



April 14, 2015

Gordon N. Ball Inc. *Via Fax, Email & Overnight Mail*

General Engineering Contractors

Earl Seaberg, Chief, Office of Contract Awards & Services
John McMillan, Deputy Division Chief
Office Engineer – MSC 43
California Department of Transportation
1727 30th Street
Sacramento, CA 95816-7005

Tel 925.838.5675

Fax 925.838.5915

**Subject: BID PROTEST
Contract 04-235624
Bid March 18, 2015**

333 Camille Avenue

Alamo, CA 94507

Gentlemen:

We hereby protest the bid submitted by Flatiron West, Inc. (FWI) for the above referenced project. The bid documents submitted by FWI includes issues for which the Department must render the bid submitted to be non-responsive.

FWI is non responsive because their DBE Commitment form is not consistent with their Subcontractor Listing. FWI has expanded the work to be performed by K&G Concrete by including Bid Items 34, 70, 71, 86, and 88 on the DBE Commitment form. Only Bid Item 87 was listed on the Subcontractor Listing.

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."

If a subcontractor is performing ½ of 1% or \$10,000, 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 Subcontractors List form and the bid items listed for the same subcontractor on the DBE Commitment form renders the bid nonresponsive.

The Department must find the bid of FWI to be non-responsive. The basis for this conclusion is the determination of the Department on Contract 03-4F3404, where Gordon N. Ball, Inc. was determined to be non-responsive for the same circumstance and reasoning as has occurred with FWI on this contract.

We request that the Department award the contract to the lowest responsible bidder.

GORDON N. BALL, INC.

A handwritten signature in black ink, appearing to be 'H Stober', written over a circular stamp or mark.

Hal Stober
President

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER
1727 30th STREET, MS-43
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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."

Mr. H. Stober
January 14, 2015
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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)

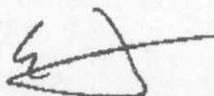
Contrary to Gordon Ball's assertions that it does not have to list bid items being performed by a subcontractor if the individual item is not ½ of 1% of the amount of the bid or \$10,000, regardless of the total amount of work being performed by the subcontractor, it is not the individual bid items that 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 3rd lowest bidder for this project, the 1st and 2nd 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,



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



April 13, 2015

Gordon N. Ball Inc. *Via Fax, Email & Overnight Mail*

General Engineering Contractors

Earl Seaberg, Chief, Office of Contract Awards & Services
John McMillan, Deputy Division Chief
Office Engineer – MSC 43
California Department of Transportation
1727 30th Street
Sacramento, CA 95816-7005

Tel 925.838.5675

Fax 925.838.5915

**Subject: BID PROTEST
Contract 04-235624
Bid March 18, 2015**

333 Camille Avenue

Gentlemen:

Alamo, CA 94507

We hereby protest the bid submitted by Ghilotti/Harris JV for the above referenced project. The subject bid listed R.E. Serrano for a bid item number that is not within the range of numbers of the bid items for the project. By listing R.E. Serrano for Bid Item 1391, there is a material discrepancy giving Ghilotti/Harris JV a competitive advantage.

The basis for this protest is supported by the decision of the Department on Contract 03-3M7504 that bid on August 30, 2011. The bidder for that project (Legg, Inc.) was determined non responsive for the same circumstance.

We request that the Department award the contract to the lowest responsible bidder.

GORDON N. BALL, INC.

Hal Stober
President

Received
APR. 3. 2015 2:35PM MCM CONSTRUCTION

Apr 3 2015 02:35pm

NO. 2316 P. 5

STATE OF CALIFORNIA - BUREAU OF TRANSPORTATION AND HIGHWAY AGENCY

Walter G. Brown, Jr., Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER, MS 43
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SACRAMENTO, CA 95816-8041
PHONE (916) 227-6280
FAX (916) 227-6282
TTY 711



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September 15, 2011

Facsimile: (925) 605-4510

Robert P. Legg, President
Legg, Inc.
2551 2nd Street
Livermore, CA 94550

03-3M7504
03-Sac, Yol-80,275-Var
B.O. 8/30/11

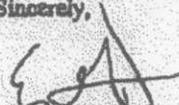
Dear Mr. Legg:

Legg, Inc. submitted a bid on contract 03-3M7504 on September 30, 2011. By this letter, the Department notifies Legg, Inc. that its bid is nonresponsive because it failed to properly submit the Subcontractor List.

Legg, Inc. listed R. E. Serrano to perform 100% of Bid Item 39 described with a description of erect steel and concrete barrier. This contract has 38 Bid Items therefore there is a material discrepancy giving Legg, Inc. a competitive advantage.

Based on the above, the Department finds your bid is nonresponsive. The Department will award the contract to the lowest responsible bidder.

Sincerely,


JOHN McMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services

Attachment

cc: California Engineering Contractors, Inc.
20 Happy Valley Road
Pleasanton, CA 94565
Fax: (925) 461-0510