



General Engineering Contractor
State License No. 594575

Via Facsimile (916) 227-6282, Via Certified Mail

December 22, 2015

State of California
Department of Transportation
1727 30th Street, Bidder Exchange, MS-43
Sacramento, CA 95816-8041

Attn: John C. McMillan, Deputy Division Chief, Office Engineer

Subject: Contract No. 02-0E0904, Route 5 – Replace Bridge, Realign Roadway,
and Seismic Retrofit North of Shasta Lake
Response to Bid Protest of MCM Construction, Inc.

Dear Mr. McMillan,

Please be advised that Shimmick Construction Company, Inc. (Shimmick) submits this letter as an official response to the bid protest submitted by MCM Construction, Inc. (MCM) dated December 8, 2015. The response to the protest are as follows:

1. Shimmick's Subcontractor List

MCM protests that Shimmick's listing of the description of work for subcontractors performing less than 100% of a bid item does not comply with Revised Standard Specification section 2-1.10 and its bid is therefore non-responsive. However, MCM confuses Shimmick's bid with that of Golden State Bridge, Inc., which is also the subject of MCM's December 8, 2015 letter.

While it appears Golden State did not describe *any* of work that subcontractors performing less than 100% of a bid item would in fact perform, Shimmick described the work in its bid. MCM's complaint, then, is not that Shimmick failed to comply with the specification but that MCM does not like the descriptions Shimmick utilized. However, the State nowhere spells out how detailed or comprehensive a "description of the work" must be to satisfy section 2-1.10, leaving it to bidders to decide on the description. Without specific guidance from the State, it is not possible for bidders to know that the hypothetical standard MCM says should apply is the correct standard, however, it seems that if the State wanted a certain phrasing use, it would have said so in order that all bidders would operate by the same rules and have equal bidding opportunities.

Shimmick's interpretation is supported by history. In the case of Valley Crest Landscape, Inc. v. City Council (1996) 41 Cal.App.4th 1432 at pages 1440 – 1441 the appellate court determined that a Public Contract Code requirement that a bidding contractor state the "portion" of the work a listed subcontractor would

perform need not state it in any particular way (either percentage of "type of work") and that it was up to the bidding contractor to define the work each subcontractor would perform. This is important because, although section 2-1.10 speaks of a "description of the subcontracted work," the State's on-line listing form (attached to MCM's protest) which is based on subcontractor listing information provided by Shimmick also refer to the "portion of the work subcontracted." Thus, when Shimmick listed subcontractors to perform portions of the work it had latitude in how it described that work.

Describing work broadly as Shimmick does will not subvert the purpose of requiring the listing of subcontractors. The purpose of a listing is to prevent a prime contractor from shopping a subcontractor's bid. Because the "description of the subcontracted work" about which MCM complains will only involve the listed subcontractors (and Shimmick for the balance) the State can easily tell if the listed subcontractor is being utilized and thus bid shopping did not occur. It is therefore not the case, as MCM suggests, that Shimmick obtained an unfair competitive advantage, since it cannot manipulate the mix of work its subcontractors will perform nor can it change the percentage of the work they will perform.

Finally, as if to underscore that the phrase "description of the subcontracted work" is broadly understood by bidding contractors in the way Shimmick applied it, MCM filed an almost identical protest against another contractor, Ghilotti Bros./RM Harris, JV, on another project (Contract No. 04-4G4604) just days before it filed the bid protest against Shimmick. A copy of MCM's December 4, 2015 bid protest is attached, and it appears as though that bidder understood section 2-1.10 just as Shimmick understood the specification. It is not plausible that experienced bidders would misinterpret the specification in the same way; more likely, Shimmick's description of subcontracted work is customary and correct, and its bid is responsive.

2. Shimmick's DBE Commitment Submittal

MCM mischaracterizes K&G Concrete, Inc.'s work in its protest. MCM claims K&G was to perform a smaller portion of work than claimed, however, MCM confuses K&G's sub-bid to Shimmick with K&G's sub-bid to MCM. At the top of the K&G quotation attached to MCM's protest letter it is plain to see that this is the quote sent to MCM, not to Shimmick. In fact, the agreed scope between Shimmick and K&G included supplying concrete as well as labor and equipment to pump, place and finish.

