

**Ghilotti Bros / RM Harris JV**

525 JACOBY STREET • SAN RAFAEL, CA 94901
TELEPHONE (415) 454-7011 FAX (415) 454-8376

STATE CONTRACTORS LICENSE # 941014



Via Facsimile (916) 227-6282 & Certified Mail

February 4, 2015

State of California

Department of Transportation

1727 30th Street, Bidder Exchange, MS 43

Sacramento CA. 95816

Attn: John C. McMillan, Deputy Division Chief, Office Engineer

FAXED
12:46
2/4/15

Re: Contract No. 04-4A0904

Napa County About 6. Miles North of Calistoga at Troutdale Creek Bridge

In District 04 on Route 29

Protest of Bid Submitted by Gordon N. Ball Inc.

This is a formal protest of the bid submitted by Gordon N. Ball Inc. (GNB) in connection with Contract No. 04-4A0904. The bid of GNB is non-responsible and nonresponsive and therefore must be rejected because GNB had post-bid communications with a listed subcontractor. This violates the spirit of the provisions of Sections 100 and 4101 of the Public Contract Code. Thus, the Department should award the job to the lowest responsive, responsible bidder, Ghilotti Bros / RM Harris JV.

The Subcontractor List that GNB submitted with their Bid and their 24 Hour Letter did not list a Subcontractor for Contract Items 105 and 106, FURNISH PRECAST PRESTRESSED CONCRETE GIRDER (50-60) and ERECT PRECAST PRESTRESSED CONCRETE GIRDER, respectively. However, post-bid GNB did contact Kie-Con via email to notify them that GNB used their quote in their Bid and that they would do the work. Attached is the quote GBI/RMH JV Received from Kie-Con describing that their work would be subcontractor work. This is the same subcontractor that was listed by both the second and third bidder as required by the bid documents and the Public Contract Code.

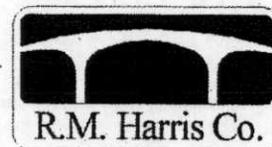
In essence, GNB is attempting to use Kie-Con as a subcontractor even though they were not listed as a subcontractor on the bid documents. To allow this behavior would allow contractors to bid shop subcontractors, the exact behavior 4101 was meant to end. This is a flagrant attempt by GNB to circumvent the Subcontracting portion of the Public Contracting Code and cannot be allowed. GNB's action undermines the intent of the code that Subcontractors and Contractors alike have come to rely on during the bidding process.



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On past contracts, the Department has determined bidders to be a non-responsible bidder and rejected their bids for this behavior. For example, on Contract 08-452204, the Department rejected a bid from MCM Construction because it had determined that post-bid communications by MCM with a listed subcontractor violated the spirit of the provisions of the Sections 100 and 4101 of the Public Contract Code.

The Department owes a duty to enforce both its bid requirements and the California Public Contract Code in a fair and uniform manner. Accordingly, because GNB has violated the Subcontracting Fair Practices Act of the Public Contract Code and the Department's longstanding bid requirements by seeking to utilize a subcontractor that they did not list GNB's bid must be rejected as non-responsible. To do otherwise would give this contractor an unfair advantage in the bidding process.

We therefore respectfully request that the Department uphold the Ghilotti Bros / RM Harris JV protest and award the contract to our company, which submitted the lowest responsive bid for Contract No. 04-4A0904

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

Sincerely,

A handwritten signature in black ink, appearing to read "David Harris", is written over the typed name.

