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VIA FACSIMILE AND U.S. MAIL

October 17, 2013

Mr. John McMillan
Deputy Division Chief
State of California, Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th St.
Sacramento, Ca. 95816-8041

RE: Bid Protest, CONTRACT NO. 01-47660, IN MENDOCINO COUNTY ABOUT
5 MILES EAST OF BONVILLE FROM 0.5 MILE EAST OF SHEARING
CREEK BRIDGE #10-7 TO 0.9 MILE WEST OF MAPLE CREEK

Dear Mr. McMillan:

This firm generally represents Argonaut Constructors ("Argonaut"), and has been tasked with submitting to you Argonaut's protest of the low bid submitted by Golden State Bridge, Inc. ("GSB") on Contract No. 01-47660 ("Contract"). Specifically, GSB's apparent low bid is non-responsive preventing any award to GSB on the Contract. Argonaut hereby requests a declaration of GSB's bid as non-responsive and an award of the contract to Argonaut as the second-low bidder.

GSB's bid is non-responsive as it fails to list a licensed subcontractor to perform the work required by Section 15-2.06(B) of the Project Specifications, which correlates to bid item no. 28, related to the destruction of water-wells. The failure to list a licensed well-contractor makes GSB's bid non-responsive.

GSB holds both an "A" (General Engineering) and a "B" (General Building) license but does not hold a "C-57" Well-Drilling specialty license. Destruction or installation of wells must be performed by a C-57 licensed well-drilling contractor. It is illegal for any other license classification to perform that scope of work:

"A specialty contractor is a contractor whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts." (Bus. & Prof. Code Sec. 7058(a))

"No general building contractor shall contract for any project that includes . . . the "C-57" Well Drilling classification as provided for in Section 13750.5 of the Water Code, unless the general building contractor holds the appropriate license classification, or subcontracts with the appropriately licensed contractor. (Bus. & Prof. Code Sec. 7057(c))

Water Code Sec. 13750 referenced above goes on to require:

"No person shall undertake to . . . abandon or destroy such a well, unless the person responsible for that . . . destruction, or abandonment possesses a C-57 Water Well Contractor's License."

There is no doubt Contract bid item no. 28 work under Section 15-2.06(B) of the specifications must be performed by a C-57 licensed contractor. GSB did not list a subcontractor for item no. 28 work (totaling \$48,000 under the bid), which work amounts to 1.36% of GSB's bid. This bid item is in excess of 1/2 of 1% of the total bid price and thus must have a listed subcontractor if it was going to be performed by a subcontractor. GSB's bid makes GSB the entity performing the work under bid item 28. a licensing violation.

Moreover, GSB cannot even obtain the required permit from Mendocino County to destroy the wells:

"The . . . destruction of wells shall be performed by contractors licensed in accordance with the provisions of the Contractors license Law . . . unless exempted by that act." (Sec. 6 of Mendocino County Well Ordinance and Special Permit Areas and Well Standards, 1994)

William Nalty of the well-permit/inspection division for Mendocino County has even confirmed in writing that a C-57 specialty contractor must perform the bid-item no. 28 work in order to obtain both the permit and approval of the work. Copies of the County's Ordinance and Mr. Nalty's letter are attached hereto.

GSB may not now submit a new list of subcontractors including one for item no. 28 to make its bid responsive. Under California law, a bid is non-responsive when one of the following is present:

1. The irregularity in that bid gives the bidder an unfair advantage over other bids – an unfair advantage is defined as any time the bidder is given any role in deciding whether the irregularity in its bid should be waived; or
2. Whether waiving the irregularity would constitute favoritism to the non-responsive bidder. See, Valley Crest Landscape, Inc. v. City Council, (1996) 41 Cal.App.4th 1432; MCM Constr. v. City & County of San Francisco, (1998) 66 Cal.App.4th 359; Ghilotti Constr. Co. v. City of Richmond, (1996) 45 Cal.App.4th 897; Monterey Mechanical Co. v. Sacramento Reg'l County Sanitation Dist., (1996) 44 Cal.App.4th 1391.

