



Gordon N. Ball Inc. MSC 43

January 21, 2014

General Engineering Contractors Office Engineer
California Department of Transportation
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Sacramento, CA 95816-7005

Tel 925.838.5675 Attn: Earl Seaberg, Chief, Office of Contract Awards & Services
John McMillan, Deputy Division Chief

Fax 925.838.5915 Reference: 04-1A2904
04-Son-12-9.6
Bid 1/8/14

333 Camille Avenue Subject: Bid Protest – Ghilotti Construction Company

Alamo, CA 94507
Gentlemen:

We hereby submit a Bid Protest of the bid submitted by the apparent low bidder, Ghilotti Construction Company (GCC). Review of the actual committed DBE participation and the Good Faith Effort documentation to obtain DBE participation indicates that a determination of non-responsiveness should be made by the Department.

Section 49 CFR Part 26 Appendix A requires that a bidder exhaust all reasonable means necessary to comply with the subcontracting goals of the project. The Good Faith Effort documentation submitted by GCC was clearly pro forma, and is completely inadequate because it lacks the quality, scope, intensity, and appropriateness to meet the stated subcontract participation goals.

While full of content, the documentation submitted lacks purpose and follow through. GCC apparently followed a specific pattern of steps and procedures to follow a blueprint to provide data to include in Good Faith Effort documentation. However, the documentation and results submitted indicate a lack of follow through and concern immediately prior to bid submission. There does not appear to have been any concern or action taken to increase DBE participation, even though there clearly were options available to do so. Additionally, our review indicates flaws in the statements and documentation of the GCC Good Faith Effort.

DBE Participation for Trucking

On Tab #3 of the documentation, GCC stated that it made \$78,900 in trucking available to DBE firms; however GCC committed to a value that is \$30,000 less than the value made available. There is considerable additional trucking value on the project that was not committed to a DBE trucking firm. The documentation submitted by GCC does not mention and/or explain the difference, nor does it reference the DBE trucking firms who were rejected.

Values of Items of Work Made Available

While the pro forma documentation by GCC contains a value of work that could have met the subcontracting goal, GCC clearly failed to offer portions of the work that experience has indicated would have increased the likelihood of achieving the goal. GCC failed to offer to DBE firms Asphalt Paving, Asphalt Dike, Prepare SWPPP, Temporary Fence, Pipe purchase, Lead Compliance Plan preparation, and Aggregate Base.

Follow Up Solicitation

The phone log submitted by GCC (Page 198-201) indicates that 15 qualified firms confirmed that they would be bidding on the project. Not only did GCC not use any of the confirmed firms as part of their commitment, they did not mention or document the reason for rejection of these firms. Documentation from other bidders confirms the receipt of bids from most of these DBE firms. GCC made contact to Roby Trucking, Western Traffic Supply, and Triumph Geosynthetics, however none of these firms were used in their commitment, and all of these firms submitted quotations to the other firms who submitted documentation. These actions are symptomatic of a bidder not performing a good faith effort.

Selected Firms/Price Difference/Rejected DBE Participation

Under Tab #5 (Page 459) of the documentation, GCC stated that it would self-perform Traffic Control because no DBE quotes were received from Traffic Control firms. However, the submitted phone log indicates that two (2) DBE Traffic Control firms (CMC Traffic and Bay Area Traffic Solutions) confirmed that they will be submitting sub bids. GCC failed to acknowledge quotes from these DBE firms. Quotes were submitted by these DBE firms to other bidders who submitted documentation.

GCC did not use good judgment nor put the subcontracting goal in mind at the time of bid relative to negotiating with DBE firms. GCC rejected three (3) DBE firms on four (4) work items who submitted quotations that included pricing minimally higher than the non-DBE firms who were utilized, as follows:

Item of Work Offered	Firm Selected	Firm Rejected	Price Difference
CAS	Statewide Safety (Non-DBE)	Shotka Construction (DBE)	\$680.00
Rolled Erosion Control Product	Shelby's Soil Erosion Control (Non-DBE)	Superior Hydroseeding (DBE)	(\$922.70)
Compost	Shelby's Soil Erosion Control (Non-DBE)	J&M Restoration (DBE)	\$690.00
Hydroseed	Shelby's Soil Erosion Control (Non-DBE)	J&M Restoration (DBE)	\$870.00

Comparison with the lowest 3 bidders

As substantiation of a pro forma Good Faith Effort without follow through, while GCC solicited a similar number of firms as other bidders, the committed participation is 81% less than the average of the second low and third low bidder.

GCC failed to demonstrate a Good Faith Effort in meeting the goal and therefore should not be awarded the contract because it did not comply with the regulations under Section 49 CFR Part 26 Appendix A, "Guidance Concerning Good Faith Efforts". GCC did not negotiate in good faith with interested DBE firms because it did not acknowledge, document rejection, nor include as participation any of the 15 DBE firms who confirmed that it would be submitting a bid for the project. GCC failed to take the responsibility to make portions of the work available to DBE subcontractors and suppliers and to select those portions of the work consistent with DBE firms who expressed interest, so as to facilitate DBE participation. The documentation submitted by GCC indicates that they did not select the portions of the work in a manner that would increase the likelihood that the DBE participation goals would be achieved. GCC clearly did not have the DBE subcontracting goal in mind when selecting or rejecting DBE firms who quoted because GCC failed to take on minimal but reasonable costs to obtain DBE participation. The evaluation with the other bidders demonstrates that because of the lack of proper Good Faith Effort by GCC, the DBE participation was significantly less than the other bidders.

In the submitted documents, GCC states that they "encourage DBE subcontractors and suppliers to bid complete or partial scopes on all items offered". However, the results of the good faith effort expended by GCC are that they clearly rejected DBE firms, with the stated reasoning being "incomplete scope", and then used a non-DBE firm in their place.

Revised Bid with the 24 Hour Subcontractor Listing Submittal

Finally, the 24 hour subcontractor listing submittal by GCC is flawed to the extent that the bid should be determined non-responsive. The documents submitted indicate that at the time of bid submission, GCC did not intend to have Sterling P. Holloway perform only a partial scope of the Bridge Removal work (Bid Item 49). However, with the 24 hour subcontractor listing submission, GCC revised its bid and listed Sterling P. Holloway to perform only 90% of the Bridge Removal work (Item 49). The revised subcontractor listing is a revision of the original bid submitted as per recent Department determinations, provides an unfair ability for gain, and thereby renders GCC's bid as non-responsive.

Sincerely,

GORDON N. BALL, INC.



Hal Stober
President



Gordon N. Ball Inc.
General Engineering Contractors

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Good Afternoon Mr. Seaberg and Mr. McMillan:

Attached please find our bid protest in reference to the following bid:

Ghilotti Construction Company

Contract No. 04-1A2904

04-Son-12-9.6

Bid Date: 01/08/14

Please feel free to email me should you have any questions.

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