David Harris

Joint Venture Partner

Jan. 21. 2015 1:16PM

No. 1626 P. 1/4

KIE-CON INC

3551 Wilbur Avenue, Antioch, CA 94509, (925) 754-9494 Fx (925) 754-0624

Contractors License #953357

An Equal Opportunity Employer

PROPOSAL

TO: Estimating Department			Date: January 21, 2015	Page: 1 of 4	
			Project Title: Troutdale Creek		
			Owner: Caltrans		
			Location: Callistoga, CA.		
Quotation No: 15-001		Specification No: 04-4A0904		Bid Date: 01/21/15	
WE PROPOSE TO FURNISH ALL OF THE MATERIALS AND/OR SERVICES AS LISTED BELOW, FOR THE ABOVE NAMED JOB, FOR THE FOLLOWING PRICES AND SUBJECT TO THE TERMS AND CONDITIONS STATED. ALL QUANTITIES ARE APPROXIMATE ONLY AND ARE SHOWN FOR THE PURPOSE OF ESTABLISHING UNIT PRICES. THEY ARE NOT TO BE CONSIDERED AS A GUARANTEED BILL-OF-MATERIALS.					
BID ITEM NUMBER	APPROX. QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
105	10	ea	Furnish Precast Concrete Girder (50'-60')	\$ 10,950	\$ 109,500.00
106	10	ea	Erect Girders	\$ 760	\$ 7,600.00
			TOTAL EXTENDED		\$ 117,100.00
		ea	Surface mounted clips	\$7.00	
		ea	Side mounted inserts	\$14.00	
		ea	Side mounted pipe sleeves	\$22.00	
Tolerance of sleeves, clips or inserts is + or - 1", above price is install only, GC to furnish.					
NOTES:					
1. Price includes 8.000% Use Tax (Buyer shall pay the current Sales or Use Tax at the time of purchase.)					
2. Kie-Con is a Caltrans Approved Precast Fabricator under Section 49 and Section 51.					
3. General Contractor shall furnish and install Bearing Pads.					
THIS PROPOSAL INCLUDES AND IS MADE SUBJECT TO THE ATTACHED GENERAL TERMS AND CONDITIONS.					
THE TERMS AND CONDITIONS OF THIS PROPOSAL ARE TO BECOME A PART OF ANY CONTRACT RESULTING FROM THIS PROPOSAL. BUYER SHALL MAKE PAYMENT IN FULL WITHOUT RETENTION, WITHIN 30 DAYS FROM THE DATE OF SELLER'S INVOICE. A FINANCE CHARGE OF 1-1/2% (18% ANNUAL INTEREST) WILL BE ADDED TO ALL OVERDUE ACCOUNTS. BUYER AGREES TO PAY FOR MATERIAL MANUFACTURED AND ON HAND A SELLER'S PLANT.					

F.O.B: Jobsite

TERMS: As Stated Above

DELIVERY/SHIPMENT: As mutually agreed

SUBMITTED BY: _____

TAXES: Included in Unit Price

James Dirk - Direct (925) 331-7108

SHOULD YOU DESIRE TO ENTER INTO A CONTRACT WITH US ON THE BASIS SET FORTH ABOVE AND ATTACHED HERETO, PLEASE SO INDICATE BY SIGNING AND RETURNING TO US, WITHIN 30 DAYS FROM THE DATE HEREOF, THE ORIGINAL AND ONE COPY OF THIS PROPOSAL WHICH SHALL BECOME A CONTRACT UPON, BUT NOT BEFORE, ACCEPTANCE BY OUR FIRM. UPON SUCH ACCEPTANCE, A DULY EXECUTED COUNTERPART WILL BE RETURNED TO YOU. A STORAGE FEE OF 1% PER MONTH WILL BE ADDED TO ALL UNITS NOT SHIPPED AFTER FOUR MONTHS. PRICE IS GOOD FOR 30 DAYS.

ACCEPTED:

ACCEPTED:

BUYER: _____

SELLER: **KIE-CON INC.**

BY: _____

BY: _____

DATE: _____

DATE: _____

Jan. 21. 2015 1:17PM

No. 1626 P. 2/4

SPECIAL PROVISIONS

This proposal is based upon the following additional terms and conditions:

Scope of Work:

- a) Kie-Con will provide erection plans, details and calculations to the extent and scope of our work.
- b) Kie-Con will supply and erect; (10) each precast prestressed concrete girders.
- c) Kie-Con cannot proceed with any work without a signed contract.

Schedule:

- a) This quotation is based on a mutually agreeable schedule.

Schedule:	Shop Drawings	3 - 4 weeks
	Approval	2 - 3 weeks
	Material Acquisition	3 - 4 weeks
	Production	2 - 3 weeks
	<u>Total</u>	<u>10 - 15 weeks</u>
- b) Schedule is subject to change depending on Kie-Con work load.

