

**BAY CITIES PAVING & GRADING INC.**

Bue: 1450 Civic Court, Bldg. B Suite #400, Concord, CA 94520  
(925) 887-6888  
Fax (925) 887-2122

**Mail:** Post Office Box 6227, Concord, CA 94524-6227

December 31, 2014

**FAXED**

Department of Transportation, MS 43  
Attn: John McMillan, Deputy Division Chief  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816

Project: Contract 03-3F6604  
Bid Opening: 12/17/14, 2:00 p.m.  
Re: Protest of Ghilotti Bros., Inc.'s Bid

Dear Mr. McMillan,

Bay Cities submitted the second-lowest bid on the Project. Ghilotti Bros. Inc. ("GBI") submitted the apparent low bid on the Project. Bay Cities hereby protests GBI Construction's ("GBI") bid as nonresponsive for the late submittal of its DBE Commitment Form and Submittal. Section 2-1.33, BID DOCUMENT COMPLETION AND SUBMITTAL, of the Contract's revised Standard Specification, provides that:

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

The Bid Opening was on 12/17/14 therefore the DBE Commitment Form had to be received by the Office Engineer by 4:00 p.m. on December 23, 2014. Attached is a copy of an e-mail from GBI to Caltrans that shows a time stamp on December 23, 2014 at 4:01 p.m (Exhibit A). In this e-mail, GBI admits that it is having troubles delivering its DBE Commitment Form and attempts to submit its DBE package via e-mail. Since the e-mail is dated after 4:00 p.m., it is patently nonresponsive. Even if GBI had submitted its form prior to 4:00 p.m. via e-mail, it would still have been nonresponsive because "Caltrans does not accept scanned or faxed copies of this submittal" (see Contract 07-259024). Moreover, GBI's Commitment Forms posted on Caltrans' website show that GBI submitted its records after 4:00 p.m. [one document shows 4:10 p.m. while the other shows a receipt of 4:17 p.m.] (Exhibit B). Caltrans has consistently held that a bidder's failure to submit its DBE Commitment Form by 4:00 p.m. on the 4<sup>th</sup> business day following a bid opening renders the bid nonresponsive (See Contracts 07-259024, 07-274804, and 02-4E90U4). GBI bid documents failed to comply with the bid requirements and GBI's bid must be rejected.

Sincerely,



Marlo Manqueros  
General Counsel

cc: File

*Exhibit A*

**Smith, Mullssa A@DOT**

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**Subject:** FW: GFE Submittals  
**Attachments:** image002.png

Begin forwarded message:

**From:** "Thomas G. Barr, P.E." <TomB@ghilottibros.com>  
**Date:** December 23, 2014 at 4:01:04 PM PST  
**To:** <elizabeth.a.doohar@dot.ca.gov>, <mgc@shell@dot.ca.gov>  
**Subject:** GFE Submittals

*Past  
4:00 p.m.* ←

Good afternoon. We have two DBE submittals being delivered to Caltrans today and are encountering difficulties with traffic. Please accept this as our official submittal of our DBE information prior to 4:00 PM today for the referenced bids. We appreciate your assistance to forward to the **AC14497 04-0G2214 DBE-GFE SUBMITTAL.pdf**  
<https://www.box.com/shared/uvucwz50q9eb6qxr2ek3>  
Shared using Box

**AC14491 04-0G2214 DBE-GFE SUBMITTAL.pdf**  
<https://www.box.com/shared/r58n9w0fn5n0908p24rs>  
Shared using Box

**AC14497 DBE-GFE.pdf**  
<https://www.box.com/shared/e8a2pgacmud52x9fn7qg>  
Shared using Box

**AC14497 DBE LIST.pdf**  
<https://www.box.com/shared/7j05b2y9207xq350yakt>  
Shared using Box

**03-3F8604.pdf**  
<https://www.box.com/shared/5c0wauldrww4zqubfkqr>  
Shared using Box

appropriate staff.

