



November 4, 2024

VIA E-MAIL
County of Fresno
Department of Public Works and Planning
Design Division, Sixth Floor
2220 Tulare Street
Fresno, CA 93721
DesignServices@fresnocountyca.gov

Re: Response to 2nd Bid Protest Filed by Wood Bros – Elkhorn Recharge Facility Project

Dear Sir or Madam,

I am writing on behalf of G&J Heavy Haul, the apparent low-bidder on the Elkhorn Recharge Facility Project. We have reviewed the second protest filed by Wood Bros., Inc. and maintain that G&J's bid is fully responsive and compliant with all bid requirements. Wood Bros.' ongoing attempt to deflect attention from their own non-responsiveness, as outlined in prior letters, must be addressed.

Wood Bros. Non-Responsive Errors

As highlighted in previous correspondence, Wood Bros. failed to comply with the requirements of Special Provisions Section 2-1.33, which unequivocally states, "Failure to submit the forms and information as specified results in a nonresponsive bid." This specification is absolute, and Wood Bros.' errors should render their bid non-responsive.

Addressing Speculative Allegations on Bid Shopping

Wood Bros. argues that the combined total of \$830,216.90 for Bid Items 17 and 18 provides G&J with an unfair economic advantage for "bid shopping." This speculative claim lacks any substantive evidence. The argument is further weakened by the breakdown of Bid Items 17 and 18, which encompass various activities such as structure excavation, structure backfill, finish grading, material procurement, flatwork installation, headwall installation, and pipe installation.

Contrary to Wood Bros.' inflated figures, the installation of headwalls and pipes—which are the only components in question for subcontractor listing—can be completed by G&J for under \$100,000, or approximately 2% of the total contract value. This further invalidates the claim of any substantial economic advantage.

Additionally, at the time of bid submission, if the Class A license had not been issued prior to contract award, G&J planned to hire subcontractors to perform specific tasks within Bid Items 17 and 18. Each subcontract would have been structured to remain below the 0.5% of the total contract value threshold, as allowed by bid requirements. This approach ensures compliance while allowing small portions of work requiring a specialty license to be effectively managed.

Class A General Engineering Contractor's License

Jesse Archer, as the owner of both G&J Heavy Haul and Archer Civil Construction, obtained a Class A General Engineering Contractor's License on October 22, 2024. This license was initially under Archer Civil Construction but has now been officially transferred to G&J Heavy Haul. As of November 4, 2024, G&J Heavy Haul is listed as the holder of General A License #1016495 (Attachment A).

Per Special Provision 3-1.06 and Public Contract Code Section 10164, "Contractor must be properly licensed as a contractor from Contract Award through Contract Acceptance (Pub Cont Code § 10164)." G&J Heavy Haul fully complies with this requirement, ensuring that we are licensed appropriately for the full duration of the Contract, from Award to Acceptance.

Conclusion

G&J Heavy Haul, Inc. remains confident that our bid is fully responsive, compliant with all bid specifications, and provides multiple pathways to execute the full scope of the project's work. The speculative and unfounded claims made by Wood Bros. should not detract from the validity and competitiveness of our bid.

We appreciate your attention to this matter and look forward to a favorable resolution.

Sincerely,



Jesse Archer
Responsible Managing Officer
G&J Heavy Haul
jesse.archer@gjheavyhaul.com

[Home](#) | [Online Services](#) | License Details

Contractor's License Detail for License # 1016495

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click [here](#) for a definition of disclosable actions.

Only construction related civil judgments reported to CSLB are disclosed ([B&P 7071.17](#)).

Arbitrations are not listed unless the contractor fails to comply with the terms.

Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Business Information

G & J HEAVY HAUL INC
10810 AVE 184
TULARE, CA 93274
Business Phone Number:(559) 684-1943

Entity Corporation
Issue Date 07/25/2016
Expire Date **07/31/2026**

License Status

This license is current and active.

All information below should be reviewed.

Classifications

[C12 - EARTHWORK AND PAVING](#)

[A - GENERAL ENGINEERING](#)

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with [AMERICAN CONTRACTORS INDEMNITY COMPANY](#).

Bond Number: 100317127

Bond Amount: \$25,000

Effective Date: 01/01/2023

[Contractor's Bond History](#)

Bond of Qualifying Individual

The qualifying individual JESSE GORDON ARCHER certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.