Erection Requirements: (at no cost to Kie-Con or Erector):

- a) Price includes (1) mobilization, each additional mobilization is \$0,000.
- b) Price is based on erecting during daylight hours.
- c) Price is based on 2 days for erection.
- d) Price excludes any welding, bracing, shoring, or cast-in-place concrete.
- e) Kie-Con assumes no responsibility for site preparation and/or site damage. Kie-Con will take limited precautions but will not be responsible for any damage to underground utilities, curbs, gutters, concrete slabs, sidewalks, pavement, trees or shrubs.
- f) While at the jobsite, our work must be continuous, any delays that cause the erector to stay an extra day or any additional mobilizations will be cause for a cost adjustment.
- g) Crane & Crew standby time will be charged at \$900/hr.
- h) Bearing pads to be supplied and installed at elevation by others. If girders are set on greased elastomeric pads, girders shall be braced immediately before unhooking.
- i) Safe place to work that complies with OSHA.
- j) General Contractor shall provide free, firm, level, all weather access capable for the capacity for crane assembly, erection and transporting equipment. If necessary, the General Contractor will provide mats, steel plates or compacted work areas.
- k) Remove or make safe any overhead or ground obstructions, including electrical wires.
- l) Lines and grades performed prior to Erectors start date and verified during erection.
- m) A representative from the General Contractor to accept final setting position of Girders.
- n) Lane closures and traffic control provided by General Contractor.

Exclusions:

- a) Any precast not described in this proposal or any items that are not cast into the precast units.
- b) Kie-Con will install additional Contractor furnished inserts for an additional fee, depending on the quantity and type of insert.
- c) Permits, traffic control, flagmen, barricades, road or lane closures, detour lights, and all Caltrans Coordination.
- d) Furnishing or installing any expansion materials, polystyrene, calking, grouting, epoxy, galvanizing, dry packing, lateral ties, bracing and/or shoring (permanent or temporary).
- e) Any fieldwork (other than erection), including but not limited to; bracing, welding, grouting keyways, diaphragms, onsite forming, field bending/cutting of rebar or strand, removal of lift loops after erection, or post tensioning.
- f) Any coatings, water proofing, sealing, painting, or preparation thereof.
- g) Epoxy, stainless steel or galvanized materials (unless noted otherwise in the contract documents).
- h) Field measurements or field surveying.

Certification & Inspection:

- a) Kie-Con is certified by Caltrans and PCI.
- b) Kie-Con does not include any outside inspection. We provide in-house Quality Control which includes our own Quality Assurance and Concrete Testing, each in accordance with ASTM, PCI, and ICBO standards & specifications.

Escalation:

- a) Price is valid for 30 days.
- b) Once we have signed a contract, Kie-Con will start purchasing materials. If we are directed not to cast product for three or more months from signing, quoted price will be subject to re-evaluation based on the current market escalations.

