

**DEPARTMENT OF TRANSPORTATION**  
 DIVISION OF ENGINEERING SERVICES  
 OFFICE ENGINEER  
 1727 30<sup>th</sup> STREET, MS-43  
 SACRAMENTO, CA 95816-8041  
 PHONE (916) 227-6299  
 FAX (916) 227-6282  
 www.dot.ca.gov/hq/esc/oe



*Serious drought.  
 Help save water!!*

January 14, 2015

Facsimile: (925) 838-5915

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

03-4F3404  
 03-Pla,Nev-80-69.3/69.8, 0.0/R2.3  
 B.O 10/15/2014

Dear Mr. Stober:

The Department of Transportation (Caltrans) received an E-Mail notification on January 12, 2015, from Robert Rosin of Leonidou & Rosin, Professional Corporation on behalf of Gordon N. Ball, Inc. (Gordon Ball) and a response from Hal Stober dated January 14, 2015, protesting the nonresponsive bid finding for Contract No. 03-4F3404 on January 9, 2015.

As you recall, Caltrans found Gordon Ball's bid to be nonresponsive based on material discrepancies between the Subcontractor List and the DBE Commitment form as follows:

*The Subcontractor List form identifies KRC Safety as performing Bid Items 2 and 3 (partial) (Construction Area Signs and Traffic Control), Camblin as performing 28 partial (Rebar) and Selby's 18 and 19 (Erosion Control) and Austin Enterprises 24 partial (Joint Seal). The DBE Commitment form identifies KRC as performing bid items 2,3,4,5,31,32 (CAS, Traffic Control, Traffic Plastic Drum, Portable CMS, Delineators, Underdrain Markers).*

*After a review of DBE Commitment form, Caltrans found that item 4, Traffic Plastic Drum was not listed by item number on the Subcontractor List, however it is covered under the description of work to be performed on the Subcontractors List form and does not therefore render the bid nonresponsive. However, Caltrans finds your bid to be nonresponsive on the following grounds:*

- (1) Item 31, Delineators was not listed on the Subcontractor List, is not considered traffic control work, and is permanent work, as per KRC's quote installation is included in the costs. Therefore, the addition of this item expands the scope of work to be performed by KRC.*
- (2) Item 32, Underdrain Markers was not listed on the Subcontractor List and is not considered traffic control work. Therefore, the addition of this item expands the scope of work to be performed by KRC.*
- (3) Item 28, Minor Concrete was listed on the DBE Commitment form as work to be performed by Austin Enterprises, however Item 28 was not listed as being performed by Austin Enterprises on the Subcontractor List.*

*The DBE Commitment Form specifically states, "IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable, with the names and items of work in the "Subcontractor List" submitted with your bid. Copies of DBE quotes are required."*

The protest alleges that Gordon Ball, Inc.'s bid was responsive because in the three instances referred to in the nonresponsive finding where there was a material inconsistency between the Subcontractor List and the DBE Commitment form, the bid items were not required to be identified in the Subcontractor List because the items in question are for less than ½ of 1% of the overall price of Gordon Ball, Inc.'s bid. Caltrans disagrees with this conclusion.

Public Contract Code Section 4104 states,

*Any officer, department, board, or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth: (a)(1) The name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, 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)*

Contrary to Gordon Ball's assertions that it does not have to list bid items being performed by a subcontractor if the individual item is not ½ of 1% of the amount of the bid or \$10,000, regardless of the total amount of work being performed by the subcontractor, it is not the individual bid items that must each individually equal ½ of 1% or \$10,000.00, but rather the totality of the work of the subcontractor. If a subcontractor is performing ½ of 1% or \$10,000.00, IN TOTAL, then the subcontractor MUST be listed on the Subcontractor List form. Any other reading of this is contrary to the intent of the Public Contract Code. Therefore, any difference between the bid items listed on the Subcontractor List form and the bid items listed for the same subcontractor on the Disadvantage Business Enterprise Commitment (DBE) form renders the bid nonresponsive. For this reason, Caltrans upholds its determination finding Gordon Ball's bid nonresponsive.

As a reminder, Gordon Ball was the 3<sup>rd</sup> lowest bidder for this project, the 1<sup>st</sup> and 2<sup>nd</sup> low bidders were found nonresponsive.

Caltrans will proceed to award the contract to the lowest responsible bidder, provided that all requirements have been met.

If you have any questions, please contact Earl Seaberg, Chief Contract Awards, at (916) 227-6280.

Sincerely,



*pc* JOHN C. McMILLAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

**\*\* Transmit Conf. Report \*\***

P. 1  
CALTRANS CONTR AWARDS Fax 916-227-6282

Jan 14 2015 03:05pm

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STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

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P.1  
CALTRANS CONTR AWARDS Fax 916-227-6282

Jan 14 2015 03:15pm

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916506912889	Normal	14:03:12pm	2'04"	5	* O K	



DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER  
CONTRACT AWARDS AND SERVICES  
1727 - 30<sup>TH</sup> STREET MS43  
SACRAMENTO, CA 95816

DATE: 1/14/15

**FAX COVER SHEET**

FAX # (916) 227-6282

Office Phone # (916) 227-6299

<b>TO:</b> District/Company: <u>Leon Down Rosin</u>	<b>FROM:</b> Name: <u>M Smith</u>
Office: _____	Office: _____
Attn: <u>R. Rosin</u>	Phone: <u>(916) 227-6228</u>
Fax #: <u>(650) 691-2889</u>	No. of Pages to Follow: _____

**MESSAGE:** Attn: Robert Rosin

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