

BAY CITIES PAVING & GRADING INC.

Bus: 1450 Civic Court, Bldg. B Suite #400, Concord, CA 94520
 (925) 687-6666
 Fax (925) 687-2122

Mall: Post Office Box 6227, Concord, CA 94524-6227

June 11, 2014

FAXED

Department of Transportation, MS 43
 Attn: John McMillan, Deputy Division Chief
 1727 30th Street
 Sacramento, CA 95816

Project: Contract 04-235844
 Bid Opening: May 13, 2014, 2:00 p.m.
 Re: Protest of Ghilotti Construction Company, Inc.

Dear Mr. McMillan,

Bay Cities submitted the second-lowest bid on the Project. Ghilotti Construction Company, Inc. ("GCC") submitted the apparent low bid on the Project. Bay Cities hereby protests GCC Construction's ("GCC") bid as nonresponsive for the late submittal of the 24-Hour Subcontractor List and for expanding the work it had listed Chrisp Company to perform. The bid of GCC must be deemed nonresponsive and the contract should be awarded to Bay Cities as the lowest-responsible bidder.

GCC Failed to Submit All Subcontractor Information Within 24-Hours of the Bid Opening

The Special Provisions provide that Caltrans will receive bids until 2:00 p.m. In the ordinary use "until" means "before" or "up to." "Until" has been judicially defined as up to a certain time, or place or event. It is a term of limitation and means during the whole time before some set time. *Nelda English v. City of Long Beach* (1952) 114 Cal.App.2d 313 at 320. Bidders may submit their bids as close to 2:00 p.m. as they choose so long as they submit their bids before 2:00 p.m. Bidders have to submit their bids prior to 2:00 p.m. because Caltrans has designated 2:00 p.m. as the Bid Opening Time.

Pursuant to Public Contract Code § 10140, Caltrans is required to advertise for bids to comply with California's competitive bidding requirements. Per Public Contract § 10141, the Department must issue a notice "stating the time and place for the receiving and opening of sealed bids" and describing in general terms the work to be done. Caltrans' Division of Procurement and Contracts provides information to bidders via BidSync's website. When Caltrans first advertised for Contract 04-235844, Caltrans notified bidders through BidSync that the Bid Opening was scheduled on April 15, 2014 at 2:00 p.m. [the bid opening date was later changed via Addendum to May 13, 2014]. The schedule of bid opening of 2:00 p.m. is Caltrans standard time for bid opening and is spelled-out in Caltrans publication "Caltrans Connect: A Quick Reference Information Guide for Contractors" which states that bid openings in

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Sacramento are held in the "1st floor conference room at 2 PM on Tuesdays and Wednesdays." Through the listing of the bid openings at 2:00 p.m., Caltrans has complied with the requirements of Public Contract Code § 10141.

In 1999, the Legislature amended Public Contract Code § 4104 to allow public entities to accept subcontractor information (other than a subcontractor's name and address) up to 24 hours after the deadline established by the entity. Caltrans Subcontractor List provides that bidders are required to fax the required information "within 24 hours of the bid opening." Since Caltrans advertisements set the Bid Opening at 2:00 p.m. on May 13, 2014., bidders would have exactly 24 hours from that moment when the time changed from 1:59 p.m. to 2:00 p.m. to submit their subcontractor information. Twenty-Four Hours is not an ambiguous amount of time: it is exactly 86,400 seconds (twenty-four hours x 60 minutes per hour x 60 seconds a minute). The Specifications provide that the all subcontractor information had to be received by Caltrans within the 86,400 seconds from the bid opening which started exactly at 2:00 p.m. on May 13, 2014.

GCC's bid is nonresponsive because GCC failed to submit the information for Columns 2 and 3 within the time allowed by the specifications and Public Contract Code § 4104. The Bid Documents reveal that GCC faxed a 22-page Subcontractor Listing form to Caltrans on May 14, 2014 (Attachment A). Caltrans's fax header shows that Caltrans received the first page of the submittal at 1:57 p.m. while Caltrans received Page 20 at 2:00 p.m.. If Caltrans had received the last very bit of subcontractor information from GCC on the last of the 86,400 seconds allowed to submit information, then GCC's bid may have been responsive. But it is clear that even if Caltrans received the top of page 20 within the 86,400 second allowed, Caltrans received the bottom portion of Page 20 after the time for submittals had expired. It is more likely that time had expired during the printing of Page 19.

When GCC submitted its Page 20 listing the information for Gerdau General Contractors, the time for submitting its subcontractor information had already expired. GCC then proceeded to fax over information regarding Cleveland Wrecking on Page 21 and then Stoney Masonry on Page 22 of its submittal. The information contained on Page 20 was late and the information contained on Pages 21 and 22 was even later. Caltrans fax header does not show the passage of seconds but since Page 20 is marked as "May 14, 2014 2:00 p.m." at least 86,400 seconds had passed from the bid opening at 2:00 p.m. on May 13, 2014 when the top of this page was printed. Caltrans received Pages 21 and 22 beyond the 86,400 seconds allowed by Public Contract Code §4104 for this submittal unless these two pages and Page 20 took absolutely zero time to be received by Caltrans. The 24-Hour requirement is a statutory requirement of limitation and does not allow Caltrans to accept documents even seconds beyond its expiration. GCC is solely responsible for waiting till the last second to attempt to submit their documents.

