



1 North San Antonio Road  
Los Altos, California 94022-3087

## MEMORANDUM

**MEETING DATE:** June 22, 2021

**TO:** City Council

**FROM:** Gaku Watanabe, Assistant Civil Engineer

**SUBJECT:** Agenda Item #5 - Construction Contract Award:  
Fremont Avenue Pavement Rehabilitation, Project TS-01056

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Shortly after the posting of Notice of Intent to Award the Fremont Avenue Pavement Rehabilitation Project to Interstate Grading & Paving, the City Clerk's office received a bid protest letter from Teichert Construction, the second lowest bidder, on June 8, 2021. The Protest letter from Teichert Construction is attached to this memo as Exhibit A. Interstate Grading and Paving submitted their response to the protest letter on June 10, 2021, attached to this memo as Exhibit B.

City staff responded to the protest per City's bid protest procedure on June 17, 2021, attached to this memo as Exhibit C, concluding the bid protest with the decision to proceed with Interstate Grading and Paving as the lowest responsive bidder for Construction Contract Award at the City Council Meeting of June 22, 2021. The City's bid protest procedure, Resolution 2015-36, is attached as Exhibit D.



6/7/2021

Gaku Watanabe  
Assistant Engineer  
City of Los Altos  
Engineering Services Department  
1 North San Antonio Rd.  
Los Altos, CA 94022-3087  
Phone: (650) 947-2780  
Fax: (650) 947-2732

RE: Fremont Avenue Rehabilitation Projects  
Project No. TS01056, Federal Project No. STPL-5309(019)  
Bid Opening: April 28, 2021

Subject: Bid Protest of Apparent Low Bidder, Interstate Grading & Paving Inc.

Dear Mr. Watanabe,

Please consider this letter as A. Teichert & Son, Inc. dba Teichert Construction's (Teichert) formal protest of the bid submitted by Interstate Grading & Paving Inc.(Interstate), the apparent low bidder for City Project Number TS01056. The basis for this protest is as follows.

1. Instructions to Bidders (Attachment L), reads as follows:

A Bid proposal must reach the DBE participation goal of 17% based on the total bid amount.

Item 11 in the Notice to Contractors says that the contract shall be award to the lowest responsive, responsible Bidder on the basis of the Total Bid. This statement establishes that the DBE participation goal of 17% shall be applied to the Total Bid. Interstate's Total Bid was \$1,471,592.75. Interstate committed \$194,925 to their DBE vendors, amounting to a 13.24% of their total bid. Per Public Contract Code 20103.8, a local agency must state how the contract is to be awarded (Item 11 in the NTC).

The Attachment L submitted by Interstate Grading & Paving Inc did not reach the DBE participation goal as it was only 13.24%.

2. Instructions to Bidders (Attachment M), reads as follows:

The City of Los Altos established a DBE goal of 17% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

The Attachment M submitted by Interstate Grading & Paving Inc failed to include any information on the attached sheets. All lines were left blank, and a note was written on top with "goals met". Section 2-1.02 of the projects Federal Provisions states that the bidder must submit the good faith efforts documentation within the specified time to protect their eligibility for award of the contract in the event the DBE goal has not been met. Exhibit 15-H states that the bidders submit their good faith efforts form in case the bidder did not meet the DBE goal for various reasons,

including if the **"bidder made a mathematical error"**. Clearly Interstate made a mathematical error, however, they failed to submit the good faith effort as required. In addition, this same section requires the bidder to submit written confirmation or a copy of the DBE's quote as written confirmation that the DBE is participating in the contract. The lack of written confirmation reduces Interstate's commitment to 0%.

These are not immaterial errors. Teichert incurs considerable costs to conduct good faith efforts in order to maximize DBE usage through the hiring of multiple full-time contract administrators as well as the use of temporary staff to conduct good faith efforts. By not enforcing the required good faith effort as required in the Federal provisions, the City of Los Altos would be giving an unjust bid advantage to vendors who choose not to make a good faith effort. Furthermore, Teichert has an increased cost to our bid in order to make the DBE goal by choosing to use DBE vendors at a higher cost in order to make the DBE goal. Again, by not enforcing the Federal provisions to meet the DBE goal or make a good faith effort, the City of Los Altos would be giving an unjust bid advantage to vendors who choose not to make the DBE goal.

In addition, Title 49, Section 26 of the Code of Federal Regulations states under section 26.53 that the local agency must award the contract only to a bidder that has made the DBE goal or made a good faith effort to meet the goal.

3. Instructions to Bidders (Attachment P), reads as follows:

For each Subcontractor that will perform a portion of the work in an amount in excess of one-half of 1% of the Bidder's total Contract Price, the bidder must list a description of the Work, the name and location of the Subcontractor, item descriptions, subcontract and percentage amounts, its California Contractor license number, its DIR registration number, DBE Certification number, annual gross receipts, and age of firm.

