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April 25, 2023

Mr. Thomas G. Barr
Chief Operating Officer
Ghilotti Bros., Inc.
525 Jacoby Street
San Rafael, CA 94901

SUBJECT: RESPONSE TO GHILOTTI BROS. INC.'S BID PROTEST REGARDING
CONTRACT NO. 2022-B-114, GOLDEN GATE BRIDGE TOLL PLAZA
PAVEMENT OVERLAY PROJECT

Dear Mr. Barr,

In accordance with the Golden Gate Bridge, Highway and Transportation District's (District) bid protest procedures, we have reviewed your bid protest letter dated and received April 24, 2023. After careful consideration of the arguments you raised, we maintain our conclusion that the bid submitted by Argonaut Constructors (Argonaut) satisfies all applicable bidding and legal requirements.

Accordingly, staff will proceed with the recommendation that the District's Board of Directors award a contract for the Golden Gate Bridge Toll Plaza Pavement Overlay Project (Project) to Argonaut as the lowest responsive and responsible bidder. Below we address each of the arguments included in your protest letter.

1. Argonaut's failure to list a unit price on items for which the estimated quantity is 1 is not a matter of responsiveness because the solicitation did not require unit prices for lump sum items.

Ghilotti Bros., Inc.'s (Ghilotti), contention that Argonaut failed to properly complete the bid form because it did not list a unit price for certain items is incorrect. As stated in section 2.07 of the Special Provisions, "[t]he Proposal shall set forth for each bid item, in clearly legible figures, a unit price, *if applicable*, and bid price for each item in the respective spaces provided, and shall be signed by the Bidder, who shall fill out all blanks in the Proposal Form *as required*." (emphasis added.)

The only items for which Argonaut did not list a unit price are items for which the estimated unit price designated by the District is 1. With an estimated quantity of 1 and lump sum pricing, the bid price for these items is the same as any unit price. Therefore,

listing the unit price is unnecessary or, as described in the solicitation, inapplicable and not required. Argonaut was not required by the solicitation to list a unit price for items designated by the District to have an estimated quantity of 1.

2. Argonaut obtained a quote from an electrical contractor to perform a portion of the magnetometer vehicle sensor nodes installation work.

Ghilotti's statement that Argonaut should be found non-responsive for its failure to designate an electrical subcontractor to install magnetometer vehicle sensor nodes is without basis. In the District's view, and as described in section 9 of the Special Provisions, furnishing and installing magnetometer vehicle sensor nodes does not require any electrical or wiring work, therefore an electrical contractor's license is not required. Nevertheless, the District understands that Argonaut obtained a quote from an electrical subcontractor for a portion of this work and the District will not substitute its judgement as to the means by which Argonaut will perform the work.

The portion of the work to be performed by the electrical subcontractor is less than .5% of Argonaut's total proposal price, therefore Argonaut was not required by law or the solicitation to list the subcontractor on Attachment E, List of Subcontractors. The District notes that Argonaut should have listed this subcontractor on Attachment F, Prime Contractor and Subcontractor/Subconsultant/Supplier Report, but it has determined that the failure to do so is a minor irregularity that may be waived by the District.

As provided in the Notice to Contractors and in the General Conditions, the District reserves the right to waive informalities and minor irregularities in any bid. It is a well-established principal of public contracting that "bids must conform to specifications, and that if a bid does not so conform, it may not be accepted. However, it is further established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed to other bidders or, in other words, if the variance is inconsequential." (*Valley Crest Landscape, Inc. v. City Council*, 41 Cal. App. 4th 1432, 1440 (1996)).

With 12.1% DBE achievement, Argonaut exceeded the 8.9% contract-specific goal for this Project. Having exceeded the contract-specific goal, Argonaut met this requirement of the solicitation. The failure to list all subcontractors on Attachment F is a non-substantive and minor irregularity, which does not affect the bid price listed by Argonaut. It also does not give Argonaut a competitive advantage as it has already met and exceeded the contract-specific SBE goal.

3. The failure to include the correct business name and complete business address on the List of Subcontractors is a minor irregularity that may be waived by the District.

Ghilotti notes that Argonaut incorrectly listed the business name for its subcontractor "Bay Line Cutting and Coring, Inc." (Bay Line) as "Bay Line Sawcutting," and that it

listed an incomplete business address. We have determined that this is a minor irregularity that may be waived by the District.

Here, Argonaut listed the correct business name and complete business address for Bay Line on Attachment F (in addition to Bay Line's DIR registration and contractors license numbers.) Furthermore, Argonaut properly listed its subcontractor's DIR registration number and contractors license number on the List of Subcontractors. The registrations affiliated with these numbers show the correct business name and the complete business address. The failure to include the correct business name and complete business address on one form, while including the correct and complete information on another, did not affect the amount of the bid, nor did it give the bidder an advantage not provided to other bidders because it did not affect Argonaut's obligations under the Subletting and Subcontracting Fair Practices Act.