Although GCC provided some subcontractor information to Caltrans prior to 2:00 p.m., Caltrans

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records show that Caltrans received GCC's records beyond the 24 hours (86,400 seconds) allowed by Public Contract Code § 4104. The Bid Form provides that a bidder's failure to provide complete information within the time specified will result in a nonresponsive bid.

GCC's Bid Impermissibly Expanded the Scope of Crisp Company's Scope of Work

On bid day, GCC submitted the attached Subcontractor List (Attachment B) in which GCC had completed Columns 1 and 4. Within 24 hours of bid time, GCC submitted the attached list ("24-Hour List") completing Columns 2 and 3 (Attachment C). On the Subcontractor List, GCC listed Crisp Company ("Crisp") for "Striping and Marking." On its 24-Hour Listing, GCC listed Crisp for striping and marking Items of work but also added the following Items:

- Item No. 50 REMOVE PAVEMENT MARKER
- Item No. 320 PAVEMENT MARKER (NON-REFLECTIVE)
- Item No. 321 PAVEMENT MARKER (RETROREFLECTIVE)

GCC's addition of Pavement Marker work to Crisp's listed work expanded the scope of work which GCC had listed Crisp to perform on the Subcontractor List.

Caltrans Standard Specifications Section 84 covers the work of Traffic Stripes and Pavement Marking whereas Section 85 covers the work of Pavement Markers. As recognized by Caltrans, the work of Striping and Markings is clearly separate and different than the work required for Traffic Markers. Striping and Marking is sprayed in coats while markers are installed using adhesives. The Project's Pavement Delineation Quantities (Sheet PDQ-1, Attachment D) show the quantities for differing items of work: Pavement Marker, Thermoplastic Traffic Stripe, Pavement Marking and Delineators. Caltrans does not pay for Pavement Markers as either Striping or Marking work because Pavement Markers are a separate item of work.

On Contract No. 02-2E5104, Mercer submitted a bid and listed a subcontractor to perform Striping and Mobilization but added Pavement Markers to the 24-Hour Listing. Caltrans determined that Mercer-Fraser's bid was nonresponsive due to this addition of work. On October 8, 2012, Mercer-Fraser protested Caltrans' determination and argued that striping companies such as Crisp Co., Central Striping, and other striping subcontractors all included pavement markers in their quotes and the work should be considered as "Striping" work. In a letter dated November 29, 2012, Caltrans wrote that it had reviewed Mercer Fraser's protest (that the description of "striping" includes pavement markers) and that Caltrans upheld its prior decision of October 4, 2012 which rejected Mercer Fraser's bid (Attachment E). For the same reasons that Caltrans determined that Mercer-Fraser's bid was nonresponsive for Contract 02-2E5104, Caltrans must also find GCC's bid as nonresponsive for this Contract.

Conclusion

Every month, Caltrans staff rejects bids that are minutes or even seconds late. Although setting

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deadlines sometimes seems harsh, the Legislature enacted statutes for public entities to ensure fair and competitive bidding procedures. For Contract 07-2768U4, the low bidder (Marina Landscape) argued that Caltrans was applying its standards too strictly. In reply, John McMillan wrote:

“As you are aware, Caltrans receives many bids in response to their highway construction needs. It is the sole responsibility of the bidder to provide accurate and responsive bids. A change or providing a bidder with an opportunity to submit its documentation outside of the submittal deadline circumvents the competitive bidding process and provides an unfair advantage, as well as a material benefit to Marina.”

Here, GCC submitted its subcontractor information beyond the 24 hours allowed by Public Contract Code § 4104. Twenty-Four Hours does not mean 24 hours and ten minutes or even twenty-four hours and ten seconds.

Secondly, GCC expanded the scope of work for Chrisp Co by listing Chrisp for pavement markers on its 24-Hour Listing when it had only listed Chrisp for striping and markings on bid day. In the same exact situation, Caltrans had determined that Mercer Fraser's bid was non-responsive. If Caltrans applies its standards uniformly, it must also find GCC's bid as non-responsive.

Sincerely,



Marlo Manqueros
Vice-President

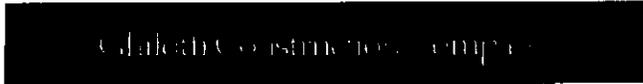
cc: File

Received
05/14/2014 13:58 Ghilotti Construction

May 14 2014 01:57pm
(FAX)707 585 1601

P.001/022

Attachment A, 1 of 5 pages



246 Ghilotti Avenue, Santa Rosa, CA 95407
Ph: (707) 585-1221 Fax: (707) 585-1601
WWW.GHILOTTI.COM

FAX COVER SHEET

To:	Department of Transportation	From:	Thomas Smith
Company:	Department of Transportation	Pages:	2 (Including Cover)
FAX #:	(916) 227 - 6282	Date:	5/14/2014
Re:	Contract No. 04-235844	CC:	

As required, following is the completed Subcontractor Listing form for project no. 04-235844 including percentages of each bid item subcontracted.

