

# COPELAND LAW FIRM, APC

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Via Facsimile & U.S. Mail

October 31, 2013

State of California  
Department of Transportation  
John McMillan  
Earl Seaberg  
Office Engineer for Bid Protests  
1727 30<sup>th</sup> St., MS-43  
Sacramento, CA 95816-8041

RE: Bid Protest by Ghilotti Construction Co. on Contract No. 01-378164

Dear Messrs. McMillan and Seaberg:

As you are already aware, this Firm generally represents Argonaut Constructors ("Argonaut") and has been asked to address a bid protest by the 4<sup>th</sup> low bidder, Ghilotti Construction Co. ("GCC") to an award of a contract to Argonaut for California Department of Transportation ("Caltrans") project no. 01-378164 ("Project"). This letter represents both Argonaut's response to GCC' meritless bid protest as well as Argonaut's protest of GCC's 4th-low bid, which violates California subcontractor listing laws (see the penultimate paragraph on page 3 of this letter).

Argonaut is the lowest responsible and responsive bidder on the Project bid, with GCC's bid being \$418,610.50 (over 10%) higher than Argonaut's bid for the same work.

GCC's protest truly serves no purpose other than to mislead Caltrans in the contract award process by advancing misleading arguments which have no basis in law nor fact. The first position in GCC's protest is a meritless allegation that Argonaut failed to properly list Appian as a subcontractor on Argonaut's subcontractor-list.

Appian is listed on the Argonaut DBE form as performing bid item nos. 1, 7, 17 and 23, which when combined total well under 0.05% of the prime contract, the minimum percentage requiring Argonaut to list Appian as a subcontractor:

“[Bidders must furnish a list with] The name and the location of the place of business of each subcontractor who will perform work or labor or render service. . . in an amount in excess of one-half of 1 percent of the prime contractor’s total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor’s total bid or ten thousand dollars (\$10,000), **whichever is greater.**” (emphasis added) Public Contract Code Sec. 4104(a)(1)

By law, Argonaut has no duty to list Appian as a subcontractor as its total work is less than 0.05% of the bid price, thus there is nothing to support GCC’s allegation of non-responsiveness. GCC’s bid protest is simply wrong, off point and ignorant of California law.

Much like its first argument, GCC’s final argument alleging an inconsistent description of the work to be performed by Mountain Enterprises (“Mountain”) between the bid packet and the subsequent “24 hour submittal of the subcontractor list” is simply a nonstarter in determining whether Argonaut’s bid is somehow non-responsive. Restating the facts, Argonaut’s bid accurately listed Mountain as performing “tree removal.” The subsequent 24-hour submittal included the additional description of the line item from the bid under which “tree removal” came, which is “clearing and grubbing.” This is not a violation of any bid requirement nor of any controlling statute – GCC’s argument does not amount to Argonaut’s bid being non-responsive.

There is simply no language in any statute nor in the bid documents requiring a verbatim recitation of a subcontractor’s work description between the bid documents and the subcontractor list. Because there is no such mandatory language, there cannot be a finding that a difference in verbiage between the two documents makes Argonaut’s bid non-responsive.

Under California law, a bid is non-responsive only when there is: (1) a failure to abide by a bid requirement, (2) which also gives the bidder an unfair advantage over other bids. Valley Crest Landscape, Inc. v. City Council, (1996) 41 Cal.App.4<sup>th</sup> 1432. In other words, a bid is non-responsive only when it gives the low bidder a last look at all the other bids as well as the ability for it to back-out of its bid. Id. GCC makes no such allegation here.

The value of Mountain’s subcontract is consistent between the two documents, as is the overall price of Argonaut’s bid, and GCC does not allege otherwise which is a silent admission that Argonaut’s bid is responsive. Merely using additional prose to describe the work of Mountain in the “24- hour subcontractor submittal” is not a bid irregularity giving Argonaut a last look at the bids, nor any legal grounds to back-out of its low bid. GCC’s argument is meritless.

Unwittingly, it is actually GCC's subcontractor listing form which demonstrates GCC's bid is the one which is indeed non-responsive as it violates California Subcontractor Listing Laws – Specifically, GCC's bid fails to comply with the express language of Public Contract Code Sec. 4104 subcontractor listing requirements. As stated in the excerpt from that section on page 2 of this letter, any entity "render[ing] service" in excess of 0.05% of the work needs to be listed as a subcontractor by a bidder.

0.05% of GCC's bid is \$21,789.05. GCC's line item breakdown demonstrates work in excess of 0.05% for line item no. 21 (fish protection services under Section 14-6.04A and 14-6.05 of the special provisions). Those provisions call for all bidders to supply a PLAC certified biological consultant. GCC has no such listed service provider on its subcontractor listing despite claiming a line item value in excess of 0.05% of the overall bid. GCC's bid is thus non-responsive as it violates subcontractor listing laws set forth at Public Contract Code Sec. 4104. GCC's bid should be thrown out.

Argonaut remains willing and able, as the lowest responsive/responsible bidder, to enter into a contract for the Project and to perform all Project work. Argonaut's bid is responsive, its good faith efforts are compliant with all law and respectfully requests award of the Project by Caltrans.

Best regards,

COPELAND LAW FIRM, APC

By:



Steven B. Copeland, Esq.