Attached to this response is the statement of Mr. Keaven Guillory of K&G Concrete, Inc., confirming that on bid day K&G provided Shimmick with a telephonic quote for a lump sum of \$1,200,000, which included not only pumping, placing and finishing, but material as well. This quote did not get put into writing by K&G at the time, however, it is the quote that Shimmick used in its bid and to which it is committed. This is corroborated by the fact (as MCM points out) that Shimmick listed K&G for "concrete pump, concrete place, *concrete furnish*." Therefore, Shimmick's DBE commitment is 5.7% as stated on its DBE-Commitment form.

It is also noteworthy that MCM did not meet the participation goal of 10% nor, Shimmick believes, did any bidder. Thus the State should examine the evidence of the good faith efforts made by Shimmick and (if necessary) any other

bidder. Shimmick is confident that such an examination will show that Shimmick exercised good faith in its DBE outreach.

3. Conclusion

The description of work subcontracted written by Shimmick in its bid complied with the specification requirement and was reasonable and customary. With this description there is no possibility that Shimmick can shop bids or manipulate subcontractors and gains no unfair advantage. Its bid was thus responsive.

Further, Shimmick included in its DBE-Commitment for the actual price quoted by its subcontractor K&G Concrete and the percentage of DBE participation Shimmick claimed is accurate.

There are no valid grounds to declare Shimmick's second lowest bid non-responsive and Shimmick should be awarded the contract in the event the lowest bid is rejected. Please contact me with any questions.

Sincerely,

Christian Fassari

Christian Fassari – Executive VP
Shimmick Construction Company, Inc.
8201 Edgewater Drive, Suite 202
Oakland, CA 94621
(510)-777-5000

Attachment A: MCM Letter to Caltrans dated 12/4/2015

Attachment B: K&G Confirming Quote to Shimmick



Attachment A

**Main Office**

P.O. BOX 620 / 6413 32nd Street / North Highlands / CA 95660

(916) 334-1221

Estimating / Engineering FAX (916) 334-0562

Accounting FAX (916) 334-8355

Southern California Regional Office

P.O. BOX 867 / 19010 Slover Ave. / Bloomington / CA 92316

(909) 875-0533

Engineering / Accounting FAX (909) 875-2243

Via Facsimile (916) 227-6282

December 4, 2015

State Of California

Department Of Transportation

1727 30th Street, Bidder Exchange, MS 43

Sacramento CA 95816-8041

Attn: John C. McMillan, Deputy Division Chief, Office Engineer

Re: Contract No. 04-4G4604

Route 101- Marin County, Remove Existing And Construct New Bridge Railings

BID PROTEST

Gentlemen:

Please consider this letter to be a formal protest of the bid submitted by Ghilotti Brothers/RM Harris JV (Ghilotti/Harris), the apparent low bidder in connection with Contract No. 04-4G4604. MCM Construction, Inc. is the second low bidder.

GHILOTTI/HARRIS' BID IS NON-RESPONSIVE

Revised Standard Specification Section 2-1.33 BID DOCUMENT COMPLETION AND SUBMITTAL Subsection 2-1.33A states "Failure to submit the forms and *information* as specified may result in a non-responsive bid". (Italics added for emphasis).

Revised Standard Specification Section 2-1.10 SUBCONTRACTOR LIST states in part "For each subcontractor listed, the Subcontractor List must show:

4. Portion of work it will perform. Show the portion of work by:

- 4.1 Bid item numbers for the subcontracted work
- 4.2 Percentage of the subcontracted work for each bid item listed
- 4.3 Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent."

With regard to Ghilotti/Harris' listing of W. C. Maloney for Item No.'s 42 thru 45 and CEM Construction for Item No.'s 91 thru 93, Ghilotti/Harris identified the percentage of work for each of the respective items as a percentage less than 100 percent but failed to provide a description of the actual portion of these items of work to be subcontracted.