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GENERAL TERMS

1. **SPECIFICATIONS:** All material and workmanship furnished by the Seller, unless otherwise provided in this proposal, shall conform to the Standard Building Code Requirements for Reinforced Concrete, Prestressed Concrete Section, and to the tolerance allowances as prescribed by the Prestressed Concrete Institute's latest manuals for Quality Control of Precast Prestressed and Architectural Precast Products. All of the prestressed/precast concrete in this proposal shall be fabricated of plain gray concrete unless otherwise specified. Manufacture shall be in accordance with our standard procedures including, but not to be limited to, mix designs, curing, surface treatment and product handling. Certain form marks, discoloration, and air pits are characteristic of the material and should therefore be expected on the surface of the products. The quality of the products is to be comparable to the standards of the precast industry for structural precast concrete.
2. **DESIGN:** The Buyer retains responsibility for the suitability, accuracy, correct detailing, structural adequacy or performance of designs, engineering or specifications submitted by the Buyer and used in the structures included in this proposal. Any engineering or design performed by the Seller will be performed in accordance with the standard of care and skill ordinarily used by members of manufacturers practicing under the same or similar circumstances at the same time in the same locality. Such engineering or design is limited solely to the individual components provided under this agreement by Seller. No building design or inspection is implied. Seller's responsibility for any engineering or design provided by any design professional under contract to Seller shall be limited to the recoveries from the insurance carried by such design professional. Seller shall have no responsibility for the integration of its design and product into neither the total project design nor the manner in which its product is incorporated into the structure, which shall remain the responsibility of the Buyer's Engineer of Record. No language in the Engineer's stamp on drawings shall add to Seller's obligations for the design. Seller makes no other warranties, express or implied, in connection with this Agreement or otherwise, in connection with engineering or design provided by the Seller.
3. **BACKCHARGES:** Remedial jobsite work shall be performed by Seller using Seller's crews. No back charges will be accepted unless approved in writing by an authorized representative of Seller. If so authorized, invoicing of complete charges must be received in Seller's office within 15 days of authorization to receive consideration.
4. **ACCEPTANCE:** Materials only: Acceptance shall be considered to have occurred upon delivery and unloading of material unless Buyer provides written claim of defective materials within twenty-four hours thereof. Installation: Either a written final acceptance or final payment from the Buyer to the Seller shall constitute a final acceptance of materials and workmanship included in this proposal for installation. Acceptance is subject only to the guarantees of Section 7.
5. **GUARANTEES:** The Seller guarantees all workmanship and material furnished by it under this proposal to be of good workmanship and material and in accordance with plans and specifications referred to in this proposal. SELLER MAKES AND BUYER RECEIVES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Seller shall be responsible to correct, repair or replace defects, whether latent or patent, for a period of one year following completion of the work.
6. **BUYER'S REMEDIES:** Buyer's remedies with respect to any claim arising out of this order or its performance, including any claim arising out of any defect or alleged defect in goods or services, shall be limited to the right of correction, repair or replacement at the point of delivery specified herein of such goods or services as provided above, or, at Seller's election, to the repayment of the purchase price. In no event shall Seller be liable for special, indirect, consequential or incidental damages of any nature, including but not limited to loss of revenue, loss of use, lost profits or revenue, or interest charges, whether arising in contract, tort (including negligence), strict liability or otherwise with respect to the goods or services provided. Any claim of defective work must be made within twenty-four hours of delivery of the material and Seller shall be provided reasonable opportunity to investigate the merits of such claim.
7. **RISK OF LOSS:** The Seller shall assume Risk of loss or damage to any material included in this proposal until its material has been delivered, unless Buyer is responsible for the transportation then Seller shall assume Risk of loss or damage to any material in this quotation until its material has been loaded on Buyer's prepared truck or barge.
8. **TITLE:** Title to material shall pass to the Buyer upon payment in full to the Seller.
9. **CONTRACTS:** A FORMAL PURCHASE ORDER OR CONTRACT SUBMITTED IN LIEU OF A SIGNED COPY OF THIS PROPOSAL MUST STIPULATE: "TERMS AND CONDITIONS SET FORTH IN THE ATTACHED PROPOSAL NO. 15-001, DATED January 21, 2015 ARE INCORPORATED HEREIN AND SHALL GOVERN OVER ANY CONFLICTING TERMS OF THIS AGREEMENT." SELLER RESERVES THE RIGHT TO REJECT ANY SUBCONTRACT TENDERED, WHICH IS INCONSISTENT WITH TERMS OUTLINED HEREIN. SELLER WILL NOT START FABRICATION UNLESS AND UNTIL A THIS AGREEMENT OR CONTRACT IS FULLY EXECUTED.
10. **BONDS:** This price excludes all cost for payment and performance bonds, if bonding is required use 1.2 percent.
11. **DRAWINGS:** The Buyer shall furnish Seller with all information, instructions and drawings requisite for the execution of the work.
12. **ARBITRATION:** All disputes arising in connection with the agreement except the payment of amounts due and payable shall be settled by arbitration. The arbitration shall be held in Concord, California and conducted in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement, as the case may be.
13. **INDEMNIFICATION:** Seller shall indemnify and hold harmless Buyer from and against any and all claims, demands, damages and liability to the extent arising out of the negligence or willful misconduct of Seller in its performance of the agreement.