In addition, Ghilotti argues that the failure to include the information described above is a basis for finding Argonaut to be an irresponsible bidder. Pursuant to California Public Contract Code section 1103, "responsible bidder . . . means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract." The District has determined that failure to include a correct subcontractor business name and complete address on one form, while properly including both on another, is not a sufficient basis for finding Argonaut to be non-responsible—far from it, in fact.

4. Argonaut's descriptions of subcontractor scopes of work are consistent and accurate.

Ghilotti argues that Argonaut improperly described Bay Line's scope of work as "saw cutting" when the bid items that Bay Line will perform do not include saw cutting. The District disagrees with Ghilotti's assertion. Bay Line is listed for the performance of bid items 15 and 21, "Remove Pylon Mounting Sleeves" and "Expansion Joint Repairs," respectively. Both bid items for which Bay Line is listed include saw cutting. The description of bid item 21 even goes so far as to refer to the saw cutting work. ("This payment item shall include full compensation for all labor, materials, tools and equipment, and all incidental work required for repairing spalled expansion joints, including saw cutting . . .") It is simply incorrect to state that these scopes of work "have nothing to do with saw cutting."

Ghilotti further argues that Argonaut listed its subcontractor Farwest Safety for CAS and traffic control scopes of work on Attachment F, when this same subcontractor is listed for "Construction Area Signs" and "Remove and Replace Portable Delineator" bid items on Attachment E. CAS is an acronym for "Construction Area Signs" and removal and replacement of portable delineators is a form of traffic control. Thus, the bid items listed for Farwest Safety on Attachment E are consistent with the description on Attachment F.

5. The District has determined that Argonaut's bid substantially complies with its Diversity Program and the requirements of the solicitation.

Ghilotti notes that the DBE total listed in Argonaut's bid does not add up based on the listed amounts per subcontractor. Additionally, Ghilotti suggests Argonaut's failure to list any rejected subcontractors does not comply with the instructions to bidders. We have determined that these are minor irregularities that may be waived by the District because they did not affect the amount of the bid, nor did they give the bidder an advantage not provided to other bidders.

Here, Argonaut was able to exceed the Small Business Enterprise (SBE) goal of 8.9% that was established for this contract. The District's DBE Program Administrator determined Argonaut was able to obtain 12.1% SBE participation, including 10.7% DBE participation. Notably, the minor mathematical error that Ghilotti found does not change the bidder's listed DBE achievement percentage. Furthermore, this mathematical error does not alter Argonaut's obligations under the District's Diversity Program. Because this minor math error does not affect the amount of the bid, nor does it give Argonaut an advantage not provided to other bidders, this is a minor irregularity that may be waived by the District.

While the District cannot confirm that Argonaut failed to list any rejected bids from subcontractors, this failure also would be a minor waivable irregularity because the purpose of the Prime Contractor and Subcontractor/Subconsultant/Supplier Report is to collect data about the universe of DBE and non-DBE contractors and subcontractors who seek to perform work on District projects. The failure to completely fill out the form does not affect the amount of the bid nor does it give Argonaut an advantage not provided to other bidders.

Moreover, the solicitation provides that, the District may "require Bidders to complete an improperly completed or incomplete Report and/or provide the District with any additional information."

6. The District has determined that Argonaut is qualified to perform concrete related work and will do so on this Project.

Ghilotti states that Argonaut does not self-perform concrete work and, therefore, it should have listed a subcontractor for bid items 20, 22, and 23. Additionally, Ghilotti suggests that the District should request a list of the projects on which Argonaut has self-performed concrete work. The District has determined that, as holder of contractors licenses in General Engineering, General Building, and Parking and Highway Improvement, Argonaut is qualified to perform the scopes of work for bid items 20, 22, and 23. We do not find Ghilotti's unsupported suggestions to the contrary to be persuasive.

After carefully considering each of the arguments raised in your bid protest letter, we maintain our conclusion that the bid submitted by Argonaut is responsive to the solicitation requirements and that Argonaut is a responsible bidder. Accordingly, staff will proceed with the

April 25, 2023

Page 5

recommendation that the District's Board of Directors award a contract for the Project to Argonaut as the lowest responsive and responsible bidder.

As you know, the staff recommendation will be presented to the Building and Operating Committee at its meeting on Thursday, April 27, 2023 at 9:00 a.m. The Committee's recommendation will be forwarded to the Board of Directors for action at its meeting on Friday, April 28, 2023, beginning at 10:00 a.m. Both meetings will take place in the St. Francis Room of the United Irish Cultural Center, 2700 45th Avenue, San Francisco, CA.

If desired, you may be present to make public comments to respond to the Bid Protest. Please let us know if you plan to attend.

Thank you for your interest in this Project.

Best Regards,



Amorette M. Ko-Wong
Secretary of the District

c: JEberle, DMoore, and JSherman
(by electronic mail only)