The attachment P submitted by Interstate Grading & Paving Inc as part of the bid documents were incomplete. They did not list any contractor license numbers for any of their subcontractors. They were missing DIR registration numbers and DBE Certification numbers (if applicable), and did not fill out the annual gross receipts, and age of firm, making this bid proposal invalid. Furthermore, Interstate did not even properly list one of the subcontractors. Interstate listed "GRC" as doing CIR work. This is not the name of any subcontractor, furthermore, the lack of a CSLB or DIR Reg # prevents any determination of who "GRC" may be. This would allow Interstate to bid shop and use many different contracts to perform the CIR work if they chose.

Public contract code 4104 states that the CSLB and DIR Registration number must be submitted with the name unless there is an inadvertent error in the CSLB or DIR Reg # (e.g. a typo). There was nothing filled out for these, so it was not a typo or inadvertent error. In addition, a correction to a typo can only be made within 24 hours and can only be made if it matches the Subcontractor's name. No CSLB or DIR Reg # match the "GRC" name listed.

Teichert is requesting that Interstate Grading & Paving Inc bid on the City of Los Altos Project Number TS01056 be declared nonresponsive for the abovementioned reasons and Teichert be awarded the project as the lowest responsive bidder.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Jason Theriault  
Chief Estimator – Public Works – Bay Area Region  
5200 Franklin Dr. Suite #115  
Pleasanton, CA 94588  
P (925) 621-5700  
F (925) 621-5799  
[jtheriault@teichert.com](mailto:jtheriault@teichert.com)

CC:  
Interstate Paving and Grading



Engineering Services Department  
 One North San Antonio Road  
 Los Altos, California 94022-3087  
 Tel: (650) 947-2780  
 Fax (650) 947-2732

### NOTICE OF INTENT TO AWARD CONTRACT

**Project Name:**  
 Fremont Avenue Pavement Rehabilitation

**City Project Number:**  
 TS-01056

**Bid Opening Date:**  
 April 28, 2021

**NOI Posting Date:**  
 June 2, 2021

The City of Los Altos intends to award the Base Bid and Additive Alternate No. 1, to the lowest responsive bidder, Interstate Grading & Paving, Inc., for the above-referenced project.

A bidder who wishes to protest the award shall follow the City's procedures as established by the attached Resolution 2015-36.

CONTRACTOR	TOTAL BASE BID	TOTAL ADD ALT	TOTAL BID *
Interstate Grading & Paving	\$ 1,132,194.40	\$ 339,398.35	\$ 1,471,592.75
Teichert & Son	\$ 1,060,088.50	\$ 416,497.80	\$1,476,586.30
Radius Earthwork	\$ 1,117,871.40	\$ 397,828.60	\$ 1,515,700.00
O'Grady Paving	\$1,064,588.50	\$ 490,064.10	\$ 1,554,652.60
G. Bortolotto & Co	\$ 1,250,906.95	\$ 397,853.60	\$ 1,648,760.55
Granite Construction	\$ 1,342,049.66	\$ 371,032.66	\$ 1,713,082.32

\*Determination of lowest bid based on "TOTAL BID" amount.

## EXHIBIT 15-G CONSTRUCTION CONTRACT DBE COMMITMENT

1. Local Agency: Public Works 2. Contract DBE Goal: 17%  
 3. Project Description: Fremont Ave. Street Rehab  
 4. Project Location: Los Altos  
 5. Bidder's Name: Interstate Grading & Paving Co. 6. Prime Certified DBE: ☐ 7. Bid Amount: 4,132,194.40 (Base Bid)  
 8. Total Dollar Amount for ALL Subcontractors: 398,434.95 9. Total Number of ALL Subcontractors: 3

10. Bid Item Number	11. Description of Work, Service, or Materials Supplied	12. DBE Certification Number	13. DBE Contact Information (Must be certified on the date bids are opened)	14. DBE Dollar Amount
1, 8, 10, 12 26-40	Striping	2003	Super Seal & stripe P.O. Box 755 Firmore, GA 30116	139,925.-
various	Trucking (Partial)	33465	18 Trucking 2417 Dunn Rd Hayward, CA 94545	59,000.-
Local Agency to Complete this Section upon Execution of Award				
21. Local Agency Contract Number: _____			15. TOTAL CLAIMED DBE PARTICIPATION	
22. Federal Aid Project Number: _____				
23. Bid Opening Date: _____				
24. Contract Award Date: _____				
25. Award Amount: _____			\$194,925.-	
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			17.2 %	
26. Local Agency Representative's Signature _____			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable with the names and items of the work in the "Subcontractor List" submitted with your bid. Written confirmation of each listed DBE is required.	
27. Date _____			Tina-Marie Mason 5.3.21	
28. Local Agency Representative's Name _____			16. Preparer's Signature	
29. Phone _____			Tina-Marie Mason 650-932-7333	
30. Local Agency Representative's Title _____			18. Preparer's Name	
			Avt. Project Mngc.	
			20. Preparer's Title	

