

Gordon N. Ball Inc.

MSC 43

August 9, 2013

General Engineering Contractors

Office Engineer
California Department of Transportation
1727 30th Street
P.O. Box 168041
Sacramento, CA 95816-8041

Tel 925.838.5675

Attn: John McMillan, Deputy Division Chief

Fax 925.838.5915

Reference: 04-2A1104
04-Nap-121-20.2/20.4 PM
Bid 7/24/13

333 Camille Avenue

Subject: Response to Bid Protest by Ghilotti Construction Company

Alamo, CA 94507

Gentlemen:

Reference is made to your correspondence dated August 8, 2013 regarding the above referenced subject for which we hereby respond.

The protest submitted by Ghilotti Construction (Ghilotti) is without merit, is frivolous, and is disrespectful to this industry. Unfortunately, the Department has been warned by this author and many others that the recent actions and determinations of the Department regarding Subcontractor Listing and Post Bid Submittals would open up this protest procedure, and the unfounded and disrespectful protest by Ghilotti is the unfortunate result.

The situation is now at hand whereby bidders with over 20 years of experience submitting bids to the Department do not have a baseline to guide what will be determined to be acceptable for bid and post bid documents. Every decision made is now under deliberate post bid scrutiny and re-examination, and unsuccessful bidders are now provided the opportunity to second guess and re-characterize documents of bidders that submit lower bids. Bidders such as Ghilotti have now developed a process to submit noncompetitive bids and then protest, to see what will stick and provide them an economic opportunity. The determination by the Department to consider a such a frivolous protest by the apparent 4th low bidder is not a reasonable procedure, and such should be reviewed and reconsidered by the Department.

The bid schedule for Contract 04-2A1104 included a total of twenty four (24) bid items that could fall under the title of "Erosion Control" when completing Column 4 of the Subcontract List titled "Description of Subcontracted Work". The Department has in the past determined Gordon N. Ball, Inc. to be non-responsive because a subcontractor was listed for a description of work for which a determination was made that the description was not the proper and full description of the work actually to be performed. In an effort to head off a protest on this contract by a higher bidder making a similar claim, for which we still contend has no basis, it was determined to clearly indicate precisely which bid items were subcontracted to Nitta, and clearly define that Nitta was only performing a portion of the bid items that could fall under the description of the work that they were

performing. Thereby, a higher bidder such as Ghilotti could not protest the bid of Gordon N. Ball, Inc. by claiming that our bid stated that Nitta was performing "Erosion Control", but that our bid did not properly list all of the Bid Items that could be included as part of the "Erosion Control" work.

It was determined by Gordon N. Ball, Inc. that Bid Items 13-29 as well as Bid Items 50-56 could be claimed by an unsuccessful bidder such as Ghilotti to be "Erosion Control" work. So as to prevent an opportunity for protest by an unsuccessful bidder such as Ghilotti, Gordon N. Ball, Inc. clearly indicated that Nitta was performing a portion of the Erosion Control work of the contract, and clearly indicated that Nitta was performing 100% of Bid Items 50-56. Notably, Bid Items 50-56 are not indicated to be partial (with the notation "(P)" next to the bid item number), as was indicated on bid items for which the subcontracted work is actually only a portion of the bid item. The subcontractor listing submitted with the bid is consistent with the post bid submittal, both documents support and agree with each other, and the intent to subcontract and conform to Public Contract Code 4100 is clearly defined.

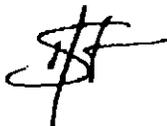
In the bid of Gordon N. Ball, Inc., Nitta is performing Bid Items 50-56, they are performing 100% of those bid items, and Bid Items 50-56 are a portion of the 24 Bid Items in the Bid Schedule that were determined to be the Erosion Control work on the contract. The bid and post bid documents of Gordon N. Ball, Inc. clearly define this.

We are at a loss on how to complete our bid and post bid documents to prevent unfounded protests that are the subject of this correspondence. We have been determined non-responsive on over \$10 million of contracts because the Department determined that the subcontractor listing documents did not properly explain and define the work being subcontracted. The Department now acknowledges a protest by an unsuccessful bidder because such pain staking, deliberate, and extra steps were taken to define the scope of the subcontracting, that additional confusion of the details is perpetrated and developed by the protest. In the past, we never would have added the term "(Partial)" next to a description of work by a subcontractor who is performing 100% of the bid items that were listed. But because of the past actions of the Department, it was believed to be necessary to fully define the scope of the work that was being subcontracted relative to the total work of the contract.

Please carefully review this explanation, and the bid listing and post bid submittal by Gordon N. Ball, Inc. Gordon N. Ball, Inc. is the lowest responsible bidder on this contract. Gordon N. Ball, Inc. is fully capable and willing, as has been supported by the bid submitted. We urge that the protest by Ghilotti Construction Company be declared to be without merit, and that increased scrutiny be placed upon the bids submitted by Ghilotti Construction Company in the future, because of the clearly apparent intent by them on this contract.

