



Gordon N. Ball Inc. MSC 43

April 17, 2013

General Engineering Contractors

Office Engineer  
California Department of Transportation  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816-7005

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Attn: Earl Seaberg, Chief, Office of Contract Awards & Services  
John McMillan, Deputy Division Chief

Reference: 04-0A0904  
04-Sol-80-R24.8/R25.2  
Bid 3/26/13

333 Camille Avenue

Subject: Determination of Nonresponsive - Gordon N. Ball, Inc.

Alamo, CA 94507

Dear Mr. Seaberg and Mr. McMillan:

This letter is to serve as our protest of the determination by the Department that Gordon N. Ball, Inc. is nonresponsive on the subject contract. This letter is also an attempt to appeal to someone in the Department to restore sanity to the bid document process. The present process that has been implemented by the Department is a discredit to the process, is completely ridiculous, is nonsensical, and is a very significant waste of funds.

At what point did the Department determine that the Office of Engineer would become complete judge and jury on the bid and post bid submittal process, and completely remove any ability for a bidder to explain, clarify, or protest a decision of nonresponsive? Is such practice a proper service to the public, the same public that the Department is supposed to be serving?

Our firm has at this time been determined to be nonresponsive on two (2) contracts that we were the apparent low bidder on. The determination was made without any consideration or appreciation of the efforts of the firm to submit the actual bid. Through our own independent search, a copy of a letter that was transmitted to the second apparent low bidder relative to 04-0A0904 was discovered on the Department website. However, to date, no communication has ever been transmitted to Gordon N. Ball, Inc. by the Department. Such practice is high handed, disrespectful, discourteous, and a very improper way for a public agency to interact with its potential clients.

The determination of nonresponsiveness on the two (2) contracts that Gordon N. Ball, Inc. was apparent low bidder on will, at a minimum, result in an increased cost of construction of the two projects of \$380,00.00. We are in possession of knowledge that this amount is a drop in the bucket compared to the increased cost that the Department has awarded contracts on other projects whereby the apparent low bidder has been determined to be nonresponsive for similar insignificant and unreasonable reasons.

On the subject contract, Gordon N. Ball, Inc. was determined to be nonresponsive because two bid item numbers were erroneously added to the bid item listing on the 24 hours submittal for a sign subcontractor. The bid item numbers that were erroneously added were for concrete repair work, a completely different scope of work. The entering of these bid item numbers by Gordon N. Ball, Inc. was a clerical error that did not make sense. Significantly, the Department possesses this additional information that are a part of the bid documents of Gordon N. Ball, Inc.:

1. An accurate listing of the same concrete repair bid items with the subcontractor that was listed to actually perform the subject concrete repair work.
2. A Good Faith Effort package that clearly, repeat clearly, indicates the intended bid item listing and amounts for the sign subcontractor.
3. Logic, data, and information that clearly indicates that there was no intent to defraud and/or seek gain by the error in the bid items that were listed. And significantly, logic, data, and information that demonstrates that there was no gain to be had by the clerical error that was made.

The stated reasons that the Department also determined that Gordon N. Ball, Inc. was nonresponsive on Contract 05-0L7014 were profoundly more frustrating, even more insignificant, and decidedly more an injustice to the process. The Department is in possession of our explanation on that contract, which was found to have no impact to the determination of the Department.

For what reason has the Department determined to ignore logic, remove the concept of clerical error, and determined not to expend any effort of review to allow the public to have construction projects built for the lowest cost possible?

For what reason has the Department determined to remove any possible appeal of determinations made in this process?

For what reason has the Department determined to completely abandon the process of reasoning and logic to review bid day and post bid day submittals, a process that previously has successfully implemented for the twenty (20) years of experience of this author?

The Department has developed a process that encourages bid protests and significantly wastes funds for construction. Bidders are being awarded for bidding higher and then attacking a lower bid. The message is being repeatedly clarified.

Upon questioning staff this date of the logic of using the reasons stated to expend approximately 15% more on a construction contract to award to the second apparent low bidder, staff replied with a chuckle. Upon receiving the frustration of such a reply, staff independently ended the phone conversation.

This member of the construction industry is alarmed and frustrated with the process currently being followed by the Department on this matter. It is unproductive, it is wasteful, it clearly invites and encourages bid protests, it is a disservice to the public and taxpayers, and it is profoundly not logical or reasonable.

It is believed that too many fellow contractors who are equally bitter and frustrated over the recent tactics taken by the Office Engineer on these matters are just too busy staying focused on their work to expend extra effort to demonstrate distress and vocalize the situation. In the interests of the taxpayers of the State of California, of which I am profoundly a part of, I am not complete with this protest. A copy of this correspondence, even though written under significant frustration and anger, and thereby its professionalism being compromised, is being copied to each and every political body and/or private political group that may chance to react to its contents.

Sincerely,

GORDON N. BALL, INC.

A handwritten signature in black ink, appearing to be 'H. Stober', written in a cursive style.

Hal Stober  
President