by the Board of Supervisors without further consideration of the merits. The decision of the Board of Supervisors on the bid protest will be final.

Sincerely,

  
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Jen Rimoldi,  
Assistant Engineer

#### Attachments

#### Distribution List

|   |                         |
|---|-------------------------|
| Teichert Construction                   | 916-757-6499            |
| George Reed, Inc.                       | 209-523-4313            |
| Granite Construction Company            | 916-369-0429            |
| Doug Veerkamp General Engineering, Inc. | 530-676-0826            |
| Martin Brothers Construction, Inc.      | 916-381-0611            |
| JV Lucas Paving, Inc.                   | aaron@jvlucaspaving.net |
| KW Emerson, Inc.                        | 209-754-3830            |