Sincerely,

GORDON N. BALL, INC.



Hal Stober
President

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-0E-0102.2 (REV 3/2011)

Bidder Name: Gordon N. Ball, Inc

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Central Stripe Rancho Cordova, CA			STRIPING + MARKERS
WC Maloney Stockton, CA			DEMOLITION
Camblin Steel Rocklin, CA			REBAR
Bentancourt Bros. Livermore, CA			TEMPORARY SIGNALS & Flashing Beacons & Maintain
CNT Scottsdale, AZ			STAIN CONCRETE
No Sub			BARRIER (PARTIAL)
Erosader HS Rancho Cordova, CA HS			Tubular Railing HS
Erect Precast HS Con Fab Lathrop, CA			Erect Precast

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STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-OE-0102.2 (REV 3/2011)

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Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Nlta Loomis, CA			Erosion Control (Partial)
Medina Orville, CA			Tubular Railing
Medina Orville, CA			Crash Cushion

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STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-OE-0102.2 (REV 3/2011)Bidder Name: Gordon N. Ball, Inc

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Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Central Stripe Pacheco Cordova, CA	4, 5, 36, 37, 82, 83	100%	Striping + Markers
WC Maloney Stockton, CA	33, 35, 41, 43	100%	Demolition
Cambrian Steel Truckee, CA	62(P), 68, 69, 81(P)	53%	Rebar
Bentley Court Livermore, CA	7, 8, 84	100%	Temporary Signals + Flashing Beacons + maintain
CNJ Scottsdale, AZ	70	100%	Stain Concrete
Medina Oroville, CA	79	100%	Tubular Hoisting
Contabo Lathrop, CA	66	100%	Erect Precast
Nitta Loomis, CA	50, 51, 52, 53, 54, 55 56	100%	Erosion Control (Partial)
Medina Oroville, CA	80	100%	Crash Cushion

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~~STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY~~~~EDMUND G. BROWN JR., GOVERNOR~~

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER, MS 43
1727 30th STREET
P. O. BOX 168041
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6300
FAX (916) 227-6282
TTY 711



*Flex your power!
Be energy efficient!*

August 8, 2013

Facsimile: (925) 838-5915

Hal E. Stober
Gordon N. Ball, Inc.
333 Camille Avenue
Alamo, CA 94507

04-2A1104
04-Nap-121-20.2/20.4 PM
B.O. 07/24/2013

Dear Mr. Stober:

The Department of Transportation (Caltrans) received the attached letter from Ghilotti Construction Company (Ghilotti) dated August 7, 2013 protesting the bid submitted by Gordon N. Ball, Inc. (GNB) for Contract No. 04-2A1104. The protest alleges that GNB failed to properly submit the Subcontractor List form. As such, Ghilotti requests that Caltrans find GNB nonresponsive and award the contract to Ghilotti.

Please provide your response to Ghilotti's protest no later than August 13, 2013.

If you have any questions, please contact Nicole Butler, Contract Awards Analyst, at (916) 227-6292.

Sincerely,

fr- JOHN C. McMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services

Attachment

Received
AUG-07-2013 WED 08:12 AM Ghilotti ConstructionAug 7 2013 08:16am
FAX NO. 7075851601

P. 01



August 7, 2013

To: Earl Saaberg
Contract Awards Branch Chief
Department of Transportation
Division of Engineering Services
Office Engineer MS 43
1727 30th Street
Sacramento, CA 95816

Re: Bid Protest
04-2A1104 Hwy 121
Bid Date: July 24, 2013

Dear Mr. Saaberg,

On Wednesday, July 24, 2013, Ghilotti Construction Company bid the above referenced project. At the time of the bid opening Ghilotti Construction was the apparent 4th low bidder with Gordon N Ball Inc (GNB) being the apparent low bidder. During a review of GNB's submitted bid documents subsequent to the bid opening, it was determined that GNB failed to properly submit the "Subcontractor List" form. Accordingly, Ghilotti Construction Company is hereby formally protesting GNB's bid as nonresponsive.

The Dept. of Transportation should reject GNB's bid as nonresponsive because it failed to properly submit the Subcontractor List.

On the original Subcontractor List submitted on July 24, 2013, Nitta was identified to perform bid items 50-56 (Bronson Control) as "partial". However, the revised Subcontractor List, faxed on July 25, 2013, denotes that Nitta would be performing 100% of bid items 50-56 (Bronson Control). The change from "partial" to 100% constitutes an improper change to the Subcontractor List form. As a result of this improper change, the Department should reject GNB's bid as nonresponsive. (See Attachment A)

Also, during a review of Proven Management Inc (PMI)'s submitted bid documents subsequent to the bid opening it was determined that PMI failed to properly submit the Subcontractor List form and the Disadvantaged Business Enterprise (DBE) Commitment form. Accordingly, Ghilotti Construction Company is hereby formally protesting PMI's bid as nonresponsive.