DISTRIBUTION: 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.  
 3. Include additional copy with award package.

at City Hall, 1 North San Antonio Road, Los Altos, CA. Bids received after this time will be returned unopened. Bids shall be valid for sixty (60) calendar days after the bid opening date. Access to City Hall is currently restricted. Sealed bids must be dropped-off inside the bid box left in front of the City Hall main entrance on April 28 between 9AM and 1:55PM. Please call 650-947-2628 for any assistance locating the bid box. Additionally, sealed bids can be delivered via USPS, FEDEX, UPS, or other carrier to the Engineering Services Department at City Hall prior to the bid due date. Please clearly label the package with the project title and add "ATTN: Kathy Kim". Bids received on time will be publicly opened and read aloud on Wednesday, April 28, 2021, at 2:00 p.m. via RingCentral Meeting's video conference meeting.

10. **Payment & Performance Bonds:** The successful Bidder will be required to furnish the City with a Performance Bond and a Payment Bond, each equal to 100% of the successful Bid, prior to execution of the Contract. All bonds are to be secured from a surety that meets all of the State of California bonding requirements, as defined in Code of Civil Procedure Section 995.120, and is admitted by the State of California. The cost of said bonds shall be included in the Bid amount.
11. **Award of Contract:** Said bids will be presented to and considered by the City Council at a regularly scheduled meeting. The City shall award the Contract for the Project to the lowest responsive, responsible Bidder on the basis of the Total Bid.
12. **Time of Completion of Work:** The work shall be completed and ready for full use within **150 calendar days**, the first day of which shall be the date specified in the City Engineer's "Notice to Proceed".
13. **Substitution of Securities:** Pursuant to Public Contract Code section 22300, the successful Bidder may substitute certain securities for funds withheld by City to ensure his performance under the Contract.
14. **Rights of the City:** The City reserves the right to cancel the project, and to reject any or all bids if not satisfied as to the price for the work or the responsibility of the bidder. The City also reserves the right to waive any informalities according to law.
15. **Project Administration:** All questions relative to this project prior to the opening of bids shall be in writing and directed to the City Engineer, City of Los Altos, 1 North San Antonio Road, Los Altos, CA 94022.

Special direction is directed to Section 2 of the General Provisions for full directions as to bidding.

Dated: March 31, 2021

/s/ Kathy Kim, E.I.T.  
Assistant Engineer

EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Cost Proposal Due Date 4.28.21 PE/CE  
Federal-aid Project No(s) STPL-5309(019) Bid Opening Date 11/30/2020 4.28.21 CON

The City of Los Altos established a Disadvantaged Business Enterprise (DBE) goal of 17% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) calendar days from cost proposal due date or bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer's or bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions, **please attach additional sheets as needed:**

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

- C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to meet or exceed the DBE contract goal.

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract
				%
				%
				%
				%

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

- E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

- F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

- G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization

Method/Date of Contact

Results


- H. Any additional data to support a demonstration of good faith efforts:

If the DBE Commitment form is not submitted with the bid, the apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the DBE Commitment form to the Agency. DBE Commitment form must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

Other bidders do not need to submit the DBE Commitment form unless the Agency requests it. If the Agency requests you to submit a DBE Commitment form, submit the completed form within 4 business days of the request.

Submit written confirmation from each DBE stating that it is participating in the contract. Include confirmation with the DBE Commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract.

If you do not submit the DBE Commitment form within the specified time, the Agency finds your bid nonresponsive.

### **Good Faith Efforts Submittal**

If you have not met the DBE goal, complete and submit the DBE Information - Good Faith Efforts, Exhibit 15-H form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by DBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

If your DBE Commitment form shows that you have met the DBE goal or if you are required to submit the DBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Agency finds that the DBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.
2. Names of certified DBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.
3. Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested DBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.

**Exhibit 12-B Bidder's List of Subcontractor (DBE and Non-DBE) Part 1**

As of March 1, 2015 Contractors (and sub-contractors) wishing to bid on public works contracts shall be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater). **Photocopy this form for additional firms.** Federal Project Number: STPL-5309(019)

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number DIR Reg Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
Name: <u>super seal strip</u> City, State: <u>Elmer, CA</u>	<u>Striping</u>	<u>139925</u>	<u>100%</u>				<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ___ yrs.
Name: <u>GRC</u> City, State: <u>DMC, CA</u>	<u>CR</u>	<u>203509</u>	<u>100%</u>				<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ___ yrs.
Name: <u>18 Trucking</u> City, State: <u>SF, CA</u>	<u>Trucking</u> <u>part 1</u>	<u>55000.-</u>		<u>9811</u>			<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ___ yrs.
Name: _____ City, State: _____							<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ___ yrs.
Name: _____ City, State: _____							<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ___ yrs.
Name: _____ City, State: _____							<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ___ yrs.

