

**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 CTM 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.

Page 2

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:

<u>Item</u>	<u>Item Description</u>	<u>% Of Item</u>	<u>Description of Portion</u>
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:

<u>Item</u>	<u>Item Description</u>	<u>% Of Item</u>	<u>Portion Of Item</u>
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

Page 3

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