

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER, MS 43

1727 30th STREET

SACRAMENTO, CA 95816-8041

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www.dot.ca.gov/hq/esc/oe

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Be energy efficient!*

October 31, 2013

Facsimile: (707) 542-4897

Michael A. Smith, Vice President
Argonaut Constructors
P.O. Box 639
Santa Rosa, CA 95402

01-476604
01-Men-128-35.0/35.3
B.O. 10/08/2013

Dear Mr. Smith:

The Department of Transportation (Caltrans) received protest letters from Argonaut Constructors (Argonaut) dated October 17, 18, and 24, 2013 for Contract No. 01-476604. The protests alleges that Golden State Bridge, Inc. (GSB) failed to list a licensed C-57, Well-contractor and is actually only performing 28.7 percent of the contract.

Caltrans conducted a review of the bid documents as well as the protest and determined that the C-57 Well-Drilling specialty license is not a condition of award for this contract.

Based on the above, Caltrans finds Argonaut's protest lacks merit and will proceed to award the contract to the lowest responsible bidder, provided that all requirements are met.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,

A handwritten signature in black ink, appearing to read "C" followed by a stylized signature.

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

COPELAND LAW FIRM, APC

Northern California Office:

19201 Sonoma Hwy., Suite 106
Sonoma, California 95476

ofc: 424/234-9701

Southern California Office:

528 Palisades Dr., Suite 540
Los Angeles, California 90272

email: sbc@copelandlawpc.com

fac: 866/288-371

Fax # (916) 227-6282
VIA FACSIMILE AND U.S. MAIL

October 18, 2013

Mr. John McMillan
Deputy Division Chief
State of California, Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th St.
Sacramento, Ca. 95816-8041

RE: Bid Protest ⁴ No. 2, CONTRACT NO. 01-47660, IN MENDOCINO COUNTY
ABOUT 5 MILES EAST OF BOONVILLE FROM 0.5 MILE EAST OF
SHEARING CREEK BRIDGE #10-59 TO 0.9 MILE WEST OF MAPLE
CREEK

Dear Mr. McMillan:

This letter is a second bid protest by Argonaut Constructors ("Argonaut") of the low bid submitted by Golden State Bridge, Inc. ("GSB") on Contract No. 01-47660 ("Contract"). GSB is not self-performing the required minimum percentage of work (30%) required by the Contract documents. Just as with the first protest, this second protest results in a non-responsive bid by GSB.

The Contract Specification require:

"The contractor shall perform with its own organization contract work amounting to not less than 30 percent . . . of the total original contract price, excluding any specialty items designated by the contracting agency." (Specifications, p. 17, Sec. (IV)(1))

GSB's bid amounts to \$3,075,817.45. GSB asserts it is self performing 36.7% of the contract with its own forces. However, GSB lists AVAR as a subcontractor for bid item no. 61, yet still claims the value for the materials in this bid item within its 36.7% of self-performance as GSB is purchasing AVAR's materials on behalf of AVAR. This is not a proper inclusion for calculating self-performance.

Purchase of materials for a subcontractor does not count in calculating self-performance percentage - if the opposite were true a contractor could simply purchase materials valued at 30.1% of the contract price and then broker the remaining project through subcontractors without ever performing any work itself. When the value of bid item no. 61 materials is removed from the self-performance calculation, GSB is actual only performing 28.7% of the contract, thereby falling under the required 30% and making the bid non-responsive.

As previously stated, Argonaut remains willing and able to perform the work as stated in its bid. The State should declare GSB's bid non-responsive and award the contract to Argonaut as the second-low bidder.

If you have any further questions on this matter, please feel free to contact either myself or Stephen Langhals of Argonaut.

Best regards,

COPELAND LAW FIRM, APC

By: _____


Steven B. Copeland, Esq.