Distribution: 1) Original-Local Agency File 2) Copy-DLAE w/ Award Package

## Bidder's List of Subcontractors (DBE and NON-DBE)

## Exhibit 12-B Bidder's List of Subcontractor (DBE and Non-DBE) Part 2

In accordance with Title 49, Section 26 of the Code of Federal Regulations, the Bidder shall list all subcontractor who provided a quote or bid but were not selected to participate as a subcontractor on this project. **Photocopy this form for additional firms.** Federal Project Number: \_\_\_\_\_

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number DIR Reg Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
Name: <i>Chosp</i>	<i>Striping</i>						<input type="checkbox"/> <\$1 million
City, State: <i>Fremont</i>							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
	Age of Firm: ____ yrs.						
Name: <i>PLS</i>	<i>CIR</i>						<input type="checkbox"/> <\$1 million
City, State: <i>Sac</i>							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
	Age of Firm: ____ yrs.						
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
	Age of Firm: ____ yrs.						
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
	Age of Firm: ____ yrs.						
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
	Age of Firm: ____ yrs.						
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
	Age of Firm: ____ yrs.						

Distribution: 1) Original-Local Agency File 2) Copy-DLAE w/ Award Package



# INTERSTATE

## GRADING & PAVING, INC.

Cont. Lic, No. 366020

DIR #1000000755

EXHIBIT B

By U.S. Mail and Facsimile  
(650) 947-2732

Mr. Gaku Watanabe  
Assistant Engineer  
City of Los Altos  
Engineering Services Department  
1 North San Antonio Rd.  
Los Altos, CA 94022-3087

RE: Fremont Avenue Rehabilitation Projects  
Project No. TS01056, Federal Project No. STPL-5309(019)  
Bid Opening: April 28, 2021

Subject: Bid Protest by A. Teichert & Son, Inc.

Dear Mr. Watanabe,

We respectfully request that the City deny the protest submitted by A. Teichert & Son, Inc. ("Teichert"). Interstate Grading & Paving Inc. ("Interstate") submitted the lowest responsive bid from a responsible contractor.

### DBE Compliance

This project has a set of base bid items and several alternates. The principal alternate, Bid Item No. 41, consists of approximately 224,221 square feet of 3" Thick Cold-in-place-Recycling.

It is not possible to perform many of the base bid items if the City proceeds with Bid Item No. 41. Note 2 on the Proposal Form states that if the City "proceeds with the Add Alternate option of 3" Thick Cold-In-Place- Recycling (CIR), Bid Items 7, 10, 13, 14, 15, 16, 17, 18, and 19 will be removed from the project."

Contrary to Teichert's arguments, the DBE participation language in the City's bidding documents does not state that the DBE goal would be determined by adding the participation amounts for the base bid and for the alternates. Instead, it states that the goal is "17% for this contract." (Emphasis supplied). Attachment M provides as follow:

The City of Los Altos	established a Disadvantaged Business Enterprise (DBE) goal of
17%	for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Under 49 CFR Part 26, DBE goals and participation are determined in relation to the “contract” to be performed. For example, for purposes of DBE participation, awarding agencies are to “count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces.” 49 CFR Part 26 defines a contract as “a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.” 49 CFR § 26.5.

Here, the “contract” cannot include all of the base bid items and all of the alternate bid items. Rather than add the amount of work that DBEs would perform on the base bid items to the amount of work that DBEs would perform on alternates, including Bid Item No. 41 – which would not have been consistent with either the City’s bidding documents or applicable law and which would not actually reflect the amount of work that DBEs would actually perform – we identified the DBE participants and amount of work that would be performed on the base bid items. Our DBE documentation establishes that we met the goal with regard to the “contract”, which are the items comprising the base bid. Subsequently, at the City’s request, we provided DBE documentation for both the base bid items and for alternates.

As with any contract provisions, the City’s bidding documents must be construed to avoid a conflict with applicable law. Additionally, in the event of a conflict between bidding documents and applicable law, the provisions of applicable law govern. Thus, the only reasonable reading bidding documents is that that DBE participation for the “contract” would be determined by the base bid items.

Interstate met the DBE goal as determined in accordance with these legal principles.

### **Subcontractor Information in DBE Documentation**

In our subcontractor list of the Los Altos proposal forms, we provided the name, location, portion of the work that would be performed, DIR number and license numbers for our subcontractors. Our subcontractor list fully complied with Public Contract Code Section 4104 and the City’s bidding requirements.

Neither DIR registration numbers nor CSLB license numbers are required under federal DBE regulations. See 49 CFR Part 26, Appendix A. In our original DBE documentation, which was submitted with our bid and before it actually was due, we did not include DIR number and license numbers. That information already was included elsewhere in our bid, however, and easily can be obtained from DIR and CSLB websites.