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John McMillan, Deputy Division Chief
State Of California, Department Of Transportation
December 4, 2015

Re: 04-4G4604 Bid Protest

In the case of the W. C. Maloney listing, Ghilotti/Harris listed Maloney for the following partial bid items as follows:

Item	Item Description	% Of Item	Description of Portion
42	BRIDGE REMOVAL (PORTION), LOCATION A	71%	BRIDGE REMOVAL
43	BRIDGE REMOVAL (PORTION), LOCATION B	73%	BRIDGE REMOVAL
44	BRIDGE REMOVAL (PORTION), LOCATION C	73%	BRIDGE REMOVAL
45	BRIDGE REMOVAL (PORTION), LOCATION D	80%	BRIDGE REMOVAL

Ghilotti/Harris submitted a description of "BRIDGE REMOVAL" to describe the portion of the BRIDGE REMOVAL item subcontracted to Maloney. Describing the portion of the subcontracted item by merely using the same description as the item description fails to describe the portion of the item subcontracted. They may have just as well not provided any description at all. Consequently, describing the portion of BRIDGE REMOVAL as BRIDGE REMOVAL, gives Ghilotti/Harris an unfair competitive advantage on items with a combined value of \$802,000 because they can decide post-bid what portions of the bridge removal items to subcontract to Maloney.

Similarly, in the case of the CTM Construction listing, Ghilotti/Harris listed CTM for the following partial bid items as follows:

Item	Item Description	% Of Item	Portion Of Item
91	CONCRETE BARRIER (TYPE 80 MODIFIED)	56%	CONCRETE BARRIER
92	CONCRETE BARRIER (TYPE 80SW MODIFIED)	48%	CONCRETE BARRIER
93	CONCRETE BARRIER (TYPE 742 MODIFIED)	78%	CONCRETE BARRIER

Ghilotti/Harris submitted a description of "CONCRETE BARRIER" to describe the portion of each of the above CONCRETE BARRIER items. Describing the portion of the subcontracted item using the same description as the item description fails to describe the portion of the item subcontracted. In the case of these items, Ghilotti/Harris also listed Rebar International for percentages less than 100 percent and described Rebar International's work on these items as "Rebar". The combined percentages between CTM and Rebar International for these items are less than 100 percent. Again, Ghilotti/Harris has attempted to gain an unfair competitive advantage on items with a combined value of \$1,107,100 by not identifying the portion of these concrete barrier items, other than rebar, to be subcontracted to CTM. Consequently, Ghilotti/Harris can decide post-bid what portions of these concrete barrier items, other than rebar, to subcontract to CTM.

SUMMARY

By providing a description of a portion of an item using the exact same description as the item itself does not, by any means, define the portion of the item subcontracted, as is required by Standard Specification Section 2-1.10. Repeating the item description as the description of the portion of the item subcontracted is worthless information. Surely, Caltrans is not requesting worthless information be provided regarding

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John McMillan, Deputy Division Chief
State Of California, Department Of Transportation
December 4, 2015

Re: 04-4G4604 Bid Protest

the portion of an item subcontracted. Repeating the item description as the description of the portion of the item subcontracted gives the bidder an unfair competitive advantage because he is not making any commitment on bid day as to what portion of an item he will subcontract. He thereby has latitude to decide post-bid exactly what portion of the item he will subcontract. Clearly, such a position gives the bidder an unfair advantage over the other bidder who submits a compliant Subcontractor List which commits himself on bid day as to what portion of items he subcontracts.

Caltrans must find Ghilotti/Harris' bid non-responsive due to their failure to provide a description of the actual work to be subcontracted, as required by Standard Specification Section 2-1.10, subparagraph 4.3.

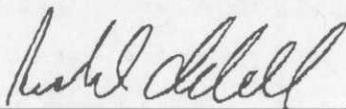
Furthermore, Caltrans has consistently found bidders non-responsive on contracts too numerous to list for submitting Subcontractor Lists that give the bidder a competitive advantage over other bidders. For the reasons explained above, Caltrans should find that Ghilotti/Harris' Subcontractor List gives them an unfair competitive advantage over the other bidders and, consequently, Caltrans should reject their bid.

We ask that Caltrans award the subject contract to the lowest responsible bidder, MCM Construction, Inc.

Please contact the undersigned, should you have any questions or comments.