COPELAND LAW FIRM, APC

Northern California Office:

19201 Sonoma Hwy., Suite 106
Sonoma, California 95476

ofc: 424/234-9701

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Fax # (916) 227-6282
VIA FACSIMILE AND U.S. MAIL

October 17, 2013

Mr. John McMillan
Deputy Division Chief
State of California, Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th St.
Sacramento, Ca. 95816-8041

RE: Bid Protest, CONTRACT NO. 01-47660, IN MENDOCINO COUNTY ABOUT
5 MILES EAST OF BONVILLE FROM 0.5 MILE EAST OF SHEARING
CREEK BRIDGE #10-1 TO 0.9 MILE WEST OF MAPLE CREEK

Dear Mr. McMillan:

This firm generally represents Argonaut Constructors ("Argonaut"), and has been tasked with submitting to you Argonaut's protest of the low bid submitted by Golden State Bridge, Inc. ("GSB") on Contract No. 01-47660 ("Contract"). Specifically, GSB's apparent low bid is non-responsive preventing any award to GSB on the Contract. Argonaut hereby requests a declaration of GSB's bid as non-responsive and an award of the contract to Argonaut as the second-low bidder.

GSB's bid is non-responsive as it fails to list a licensed subcontractor to perform the work required by Section 15-2.06(B) of the Project Specifications, which correlates to bid item no. 28, related to the destruction of water-wells. The failure to list a licensed well-contractor makes GSB's bid non-responsive.

GSB holds both an "A" (General Engineering) and a "B" (General Building) license but does not hold a "C-57" Well-Drilling specialty license. Destruction or installation of wells must be performed by a C-57 licensed well-drilling contractor. It is illegal for any other license classification to perform that scope of work:

"A specialty contractor is a contractor whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts." (Bus. & Prof. Code Sec. 7058(a))

"No general building contractor shall contract for any project that includes . . . the "C-57" Well Drilling classification as provided for in Section 13750.5 of the Water Code, unless the general building contractor holds the appropriate license classification, or subcontracts with the appropriately licensed contractor. (Bus. & Prof. Code Sec. 7057(c))

Water Code Sec. 13750 referenced above goes on to require:

"No person shall undertake to . . . abandon or destroy such a well, unless the person responsible for that . . . destruction, or abandonment possesses a C-57 Water Well Contractor's License."

There is no doubt Contract bid item no. 28 work under Section 15-2.06(B) of the specifications must be performed by a C-57 licensed contractor. GSB did not list a subcontractor for item no. 28 work (totaling \$48,000 under the bid), which work amounts to 1.36% of GSB's bid. This bid item is in excess of 1/2 of 1% of the total bid price and thus must have a listed subcontractor if it was going to be performed by a subcontractor. GSB's bid makes GSB the entity performing the work under bid item 28, a licensing violation.

Moreover, GSB cannot even obtain the required permit from Mendocino County to destroy the wells:

"The . . . destruction of wells shall be performed by contractors licensed in accordance with the provisions of the Contractors license Law . . . unless exempted by that act." (Sec. 6 of Mendocino County Well Ordinance and Special Permit Areas and Well Standards, 1994)

William Nalty of the well-permit/inspection division for Mendocino County has even confirmed in writing that a C-57 specialty contractor must perform the bid-item no. 28 work in order to obtain both the permit and approval of the work. Copies of the County's Ordinance and Mr. Nalty's letter are attached hereto.

GSB may not now submit a new list of subcontractors including one for item no. 28 to make its bid responsive. Under California law, a bid is non-responsive when one of the following is present:

1. The irregularity in that bid gives the bidder an unfair advantage over other bids – an unfair advantage is defined as any time the bidder is given any role in deciding whether the irregularity in its bid should be waived; or
2. Whether waiving the irregularity would constitute favoritism to the non-responsive bidder. See, Valley Crest Landscape, Inc. v. City Council, (1996) 41 Cal.App.4th 1432; MCM Constr. v. City & County of San Francisco, (1998) 66 Cal.App.4th 359; Ghilotti Constr. Co. v. City of Richmond, (1996) 45 Cal.App.4th 897; Monterey Mechanical Co. v. Sacramento Reg'l County Sanitation Dist., (1996) 44 Cal.App.4th 1391.

Here, there is no dispute GSB's bid failed to list a required subcontractor for the well work. Now that all bids have been submitted and opened, there is no way for GSB to remedy this failure without also being granted an unfair advantage over all other bidders.

For these reasons, there is no question the GSB's bid is both non-responsive and there can be no fair way to award the contract to GSB without violating California contractor-licensing laws.

