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November 13, 2014

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

ATTN: Mr. John C. McMillan  
Deputy Division Chief

Subj: 08-1C3704 RT 95 IN RIVERSIDE COUNTY NEAR BLYTHE FROM 0.2 MILES SOUTH OF ROUTE 10/95  
TO 0.7 MILE SOUTH OF LYE ROAD  
FEDERAL PROJECT NO. ACSTP-P095(027)E

Re: FORMAL PROTEST OF BID SUBMITTED BY SKANSKA USA CIVIL WEST CALIFORNIA DISTRICT INC  
(SKANSKA)

Dear Mr. McMillan,

Please consider this letter to be a formal protest of the bid submitted by SKANSKA, the apparent low bidder on the subject project. The bid turned in by SKANSKA is nonresponsive and therefore must be rejected based on the Department's bidding requirements, strictly enforced policies and governing applicable Federal Regulations. Chester Gross Construction Company is the 3rd lowest bidder on this project.

**The SKANSKA bid impermissibly changed the scope of work to be performed by its subcontractors**

Upon review of the bid summary listings as provided on the Caltrans website, it is clear that SKANSKA has in fact, changed the percentage of work to be performed by each of its subcontractors listed on its bid day Subcontractor list form and the 24 hour Subcontractor list form.

The Caltrans Bidder Subcontractor List form states very clearly, and with no ambiguity in part.. *"the bidder must set forth in the bid the name, the location of the place of business, the California*



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contractor license number, **and the portion of work** 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," continuing "The Bidder must submit within 24 hours of the bid opening, the bid item numbers with percentages of the portion of work subcontracted."

On the Subcontractor List form submitted with the bid, SKANSKA identified Chrisp Company, Our Valley Fence Inc., MSL Electric, Inc., APCO, Maneri Traffic Control, and Pavement Recycling Systems to perform work listed as 100 percent for various items identified for each respective subcontractor. However, on the 24-hour Subcontractor List form, SKANSKA changed the percentage of work to be performed from 100 percent to partial. Each respective change from 100 percent to partial for numerous items reduces the scope of work to be performed by each subcontractor, and constitutes an improper change to the Subcontractor's List form.

Based on the above, Caltrans must deem the bid submitted by SKANSKA as nonresponsive and proceed to award the contract to the lowest responsible bidder.

Caltrans has and continues to enforce its strict compliance with governing policies, regulations and law with respect to improper changes to the Subcontractors List form. A clear recent example of this can be noted with the attached Caltrans letter pertaining to Contract 04-2G8604 (attached) that carries with it the same impermissible change in scope and the clear consequences of such an impermissible change.

The attached letter from Caltrans is clear and without ambiguity lending favor to clear and decisive action in deeming the Contractor's bid nonresponsive for the same improper change to the Subcontractor's List form. In this instance Caltrans has rejected Gordan N. Ball for listing portions of Selby's Soil Erosion Control work as partial on the bid day Subcontractor List form, then showing the same portions of work as 100 percent on the 24 hour Subcontractor List form. As such, and in Caltrans own words, this change "constitutes an improper change to the Subcontractor's List form." Therefore, Caltrans, enforcing its strictly enforced bidding requirements, policies and governing applicable Federal and State Regulations informs Gordan N. Ball that "its bid is nonresponsive" and "Based on the above, Caltrans will proceed to award the contract to the lowest responsible bidder."

As a matter of clear fact, Caltrans has, and rightfully so, informed Gordan N. Ball that by listing any work as "partial", it has committed to utilizing that subcontractor for only a portion of the work described, moreover, Caltrans has clarified with irrefutable clarity, that without utilization, or reference to "partial", "portion" or any descriptive word of like and kind, the description itself stand alone, establishes 100 percent of the work. The fact is, Caltrans is clear, that without the reference to a portion of work, or partial, the work referenced by description is considered 100 percent. As such,



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substantiated by the attached letter, governing requirements and pertinent law, it is an impermissible and improper change to the Subcontractor's List form to list a subcontractor for a given item of work, then reduce the portion of work to be performed by the subcontractor on the 24 hour Subcontractor List form.

SKANSKA, as outlined above, has wrongfully, and effectively changed the scope of work for every subcontractor it listed by reducing the scope of work for numerous items on its 24 hour subcontractor list.

**Conclusion**

Based on the clear facts, references and information presented herein, governing regulations, specifications, law, and Caltrans enforcement precedence, the bid provided by SKANSKA must be rejected as nonresponsive.

The facts are clear and irrefutable, the changes SKANSKA has made from its bid day Subcontractor List to its 24 hour Subcontractor List constitute an improper change to the Subcontractor's List form. As such, there is no alternative other than to notify SKANSKA that its bid is nonresponsive and proceed to award the contract to the lowest responsible bidder.

Based on the information presented herein, it is respectfully and formally requested that the Department uphold and validate Chester Gross Construction's bid protest and reject the bid submitted by SKANSKA and proceed to award the contract to the lowest responsible bidder.

Thank you for your attention to this matter and please feel free to contact me if you have any questions.

Very truly yours,

Shawn N. Simmons  
Western Division Manager  
Sent Via Facsimile to (916) 227-6282

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF ENGINEERING SERVICES**  
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 www.dot.ca.gov/hq/csc/oe



Serious drought.  
 Help save water!!

October 30, 2014

Facsimile: (925) 838-5915

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

04-2G8604  
 04-Ala-580-R33.4  
 B.O 10/16/2014

Dear Mr. Stober:

The Department of Transportation (Caltrans) received a bid submitted by Gordon N. Ball, Inc. (Gordon Ball) for Contract No. 04-2G8604 on October 16, 2014. By this letter, Caltrans notifies Gordon Ball that its bid is nonresponsive.

The Subcontractor List form states in part, "...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."

On the Subcontractor List form submitted with the bid, Gordon Ball identified Selby's Soil Erosion Control (Selby) to perform work listed as partial. However, on the 24-hour Subcontractor List form, Gordon Ball changed the percentage of work to be performed from partial to 100 percent. The change from partial to 100 percent expands the scope of work to be performed by Selby, and constitutes an improper change to the Subcontractor's List form.

Based on the above, Caltrans will proceed to award the contract to the lowest responsible bidder.

Your attention is directed to Section 3-1.04 of the Amendments to the 2010 Standard Specifications. Caltrans is not obligated to offer an extension of the award period for a nonresponsive bid. Should you wish to extend your bid while resolving a nonresponsive finding, you must send your request to the Office Engineer no later than 4:00 p.m., two business days prior to the expiration of your bid.

If you have any questions, please contact Irene Beckham, Contract Award Analyst, at (916) 227-6284.

Sincerely,

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