Under California law, if information missing in one part of a bid can be supplied either from other parts of the bid or ascertained from publicly available information, an awarding agency is entitled to award a contract despite the missing information. *Bay Cities Paving & Grading, Inc. v. City of San Leandro*, 223 Cal. App. 4th 1181, 1185 (2014) (upholding agency’s decision to award a contract; missing first page of bid bond was inconsequential variation); *Menefee v. County of Fresno*, 163 Cal. App. 3d 1175, 1180 (1985) (upholding agency’s right to award contract where bid documents were signed in one location, but was not signed in another).

Teichert also argues that it cannot determine from our DBE documentation who we listed to perform the Cold-in-place-Recycling (CIR) work. In our subcontractor list, another part of our bid, we listed GraniteRock Company by its initials, GRC. This is the same company that Teichert listed in its bid. GraniteRock Company is commonly known in the construction

Interstate Grading & Paving, Inc.  
June 10, 2021

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industry as GRC, just as International Business Machines is referred to as IBM. There is no other company with the initials GRC in this area that would be capable of performing the CIR work.

“Not every mistake on a bid is sufficiently significant to render the bid nonresponsive.” *DeSilva Gates Construction, LP v. Department of Transportation*, 242 Cal. App. 4th 1409, 1420 (2015). It is “well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential.” *Bay Cities Paving & Grading, Inc. v. City of San Leandro*, 223 Cal. App. 4th 1181, 1188 (2014).

None of the issues raised by Teichert made our bid different from which we intended; we have no basis to withdraw our bid. See Pub. Contract Code §§ 5100 & 5103. Interstate does not have the ability to change subcontractors or shop subcontractor prices after the City opened all bids because we clearly identified our subcontractors on our subcontractor list. The items raised by Teichert with respect to our DBE documentation are inconsequential and do not affect the responsiveness of our bid.

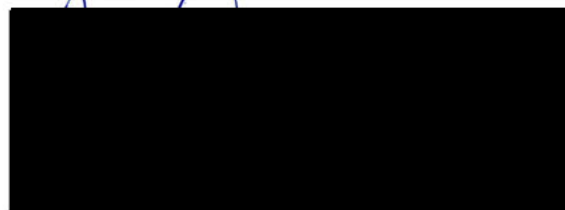
### Conclusion

For the reasons set forth above, we respectfully request that the City award the project to Interstate Grading & Paving, Inc., the contractor that submitted the lowest responsive bid.

The City is in possession of our original bid proposal and post bid documentation as well as its bidding requirements. However, we have included our copies for your reference. Please feel free to call or email me if you have any questions or would like to discuss this matter.

Sincerely,

INTERSTATE GRADING & PAVING, INC.



Craig Caron  
President

Enclosures: Bid proposal and documentation; City bid documents

cc A. Teichert & Son, Inc. (jtheirault@teichert.com)

## Bidder's List of Subcontractors (DBE and NON-DBE)

## Exhibit 12-B Bidder's List of Subcontractor (DBE and Non-DBE) Part 1

As of March 1, 2015 Contractors (and sub-contractors) wishing to bid on public works contracts shall be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater). Photocopy this form for additional firms. Federal Project Number: \_\_\_\_\_

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number DIR Reg Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
Name: <u>Super Seal &amp; Stripe</u> City, State: <u>Filmore, Ca</u>	<u>striping</u>	<u>139,925.</u>	<u>100%</u>	<u>391662</u> <u>1000000752</u>	<u>Y</u>	<u>2003</u>	<input type="checkbox"/> <\$1 million <input checked="" type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: <u>42</u> yrs.
Name: <u>Granite Rock</u> City, State: <u>San Jose, Ca</u>	<u>CIR</u>	<u>203,509</u>	<u>100%</u>	<u>22</u> <u>1000000239</u>	<u>N</u>		<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input checked="" type="checkbox"/> <\$15 million Age of Firm: <u>101</u> yrs.
Name: <u>18 Trucking</u> City, State: <u>Hayward, Ca</u>	<u>Trucking (Partial)</u>	<u>55,000.-</u>	<u>Various items of Base Bid and/or Alt.</u>	<u>1000009811</u>	<u>Y</u>	<u>334165</u>	<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input checked="" type="checkbox"/> <\$15 million Age of Firm: <u>24</u> yrs.
Name: _____ City, State: _____			<u>0% TBD</u>				<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ____ yrs.
Name: _____ City, State: _____							<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ____ yrs.
Name: _____ City, State: _____							<input type="checkbox"/> <\$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million Age of Firm: ____ yrs.