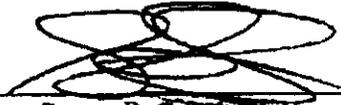
As the second-low bidder, Argonaut remains willing and able to perform the work as stated in its bid. The State should declare GSB's bid non-responsive and award the contract to Argonaut as the second-low bidder.

If you have any further questions on this matter, please feel free to contact either myself or Stephen Langhals of Argonaut.

Best regards,

COPELAND LAW FIRM, APC

By:


Steven B. Copeland, Esq.

Encl.

COPELAND LAW FIRM, APC

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Fax # (916) 227-6282
VIA FACSIMILE AND U.S. MAIL

October 24, 2013

Mr. John McMillan
Deputy Division Chief
State of California, Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th St.
Sacramento, Ca. 95816-8041

RE: REPLY TO GOLDEN STATE BRIDGE INC.'S OPPOSITION TO Bid Protests,
CONTRACT NO. 01-47660, IN MENDOCINO COUNTY ABOUT 5 MILES
EAST OF BOONVILLE FROM 0.5 MILE EAST OF SHEARING CREEK
BRIDGE #10-59 TO 0.9 MILE WEST OF MAPLE CREEK

Dear Mr. McMillan:

This letter is a reply to the opposition of Golden State Bridge, Inc. ("GSB") to the protests by Argonaut Constructors ("Argonaut") of the low bid submitted by GSB on Contract No. 01-47660 ("Contract").

GSB's two October 21, 2013 letters raise absolutely no new facts and cite to no law to contradict the two protests submitted by Argonaut. To the contrary, GSB's letters both allege only future compliance by GSB – this ignores the fact that GSB's bid is non-responsive and cannot become responsive in the future without GSB being granted favoritism and an advantage to rectify its prior non-compliance, both of which are violations of controlling California law and mandate finding GSB's bid non-responsive. GSB admits it is not licensed as a C-57 well contractor and that it has no such subcontractor in its bid. GSB's letters also fail to address that it cannot obtain a permit for the well work from Mendocino County unless a C-57 contractor

performs the work – which cannot happen under the GSB bid as the C-57 work is over 0.05% of the price and has no such listed subcontractor. GSB's letters also fail to demonstrate mathematical percentages showing GSB's performance of over 30% of the contract work.

Argonaut's protest letters site chapter and verse to facts contained in/missing from both GSB's bid documents and the controlling California law governing responsive bids. These allegations remain unrefuted.

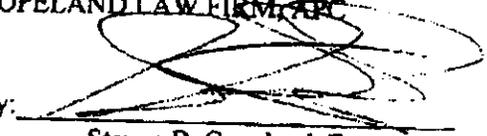
As previously stated, Argonaut remains willing and able to perform the work as stated in its bid. The State should declare GSB's bid non-responsive and award the contract to Argonaut as the second-low bidder.

If you have any further questions on this matter, please feel free to contact either myself or Stephen Langhals of Argonaut.

Best regards,

COPELAND LAW FIRM, APC

By:


Steven B. Copeland, Esq.

Encl.

**** Transmit Conf. Report ****

P.1
CALTRANS CONTR AWARDS Fax 916-227-6282

Oct 31 2013 04:06pm

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STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER, MS 43

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Be energy efficient!*

October 31, 2013

Facsimile: (707) 542-4897

Michael A. Smith, Vice President

01-476604

Argonaut Constructors

01-Men-128-35.0/35.3

P.O. Box 639

B.O. 10/08/2013

Santa Rosa, CA 95402

Dear Mr. Smith:

The Department of Transportation (Caltrans) received protest letters from Argonaut Constructors (Argonaut) dated October 17, 18, and 24, 2013 for Contract No. 01-476604. The protests alleges that Golden State Bridge, Inc. (GSB) failed to list a licensed C-57, Well-contractor and is actually only performing 28.7 percent of the contract.

Caltrans conducted a review of the bid documents as well as the protest and determined that the C-57 Well-Drilling specialty license is not a condition of award for this contract.

Based on the above, Caltrans finds Argonaut's protest lacks merit and will proceed to award the contract to the lowest responsible bidder, provided that all requirements are met.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,

JOHN C. McMILLAN

Deputy Division Chief

Office Engineer

Division of Engineering Services