Here, there is no dispute GSB's bid failed to list a required subcontractor for the well work. Now that all bids have been submitted and opened, there is no way for GSB to remedy this failure without also being granted an unfair advantage over all other bidders.

For these reasons, there is no question the GSB's bid is both non-responsive and there can be no fair way to award the contract to GSB without violating California contractor-licensing laws.

As the second-low bidder, Argonaut remains willing and able to perform the work as stated in its bid. The State should declare GSB's bid non-responsive and award the contract to Argonaut as the second-low bidder.

If you have any further questions on this matter, please feel free to contact either myself or Stephen Langhals of Argonaut.

Best regards,

COPELAND LAW FIRM, APC

By:


Steven B. Copeland, Esq.

Encl.



MENDOCINO COUNTY
WELL ORDINANCE
AND
SPECIAL PERMIT AREAS
AND
WELL STANDARDS

1994

4 April 1994

Before a change of use is made of a well, compliance shall be made with the requirements for the new use as specified herein.

Section 3. Exemption Due to Unusual Conditions.

If the enforcing agency finds that compliance with of the requirements prescribed herein is impractical for a particular location because of unusual conditions or if compliance would result in construction of an unsatisfactory well, the enforcing agency may waive compliance and prescribe alternative requirements which are "equal to" these standards in terms of protection obtained.

Section 4. Exclusions.

The standards prescribed in Part II, "Construction", do not apply to exploration and test holes. However, the provisions of Section 7 "Reports" (following) and Part III, "Well Destruction", do apply to these holes. Exploration holes for determining suitability of on-site domestic sewage disposal that are less than 10 feet in depth are exempt from the reporting and destruction requirements of these standards.

Springs are excluded from these standards.

Section 5. Special Standards.

- A. In locations where existing geologic or ground water conditions require standards more restrictive than those described herein, such special additional standards may be prescribed by the enforcing agency.
- B. Special standards are necessary for the construction of recharge or injection wells, horizontal wells and other unusual types of wells. Design of these wells is subject to the approval of the enforcing agency.

Section 6. Well Drillers.

The construction, alteration, or destruction of wells shall be performed by contractors licensed in accordance with the provisions of the Contractors license Law (Chapter 9, Division 3, of the Business and Professions Code) unless exempted by that act.

Section 7. Reports.

Reports concerning the construction, alteration, or destruction of water wells shall be filed with the California Department of Water Resources in accordance with the provisions of Sections 13750 through 13755 (Division 7, Chapter 10, Article 3) of the California Water Code.

Dave S

From: William Nalty <naltyw@co.mendocino.ca.us>
Sent: Wednesday, October 09, 2013 4:16 PM
To: Dave S
Subject: Re: Well Abandonment permit

Dave,

I spoke with my Program Manager and an experienced well inspector, and was informed that a C-57 Water Well Drilling Contractors license is required. I hope this helps,

Very Respectfully,

Will Nalty
Environmental Health Technician
Mendocino County Environmental Health
(707) 234-6632 office
(707) 463-4038 fax

>>> Dave S <DaveS@argonautconstructors.com> 10/9/2013 2:25 PM >>>
Hi Will,

Need a clarification regarding the Counties position on issuing a well destruction permit. I have attached the specifications from a Caltrans project. Project is located in Boonville area. One of the requirements for the well abandonment according to the attached special provisions section **15-206B(1)(a) Summary**, states that destroying a well must comply with: Item 1 & 4, Item one (1) being Regulations of Mendocino County, including obtaining a well destruction permit from the County of Mendocino and number four (4) compliance with California Water Code Section 13750.5-13753, which I have attached for your review. The money question is, will the County of Mendocino issue a Contractor a well destruction permit who has an A & B license but does not possess a C-57 Water Well Drilling Contractors license. Let me know when you can.

Thank you,

Dave Stanford
Contract Administrator
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