Thank you,

Thomas G. Barr, P.E.  
Vice-President of Estimating  
Ghilotti Bros., Inc.  
Direct: 415-256-2216  
Mobile: 415-760-8997  
Fax: 415-454-8376  
E-mail: [TomB@ghilottibros.com](mailto:TomB@ghilottibros.com)

525 Jacoby Street - San Rafael - CA - 94901  
Tel: 415-454-7011 - Internet: [www.ghilottibros.com](http://www.ghilottibros.com)

Like us on Facebook: [www.facebook.com/GhilottiBrosInc](http://www.facebook.com/GhilottiBrosInc)

Exhibit B  
Page 1 of 2

BO 12/17/2014  
03-3F6604 04-092214

Office Engineer is in receipt of your company's documents.

Date: \_\_\_\_\_ Time: \_\_\_\_\_ am / pm

Received by: \_\_\_\_\_

Questions call: (916) 227-5299

12-23-14 P04:10 RCVD

*Call  
from  
guard*

↑  
Past  
4:00 P.M.

Past 4:00 p.m.

EX1101

Page 2 of 2

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
CALTRANS BIDDER - DBE - COMMITMENT  
DES-OE-0102.10C (NEW 08/2012)  
12-23-14 P04:17 RCVD

12-23-14 P04:17 RCVD

Low Bidder PAGE 1 OF 3

This information may be submitted with your bid proposal. If it is not, and you are the bidder, the information must be submitted and received as specified in section 3 of the specifications. Failure to submit the required DBE information will result in your bid being non-responsive.

CONTRACT NO: 03-3P6604

BID AMOUNT:  
\$ 1,979,457.00

BID OPENING DATE:  
12/17/14

BIDDER'S NAME:  
Ghilotti Bros., Inc.

DBE GOAL FROM CONTRACT, %:  
9%

DBE PRIME CONTRACTOR CERTIFICATION<sup>1</sup>:  
N/A

BID ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED <sup>2</sup>	FOR CALTRANS USE ONLY	NAME OF DBEs (Must be certified on the date bids are opened - include Caltrans certification #, DBE address and phone number) (Indicate 2nd and lower tier subcontractors)	DOLLAR AMOUNT DBE <sup>3</sup>
2, 4, 5, 8	Work as described in Bid Items: 2, 4, 5, 8		KRC Safety Co. #44/ 7821 West Sunnyview Visalia, CA 93291 559-732-0393	\$9,550.
	Construction Area Signs, Type III Barricades, Channelizers & Alt. Temp Crash Cushions			
32	Work as described in Bid Item: 32		ABSL Construction #5270 29393 Pacific Street Hayward, CA 94544 510-727-0900	\$15,900.
	Prepaving Grinding Day			

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 work in the "Subcontractor List" submitted with your bid. Copies of the DBE quotes are required.

Total Claimed Participation

\$ (SEE NEXT PAGE)

%

- DBE prime contractors must enter their certification number and indicate all work to be performed by DBEs including work performed by its own forces.
- If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished.
- See section 2-1.12 of the specifications to determine the credit allowed for DBE firms.

(SEE NEXT PAGE)

Signature of Bidder

Date

(Area Code) Tel. No.

Person to Contact

(Please Type or Print)

Submit to:

MBC 43  
OFFICE ENGINEER  
DEPARTMENT OF TRANSPORTATION  
1727 30TH STREET  
SACRAMENTO, CA 95816-7005

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 854-8410 or TDD (916) 854-8880 or write Records and Forms Management, 1120 N Street, MS-99, Sacramento, CA 95814.

# facsimile

## TRANSMITTAL

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**to:** John McMillan/ Deputy Division Chief, Caltrans  
**fax #:** (916) 227-6282  
**re:** CDOT Contract 03-3F6604, Protest of Ghilotti Bros., Inc. Bid  
**date:** December 31, 2014  
**pages:** 5, including cover sheet.

### CONFIDENTIALITY NOTICE

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From the desk of...

**Marlo Manqueros**  
Vice-President  
Bay Cities Paving & Grading, Inc.  
P.O. Box 6227  
Concord, CA 94524-6227

(925) 446-6001  
Fax: (925) 687-2122