— Engineering Contractor —

248 GHILOTTI AVENUE - SANTA ROSA, CA 95407 • 707-588-1221 • FAX: 707-585-0129

STATE CONTRACTORS LICENSE #009915

Received
AUG-07-2013 WED 08:12 AM Ghilotti ConstructionAug 7 2013 08:18am
FAX NO. 7075851801

P. 02

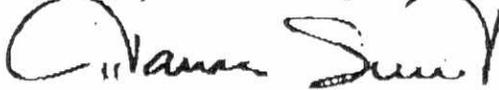
The Dept. of Transportation should reject PMI's bid as nonresponsive because of inconsistency between the Subcontractor List and the DBE Commitment form.

On the Subcontractor List form PMI identified Superior Hydroseeding as performing Bid Items 20, 21 and 50-56. However, on their DBE Commitment form PMI has ~~deleted Bid Item 21~~ from Superior's scope. The deletion of Bid Item 21 changes the work to be performed by the subcontractor and constitutes a change that is not consistent with the Subcontractor List form. The DBE Commitment form states in part, "...item(s) of work listed above must be consistent... with the items of work in the "Subcontractor List" submitted with your bid". As a result of this inconsistency, the Department should reject PMI's bid as nonresponsive. (See Attachment B)

Also, PMI listed Schotka on the Subcontractor List form to perform 100% of Bid Item 2 (Construction Area Signs) the value of which is \$25,000. Yet on the DBE Commitment form PMI reduces the amount awarded to Schotka for Bid Item 2 to only \$6,590. Again, this reduction changes the work to be performed by the subcontractor and constitutes a change that is not consistent with the Subcontractor List form. As a result of this inconsistency, the Department should reject PMI's bid as nonresponsive. (See Attachment C)

Based on this information, Ghilotti Construction Company hereby protests an award of this contract to either Gordon N Ball Inc or Proven Management Inc.

Thank you for considering this matter.



Thomas Smith
Estimating Manager
Ghilotti Construction Company, Inc

Attachments

Received
AUG-07-2013 WED 08:12 AM Ghilotti Construction

Aug 7 2013 08:16am
FAX NO. 7075851801

P. 03

Received
07/25/2013 11:17 9258385915

Jul 26 2013 12:28pm
GORDON N. BALL, INC

PAGE 02/02

ATTACHMENT A

Contract Name: Gordon N. Ball, Inc

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION SUBCONTRACTOR LIST

The bidder must identify each subcontractor performing work in an amount in excess of 1% of 1 percent of the total bid or \$10,000, whichever is greater (Pub Code Code § 4100 et seq.). Complete columns 1 and 4 and identify with the bid. Complete columns 2 and 3 and attach with the bid or fax to (916) 227-8882 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a non-responsive bid.

Column 1: Subcontractor Name and Location	Column 2: Bid Base Max.	Column 3: Percentage of Bid Base Subcontracted	Column 4: Description of Subcontracted Work
Central Strips Porchia Candano, CA	4,5, 8m 27, 82, 85	100%	Striping & Markers
W.C. Maloney Stockton, CA	33, 33, 41, 43	100%	Demolition
Comblin Steel Truckee, CA	221(P), 428 109, 81(P)	53%	Rebar
Bentancourt Bros. Livermore, CA	7, 8, 84	100%	Temporary Signals + Flashing Beacons + maintain
CNJ Scottsdale, AZ	70	100%	Stain Concrete
Medina Oroville, CA	79	100%	Tubular Trailing
Confab Lathrop, CA	160	100%	Erect Precast
Witts Loomis, CA	50, 51, 52, 53, 54, 55 56	100%	Erosion Control (Partial)
Medina Oroville, CA	80	100%	Crash Cushion

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[Signature]
7-25-13



FAX TRANSMITTAL

Gordon N. Ball Inc.

DATE: 8-12-13

General Engineering Contractors

TOTAL # PAGES: 10
(including cover sheet)

Tel 925.838.5675

COMPANY: CALTRANS MS 43 Office Engineer

Fax 925.838.5915

ATTENTION: John C. McMillan, Division Chief

FAX NUMBER: (916) - 227 - 6282

333 Camille Avenue

Alamo, CA 94507

FROM: Sopheu Sem

Attached is a copy of the response to Ghilotti's
protest for CALTRANS Contract # 04-2A1104.
Also, a hard copy is being sent via GSO
and should arrive at your office on 8-13-13.

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION, PLEASE CALL US IMMEDIATELY.

A COPY OF THIS TRANSMISSION WILL BE FORWARDED BY REGULAR MAIL: YES NO

THANK YOU.