

BUGLER CONSTRUCTION

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May 13, 2015

John C. McMillan,
Deputy Division Chief
DEPARTMENT OF TRANSPORTATION
Division of Engineering Services
Office of Engineer
1727 30th Street, MS-43
P.O. Box 168041
Sacramento, CA 95816-8041

Re: Contract 05-1F3604
Bid Opening April 14, 2015
Response to Gordon N. Ball, Inc. May 11, 2015 Bid Protest

Dear Mr. McMillan:

This letter is sent in response to Gordon N. Ball's ("GNB") second protest letter dated May 11, 2015. Bugler Construction has already addressed GNB's first protest letter dated April 27, 2015.

In its second protest letter, without citing a single case, statute or specification to support its arguments, GNB contends that Bugler's bid is non responsive because it expands the scope of work to be performed by Titan, DVBE from that which is listed in Bugler's bid documents. GNB contends that this is an unfair advantage. GNB's attempt to mischaracterize Bugler's bid documents does not an argument make. Said another way, GNB has simply reshuffled the erroneous cards upon which it based its original protest argument. Nothing has changed. GNB's original argument was addressed by Bugler in is response letter dated April 29, 2015. Nothing new has been raised by GNB which warrants additional discussion.

Bugler's bid substantially conforms to the solicitation for Project 05-1F3604. It is well established that a bid which substantially conforms to a solicitation, though it is not perfect, may be accepted if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders. *See Ghilotti Construction Co. v. City of Richmond*, 45 Cal. App. 4th 897 (1996)(; *see also Menefee v. County of Fresno*, 163 Cal. App. 3d 1175 (1985)(public agency can waive a immaterial defect in bid); *MCM Construction, Inc. v.*

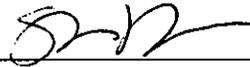
City and Council of San Francisco, 66 Cal. App. 4th 359, 374 (1998)(an agency has discretion to waive immaterial deviations from bid specifications and may accept the bid). GNB has not made a single argument in either its first or second protest letters as to how Bugler's variance is material and/or how Bugler has gained an advantage over bidders. Instead, in a shotgun style approach, GNB has merely thrown its argument at the proverbial wall – for a second time - in hopes that it will stick. Absent any articulate argument made by GNB, any “mistake” made by Bugler listing Titan as its Traffic Control subcontractor for bid item no. 3 is immaterial and may be waived by Caltrans and therefore does not render Bugler's bid as nonresponsive to the solicitation.

Conclusion

Bugler has addressed all arguments made by Gordon N. Ball, Inc. in its second protest letter dated May 11, 2015. No new arguments were raised by Gordon N. Ball in its second protest letter which were not already addressed by Bugler in its response to Gordon N. Ball's first protest letter. For all of the reasons already set forth herein, as well as the reasons set forth in Bugler's initial response letter, Bugler respectfully requests that Gordon N. Ball's first and second protests be denied and Bugler be awarded Contract 05-1F3604 as the lowest, responsive, responsible bidder.

Respectfully Submitted,

BUGLER CONSTRUCTION



Shelley Bugler, CEO

cc: Mulissa Smith, Contract Awards Branch Chief
Allen W. Estes, III, Esq.