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- 14. **INSURANCE:** Prior to commencement of the work, Seller shall furnish evidence of , and thereafter maintain the following types and amounts of insurance:
 - Workers' Compensation - Statutory and Employer's Liability of \$1,000,000 each accident;
 - Commercial General Liability - \$1,000,000 each occurrence / \$2,000,000 annual aggregate Combined Single Limit;
 - Automobile Liability - \$1,000,000 each accident Combined Single Limit.
 Seller shall provide Buyer with certificates of insurance evidencing such insurance as outlined above prior to beginning any work. Such certificate shall provide for thirty (30) days advance written notice of cancellation.
- 15. **PAYMENT:** Buyer shall pay for material manufactured and on hand at Seller's Plant. Buyer shall make payment in full within thirty (30) days from the date of Seller's Invoice. No retention shall be held. In the event of Buyer's failure to make payment within the time provided, Seller shall have the option, upon forty eight (48) hours' notice, to suspend further deliveries until such time is payment is received. Upon resumption of deliveries, Seller shall be entitled to an equitable adjustment of contract time and price for any time lost or additional costs of performance arising out of such suspension. Seller shall be entitled to interest on late payments at the rate of one percent (1%) per month until paid in full.
- 16. **PAYMENT SCHEDULE:** Buyer shall pay for material manufactured and on hand at seller's plant.
- 17. **SECURITY FOR PAYMENT:** Buyer shall, prior to the date for commencement of work, furnish Seller with satisfactory security for payments in the form of an irrevocable standby letter of credit, escrow account, payment bond or other security in an amount and form, and from a bank or surety, acceptable to Seller. Acceptance of a contract by Seller is contingent upon Seller's satisfaction with security for payments due for the work or material.
- 18. **LIENS:** Upon payment by Buyer of amounts due Seller hereunder, Seller shall discharge and hold Buyer harmless of any liens, claims, stop notices, or attachments, presented or file by any person or firm performing labor or furnishing materials in connection with the work or material furnished hereunder.
- 19. **SCHEDULE:** Seller shall deliver the materials in accordance with the schedule provided in this proposal or in accordance with a mutually agreed schedule.
- 20. **OVERTIME:** The price or prices herein stated are based upon work being done on the basis of a normal forty hour week, Monday through Friday. Buyer agrees to pay Seller any extra cost resulting from overtime work required by Buyer.
- 21. **FORCE MAJEURE:** Seller shall be excused for delays in the performance, in whole or in part, of any contract made on the basis of this proposal resulting from Acts of God; fire or flood; inclement weather; strike or labor difficulties; war; riot; embargo; delays, losses or damages in transportation; shortages of fuel and labor or materials; acts of civil or military authorities; or any other cause beyond Seller's control and without Seller's fault.
- 22. **LIMITATION OF LIABILITY:** Seller's liability to Buyer for any loss or damage in any manner arising out of or in connection with the performance of this agreement shall not exceed five percent of the contract price.
- 23. **COMPLIANCE WITH LAWS:** Seller shall comply with all laws, rules, and regulations applicable to its services.
- 24. **SAFETY:** Buyer to provide all reasonable safety requirements pertaining to Seller's work, without limiting the generality of foregoing, it shall comply with all applicable laws, ordinances, rules, regulations and orders issued by any public or governmental body or authority, whether federal or otherwise, including, but not limited to occupational safety and health legislation and, in addition, the safety measures called for by the Seller.
- 25. **DOCUMENTS:** All documents, reports, data and other information developed by Seller in the performance of the agreement shall remain the property of Seller unless otherwise specifically agreed in writing by the parties.
- 26. **CONTROLLING LAW:** This agreement shall be governed by the law of the state of California.
- 27. **ATTORNEYS FEES:** In the event of arbitration or suit in court in connection with any disputed matter arising under this Subcontract, the prevailing party shall be entitled to recover all costs, expenses and attorney fees in addition to any other relief granted by the court.
- 28. **ENTIRE AGREEMENT:** The terms and conditions set forth in this Proposal and any documents incorporated herein by reference, constitute the entire agreement between Buyer and Seller, and supersede any oral or written communication unless the terms thereof are expressly referenced and incorporated. No additional terms and conditions whether contained in a purchase order issued by Buyer or elsewhere, shall be binding upon Seller unless expressly agreed to in writing.

Contractor's License No. 853357
Federal I.D. No. 01-0969607

KIECON, INC.

By: _____

Date: _____, 2015

ACCEPTANCE AND AGREEMENT:

By: _____

Date: _____, 2015