Distribution: 1) Original-Local Agency File 2) Copy-DLAE w/ Award Package

## Bidder's List of Subcontractors (DBE and NON-DBE)

## Exhibit 12-B Bidder's List of Subcontractor (DBE and Non-DBE) Part 2

In accordance with Title 49, Section 26 of the Code of Federal Regulations, the Bidder shall list all subcontractor who provided a quote or bid but were not selected to participate as a subcontractor on this project. Photocopy this form for additional firms. Federal Project Number: \_\_\_\_\_

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number DIR Reg Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
Name: <u>Chasp</u>	<u>Striping</u>	<u>125,449</u>	<u>100%</u>	<u>3746000</u>	<u>N</u>		<input type="checkbox"/> <\$1 million
City, State: <u>Fremont, CA</u>				<u>1000000306</u>			<input type="checkbox"/> <\$5 million
							<input checked="" type="checkbox"/> <\$10 million
							<input checked="" type="checkbox"/> <\$15 million
							Age of Firm: ____ yrs.
Name: <u>PRS</u>	<u>CIR</u>	<u>383,455</u>	<u>100%</u>	<u>569352</u>	<u>N</u>		<input type="checkbox"/> <\$1 million
City, State: <u>Sacramento, CA</u>				<u>10000003363</u>			<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input checked="" type="checkbox"/> <\$15 million
							Age of Firm: ____ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ____ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ____ yrs.
Name:							<input type="checkbox"/> <\$1 million
City, State:							<input type="checkbox"/> <\$5 million
							<input type="checkbox"/> <\$10 million
							<input type="checkbox"/> <\$15 million
							Age of Firm: ____ yrs.

Distribution: 1) Original-Local Agency File 2) Copy-DLAE w/ Award Package

## EXHIBIT 15-G CONSTRUCTION CONTRACT DBE COMMITMENT

1. Local Agency: Public Works 2. Contract DBE Goal: 17%  
 3. Project Description: Fremont Ave. Street Rehab  
 4. Project Location: Los Altos  
 5. Bidder's Name: Interstate Grading & Paving Inc. 6. Prime Certified DBE: ☐ 7. Bid Amount: 4,132,194.40 (Base Bid)  
 8. Total Dollar Amount for ALL Subcontractors: 398,434.95 9. Total Number of ALL Subcontractors: 3

10. Bid Item Number	11. Description of Work, Service, or Materials Supplied	12. DBE Certification Number	13. DBE Contact Information (Must be certified on the date bids are opened)	14. DBE Dollar Amount
1, 8, 10-12 26-40	Striping	2003	Super Seal & stripe P.O. Box 755 Firmore, Ca 93016	139,925.-
various	Trucking (Partial)	33465	18 Trucking 2417 Dunn Rd Hayward, Ca 94545	59,000.-
Local Agency to Complete this Section upon Execution of Award			15. TOTAL CLAIMED DBE PARTICIPATION	\$194,925.-
21. Local Agency Contract Number: _____ 22. Federal-Aid Project Number: _____ 23. Bid Opening Date: _____ 24. Contract Award Date: _____ 25. Award Amount: _____				17.2 %
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.  26. Local Agency Representative's Signature _____ 27. Date _____ 28. Local Agency Representative's Name _____ 29. Phone _____ 30. Local Agency Representative's Title _____			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable with the names and items of the work in the "Subcontractor List" submitted with your bid. Written confirmation of each listed DBE is required. Tina-Maria Mason 5.3.21 16. Preparer's Signature _____ 17. Date _____ Tina-Maria Mason 650-952-7333 18. Preparer's Name _____ 19. Phone _____ Asst. Project Mngr. 20. Preparer's Title _____	

DISTRIBUTION: 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.  
 3. Include additional copy with award package.

## EXHIBIT 15-G CONSTRUCTION CONTRACT DBE COMMITMENT

1. Local Agency: Public Works 2. Contract DBE Goal: 17.90  
 3. Project Description: Fremont Ave Street Rehab  
 4. Project Location: Los Altos  
 5. Bidder's Name: Interstate Grading & Paving, Inc. 6. Prime Certified DBE: ☐ 7. Bid Amount: 1,173,476.<sup>35</sup> (A1)  
 8. Total Dollar Amount for ALL Subcontractors: 405,347.95 9. Total Number of ALL Subcontractors: 3

10. Bid Item Number	11. Description of Work, Service, or Materials Supplied	12. DBE Certification Number	13. DBE Contact Information (Must be certified on the date bids are opened)	14. DBE Dollar Amount
18,1912 26-40	Striping	2003	Super Seal & Stripe P.O. Box 755 Falmouth, GA 30426	139,925.-
various	Trucking (Partial)	33465	18 Trucking 2417 Dunn Road Hayward, CA 94545	61,913.-

<b>Local Agency to Complete this Section upon Execution of Award</b>		<b>15. TOTAL CLAIMED DBE PARTICIPATION</b>	<b>\$201,833.-</b>
21. Local Agency Contract Number: _____ 22. Federal-Aid Project Number: _____ 23. Bid Opening Date: _____ 24. Contract Award Date: _____ 25. Award Amount: _____			<b>17.2 %</b>
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable with the names and items of the work in the "Subcontractor List" submitted with your bid. Written confirmation of each listed DBE is required.	
26. Local Agency Representative's Signature	27. Date	16. Preparer's Signature	17. Date
28. Local Agency Representative's Name	29. Phone	18. Preparer's Name	19. Phone
30. Local Agency Representative's Title		20. Preparer's Title	

DISTRIBUTION: 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.  
 3. Include additional copy with award package.

## EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Cost Proposal Due Date 4.28.21 PE/CEFederal-aid Project No(s) STPL-5309(019) Bid Opening Date 4.28.21 CON

The City of Los Altos established a Disadvantaged Business Enterprise (DBE) goal of 17% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) calendar days from cost proposal due date or bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer's or bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions, **please attach additional sheets as needed:**

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications

Dates of Advertisement

There was insufficient time between document procurement and bid date to advertise but we were listed in Dodge Network as a bidder

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited

Date of Initial Solicitation

Follow Up Methods and Dates

18 Trucking 4.20.21 via phone. Said yes will bid  
SuperSeal & Stripe 4.20.21 via phone then follow up 4.28.21

- C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to meet or exceed the DBE contract goal.

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract
Striping	No			%
Trucking	Partial			%
CIR	No			%
				%

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Western Traffic Supply 925.249.1854 - IGP will self perform provide  
All Cities Trucking 510.461.8287 - Listed <sup>DBE</sup> Contractor has lower rates

Names, addresses and phone numbers of firms selected for the work above:

18 Trucking 415.552.1818

- E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

Plans, Specs and our estimators were made available to any and all subcontractors.  
no requests were made

- F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

no requests were made

- G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results
none		

- H. Any additional data to support a demonstration of good faith efforts:

once we downloaded the project documents, we contacted DBE's we know to see if they would bid. We recieved positive responses and felt confident in reaching the goal.



Engineering Services Department  
1 North San Antonio Road  
Los Altos, California 94022-3087  
(650) 947-2780  
Fax (650) 947-2732

June 17, 2021

Teichert Construction  
Attn: Jason Theriault  
5200 Franklin Drive Suite #115  
Pleasanton, CA 94588

*Delivered via certified mail and by email to [jtheriault@teichert.com](mailto:jtheriault@teichert.com)*

**SUBJECT: FREMONT AVENUE PAVEMENT REHABILITATION, PROJECT No. TS-01056 (BID PROTEST)**

Dear Mr. Theriault,

Following review of the bids protest received from Teichert Construction on June 8, 2021, and response to bid protest received from Interstate Grading & Paving on June 10, 2021, the City determined Interstate Grading & Paving as responsive bidder, and staff will proceed to recommend acceptance of its bid at City Council meeting on June 22, 2021.

According to Teichert Construction, Interstate Grading & Paving's bid should be rejected for the following reasons:

1. Attachment L for Construction Contract DBE Commitment should meet 17% goal with the "Total Bid".
2. Attachment M for Contractor Good Faith Efforts was incomplete.
3. Attachment P submitted as part of bid proposal was incomplete with missing information.

City Response to bid protest:

1. Attachment L on the bidding document states 17% DBE goal shall be met with the contract amount. This means that the 17% goal should be met with respect to both the base bid and the total bid with item reduction per Note 2 on the proposal form that states "If the City Proceeds with the Add Alternate option of 3" Thick Cold-In-Place Recycling (CIR) Bid Items 7, 10, 13, 14, 15, 16, 17, 18, and 19 will be removed from the project." Interstate Grading & Paving submitted Attachment L for both base bid and additive alternate award scenario meeting the 17% goal.
2. Attachment M for Contractor Good Faith Efforts is used to shows that the bidder made adequate good faith efforts in an event that DBE goal could not be met. The Federal

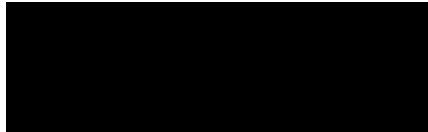
Provision also states “If your DBE Commitment form shows that you have met the DBE goal or if you are required to submit the DBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Agency finds that the DBE goal has not been met.” Interstate has met DBE goals of 17% for both base bid and additive alternate option (with item reduction) and does not need a review of attachment M for good faith efforts.

3. Key information on Attachment P such as contractor name and subcontract amount were filled in while other information such as contractor license number and DBE certification numbers were provided at a later date. The City determined that missing information on attachment P was not material so that the irregularity could be cured.

With the response provided above, the City has determined Interstate Grading & Paving's is the lowest responsive, responsible bidder.