Sincerely,

MCM CONSTRUCTION, INC.



RICHARD McCALL
Area Manager

/rm

Enclosure

Cc: HDM, JAC, RDB, Bid File

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 04-4G4604 Project ID: 0412000480

Bidder Name: Ghilotti Bros/RM Harris JV

Bidder ID: VC0000108255

DES-OE-0102.2C (REV 03/2015)

Bidding Firm: Ghilotti Bros/RM Harris JV

List this sub? Yes

10) Business Name FARWEST SAFETY

Location City LODI State CA

California Contractor License Number 523187

Public Works Contractor Registration Number 1000001371

Portion of Work Subcontracted:

Item #	Description
106 100	

List this sub? Yes

12) Business Name W. C. MALONEY, INC.

Location City STOCKTON State CA

California Contractor License Number 718243

Public Works Contractor Registration Number 1000003349

Portion of Work Subcontracted:

Item #	Description
42 71	BRIDGE REMOVAL
43 73	BRIDGE REMOVAL
44 73	BRIDGE REMOVAL
45 80	BRIDGE REMOVAL
46 100	BRIDGE REMOVAL

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 04-4G4604 Project ID: 0412000480

Bidder Name: Ghilotti Bros/RM Harris JV

Bidder ID: VC0000108255

DES-OE-0102.2C (REV 03/2015)

Bidding Firm: Ghilotti Bros/RM Harris JV

List this sub? Yes

13) Business Name W. C. MALONEY, INC.
Location City STOCKTON State CA
California Contractor License Number 718243
Public Works Contractor Registration Number 1000003349
Portion of Work Subcontracted:

Item #	Description
47	100 BRIDGE REMOVAL

List this sub? Yes

14) Business Name C T M CONSTRUCTION, INC.
Location City RANCHO CORDOVA State ca
California Contractor License Number 611606
Public Works Contractor Registration Number 1000011342
Portion of Work Subcontracted.

Item #	Description
91	56 construct barrier
92	48 construct barrier
93	78 construct barrier

Attachment B

**CONCRETE INC**1079 Sunrise Ave Ste 353
Roseville, CA 95661OFFICE (916) 539.6652
FAX: (866) 878.27691300 Clay, Suite 600
Oakland, CA 94612

gglcnn@kgconcretepumping.com

keaven@kgconcretepumping.com

Date: 12.21.15

To: Cu Mai @ Shimmick Construction

Project: Dog Creek Cal Trans 02-0E0904

Hello Cu,

This letter will confirm the following:

K&G Concrete, Inc. provided Shimmick Construction with a quote on bid day for concrete pumping, placing and finishing for the above mentioned project. After we provided the initial quote we spoke and negotiated a lump sum supply and place material number on this project, as well. That lump sum price was \$1.2 million and included the supply of concrete. That quote was not followed up in writing.

Should you or the State of California have any questions feel free to contact me.

Sincerely

Keaven Gaillory

A handwritten signature in black ink, appearing to read 'Keaven Gaillory', is written over a horizontal line.

CSLB Lic # 982137 DIR # 1000004003

BART Cert # 4038

SBE # 1632320

FEDERAL SBE CERTIFICATIONS;

DUNS: 967345831

DBE Cert # 38962 EXP: 10/15/2017

PUC Cert # 11050070

BUSINESS LICENSE # 1001844

CAGE: 6UUD2

F A X

General Engineering Cont
State License No. 594575

Shimmick Construction Company, Inc.
8201 Edgewater Drive, Suite 202
Oakland, CA 94621
Phone: 510-777-5000
www.shimmick.com

Total Number of Pages: 10
(including Cover)

To: John McMillan
Fax number: 916-227-6282

From: Christian Fassari
Fax number: 510-777-5099

Date: 12/22/2015

Regarding:

Contract No. 02-0E0904, Route 5 – Replace Bridge,
Realign Roadway, and Seismic Retrofit North
of Shasta Lake
**Response to Bid Protest of MCM
Construction, Inc.**

Certified Letter with original to follow

Comments:

Please contact me if there are any questions regarding the attached letter.

Thank you,
Christian Fassari
(510) 777-5000