Please contact me if you need further information.

Thank you,

Thomas Smith
Estimating Manager
Ghilotti Construction Company, Inc.
(707) 585 - 1221

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05/14/2014 14:01 Ghilotti Construction

Received

May 14 2014 01:59pm

(FAX) 707 565 1601

P.019/022

Attachment A, 2 of 5 pages

C2

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-05-0102.2 (REV 3/2011)

Bidder Name: Ghilotti Construction Company, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6262 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
KIE-CON, INC. ANTIOCH, CA	193	100%	FURNISH AND ERECT PRECAST PRESTRESSED CONCRETE GIRDERS
	194	100%	
	195	100%	
	196	100%	

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05/14/2014 14:01 Ghilotti Construction

Received

May 14 2014 02:00pm

(FAX) 707 983 1601

P.020/022

Attachment A, 3 of 5 pages

C3

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-05-0102.2 (REV 3/2011)

Bidder Name: Ghilotti Construction Company, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub. Cont. Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-8282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
GERDAU GENERAL CONTRACTORS FAIRFIELD, CA	185	24%	BAR REINFORCING STEEL
	186	25%	
	187	37%	
	200	100%	
	201	100%	
	202	100%	
	203	100%	
	204	100%	
	205	100%	
	290	13%	
	291	30%	
	304	39%	
305	41%		
306	38%		

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05/14/2014 14:01 Ghilotti Construction

Received

May 14 2014 02:00pm
(FAX) 707 585 1601

P.021/022

Attachment A, 4 of 5 pages

D2

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-CE-01022 (REV 3/2011)

Bidder Name: Ghilotti Construction Company, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracts	Column 4: Description of Subcontracted Work
CLEVELAND WRECKING SAN LORENZO, CA	78	82%	BRIDGE REMOVAL

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05/14/2014 14:01 Ghilotti Construction

Received

May 14 2014 02:00pm
(FAX) 707 585 1601

P.022/022

Attachment A, 5 of 5 pages

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
09S-05-0102.2 (REV 3/2011)

Bidder Name: Ghilotti Construction Company, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-5282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
STONE MASONRY MADERA, CA	275	100%	STONE VENEER

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Attachment B

A10

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-OE-0102.2 (REV 3/2011)

Bidder Name: Orlotti Construction Company, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Chrisp Company Woodland, CA			STRIPING AND MARKING

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✓

Received
05/14/2014 14:00 Ghilotti Construction

May 14 2014 01:58pm
(FAX)707 585 1601

P.011/022

Attachment C

A10

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DES-OE-4102.2 (REV 3/2011)

Bidder Name: Ghilotti Construction Company, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
CHRISP COMPANY WOODLAND, CA	35	100%	STRIPING AND MARKING
	46	100%	
	47	100%	
	48	100%	
	49	100%	
	50	100%	
	308	100%	
	309	100%	
	310	100%	
	311	100%	
	312	100%	
	313	100%	
	314	100%	
	315	100%	
	316	100%	
	317	100%	
318	100%		
319	100%		
320	100%		
321	100%		

Pavement
Markers

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DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER, MS 43
1727 30th STREET
P. O. BOX 168041
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6280
FAX (916) 227-6282
TTY 711



Flex your power!
Be energy efficient!

Attachment E

November 29, 2012

Facsimile: (707) 443-0277

Justin Zabel, President
Mercer-Fraser Company
P. O. Box 1006
Eureka, CA 95502

02-2E5104
02-Sha-299-4.3/5.5
B.O. 9/25/12

Dear Mr. Zabel:

The Department of Transportation (Caltrans) received the attached letter dated October 8, 2012 from Mercer-Fraser Company (Mercer-Fraser) protesting being found nonresponsive. The protest states that "striping" includes pavement markers, that Mercer-Fraser completed the Subcontractor List form correctly, and that Apply-A-Line's work did not have to be listed at all as it fell beneath half on one percent of the bid total. Mercer-Fraser requests Caltrans reverses its nonresponsive finding.

Caltrans has reviewed the protest and upholds its decision dated October 4, 2012.

Based on the above, Caltrans finds Mercer-Fraser's protest lacks merit and will award the contract to the lowest responsive bidder.

If you have any questions, please contact Dave Neumann, Contract Awards Senior, at (916) 227-6285.

Sincerely,


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

Attachment

facsimile

TRANSMITTAL

to: John McMillan/ Deputy Division Chief, Caltrans
fax #: (916) 227-6282
re: CDOT Contract 04-235844, Protest of Ghilotti Construction Bid
date: June 11, 2014
pages: 14, including cover sheet.

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From the desk of...

Marlo Manqueros
Vice-President
Bay Cities Paving & Grading, Inc.
P.O. Box 6227
Concord, CA 94524-6227

(925) 446-6001
Fax: (925) 687-2122