The City Council is expected to award the project at its meeting of June 22<sup>nd</sup>, 2021, at [7:00 PM]. A copy of the agenda for the meeting is enclosed for your reference. The meeting will be held online as described in the agenda, and members of the public are entitled to speak on any item on the agenda.

Sincerely,



Assistant Engineer  
Engineering Services Department

cc: Andrea Chelemengos, City Clerk

## RESOLUTION NO. 2015-36

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS  
APPROVING A PROCEDURE FOR DETERMINATION ON PROTESTS FOR  
PUBLIC PROJECTS**

**WHEREAS**, the City of Los Altos ("City") is a general law city of the State of California and is thereby empowered to create its own procedures for the procurement and purchase of City goods and services, consistent with its purchase policies, ordinances and other prevailing law; and

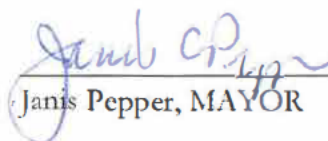
**WHEREAS**, the City does, in a great many cases, procure goods and services through a competitive bidding process which generally includes a determination of lowest responsive and responsible bidder; and

**WHEREAS**, it is not uncommon for one or more applicants or bidders to protest a contract to be awarded to another bidder or to protest a determination that it is not qualified to bid on a contract and it would be beneficial to City departments to have available to them a uniform procedure for making final determinations on such matters.

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Los Altos hereby authorizes the following Bid Protest Procedures, attached hereto as Exhibit "A" and incorporated by this reference. As needed, these Bid Protest Procedures will be implemented by the City Manager, or his or her designee, administering the work, as an alternative to any other existing bid protest or qualification protest procedures available to the City.

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 10<sup>th</sup> day of November, 2015 by the following vote:

AYES:	BRUINS, MORDO, PEPPER, PROCHNOW, SATTERLEE
NOES:	NONE
ABSENT:	NONE
ABSTAIN:	NONE

  
Janis Pepper, MAYOR

Attest:

  
Jon Maginot, CMC, CITY CLERK

## BID PROTEST PROCEDURES

### General

Any bid protest must be in writing and received by the City Clerk's Office at:

City of Los Altos  
1 North San Antonio Road  
Los Altos, CA 94022

by 5:00 p.m. within five working days of posting a notice of Intent to Award in a place accessible by the general public, including any internet site (the "Bid Protest Deadline") and must comply with requirements set forth in these procedures.

Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. For purposes of these procedures, a "working day" means a day that City is open for normal business, and excludes weekends and holidays observed by City. Material submitted after the Bid Protest Deadline will not be considered.

### Protest Contents

The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. The protest must refer to the specific portion or portions of the contract documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the protesting bidder.

### Copy to Protested Bidder

A copy of the protest and all supporting documents must be concurrently transmitted by fax or by email, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

### Response to Protest by Protested Bidder

The protested bidder may submit a written response to the protest, provided the response is received by the City Clerk's Office before 5:00 p.m., within two working days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person representing the protested bidder if different from the protested bidder.

### Copy to Protesting Bidder

A copy of the response and all supporting documents must be concurrently transmitted by fax or by email, by or before the Response Deadline, to the protesting bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

### **Decision on Bid Protests**

Bid Protests shall be decided by the department head, or department head's designee(s) for the City department administering the proposed contract (the "Decision Making Officer"), based upon the materials included with the protest and materials submitted by City staff and protested bidder relevant to the protest. A decision shall be rendered after review of the protest and an investigation of the facts by the Decision Making Officer within five working days after the Response Deadline. Such decision shall be in writing and transmitted to the protesting bidder by U.S. Mail. The City shall also attempt to send by facsimile or email the decision at the same time as mailing if the Fax number or email address of the Protesting Bidder is known.

### **Review of Decision on Bid Protests**

The protesting bidder may seek review of the decision of the Decision Making Officer by filing a request for review ("Request for Review") with the City Clerks' Office within five working days of the date the decision was mailed to the protesting party by U.S. Mail. The Request for Review shall be accompanied by any additional documentary evidence the protesting bidder wishes the City to consider. The review shall be conducted by the City Manager or City Manager's designee(s), (the "Reviewing Officer"). The Reviewing Officer shall conduct the review at least ten working days prior to the proposed contract award date. The review shall be de novo, shall consider all documentary evidence presented to the Decision Making Officer and any new documentary evidence presented to the City. The Reviewing Officer shall render a decision prior to the proposed contract award date. Notice of the decision shall be mailed to the protesting bidder by U.S. Mail. The decision of the Reviewing Officer shall be the final administrative decision of the City. Review of the decision of the Reviewing Officer shall be by a court of competent jurisdiction of the County of Santa Clara.

### **Exclusive Remedy**

The procedure and time limits set forth in this section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. A bidder's failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

### **Right to Award**

The City Council reserves the right to award the contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a notice to proceed with the work notwithstanding any pending or continuing challenge to its determination.