Effective Date: 11/01/2024

[BQI's Bond History](#)

Workers' Compensation

This license has workers compensation insurance with the [ZENITH INSURANCE COMPANY](#)

Policy Number:Z138194003

Effective Date: 01/01/2024

Expire Date: 01/01/2025

[Workers' Compensation History](#)

Workers' compensation classification code(s):

62201 - Excavation-high wage

72191 - Trucking Firms

8810 - Clerical Office Employees

For a description of the workers' compensation classification code(s) listed for this licensee, contact the licensee's insurance carrier. Contact information for the licensee's insurer is available by clicking the insurer link above. Classification codes are also available on the Workers' Compensation Insurance Rating Bureau's classification search page.

The board does not verify or investigate the accuracy of classification codes displayed.

Other

Personnel listed on this license (current or disassociated) are listed on other licenses.

#11
11-5-2024

October 23, 2024

VIA E-MAIL ONLY

County of Fresno
Design Division, Department of Public Works and Planning
2220 Tulare Street, Sixth Floor
Fresno, CA 93721
DesignServices@fresnocountyca.gov

Re: Elkhorn Recharge Facility
Bid Protest of Wood Bros., Inc. Re: G&J Heavy Haul
Bid Date: October 9, 2024

Dear Sir or Madam,

We write in response to G&J Heavy Haul's ("G&J") October 18, 2024 response to Wood Bros., Inc.'s protest of any award of the contract for the Elkhorn Recharge Facility ("Project") to G&J. As Wood Bros., Inc. previously stated in its October 15, 2014 letter, G&J has submitted a nonresponsive bid, and the County of Fresno should therefore reject its bid pursuant to Section 2-1.46 of the Specifications. G&J fails in its efforts to minimize the scope of work which G&J is not qualified to self-perform. As the lowest responsive bidder, Wood Bros., Inc. should be the recipient of the contract award for the Project and hereby demands such.

G&J's efforts to minimize the scope of Bid Items 17 and 18 fall flat, and its reliance on *Dez Construction v. Calexico Unified School District* (2006 WL 2234658) is inapposite. It is patently absurd to claim that the work is "incidental to the primary scope" when the combined value of the specialty pipe and concrete structure work (Bid Item Nos. 17 and 18) in G&J's bid is \$830,216.90 or 23% of its total base bid value. G&J holds a C-12 license, qualifying it to perform earthwork and paving.¹ While the County of Fresno requires either a Class A or C-12 to be awarded the contract for the Project, nowhere do the Bid Documents state that a contractor may self-perform work which it is not qualified to perform. Instead, a qualified subcontractor is expected to be retained for scopes of work for which the contractor is not qualified.

Furthermore, G&J misinterprets *Dez Construction v. Calexico Unified School District* for its own benefit. Notably, it was the trial court that determined the Notice and Bid Form were ambiguous on the question of the requirement of specialty licenses and that "the general intent of the contract documents was to allow a general contractor who did not specify any subcontractors

¹ Specifically, the California State License Board describes a C-12 licensee as follows: "An earthwork and paving contractor digs, moves, and places material forming the surface of the earth, other than water, in such a manner that a cut, fill, excavation, grade, trench, backfill, or tunnel (if incidental thereto) can be executed, including the use of explosives for these purposes. This classification includes the mixing, fabricating and placing of paving and any other surfacing materials."

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to perform all work itself without any specialty license,” not the appellate court. The appellate court went on to reverse the judgment. (*Dez v. Calexico, supra*, WL 2234658. Emphasis added.) Here, similarly to the contractor in *Dez*, G&J does not possess the skill or licensure to perform the specialty pipe and concrete structure work identified in Bid Item Nos. 17 and 18.

Failing to list subcontractors for the specialty pipe and concrete structure work creates an unfair economic advantage post-bid for G&J by allowing “bid shopping” for that work should G&J need to subcontract the scopes described in Bid Item Nos. 17 and 18. The failure by G&J to list subcontractors for the specialty pipe and concrete structure work is a material irregularity because G&J has the choice to now shop for subcontractors, thus giving it an unfair economic advantage over bidders whose subcontractor quotes are final in their respective bids. It is this choice that gives G&J an economic advantage over other bidders who complied with the listing requirement. While a public entity may waive inconsequential deviations from a public contract bid, to be considered inconsequential, a deviation must neither give the bidder an unfair competitive advantage nor otherwise defeat the goals of ensuring economy and preventing corruption in the public contracting process. (*Ghilotti Const. Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 900.) When a bid contains an irregularity, the awarding entity must determine whether the irregularity materially affects the bid proposal. (James Acret, Jon T. Anderson, George D. Calkins, Robert C. Field, Timothy L. Pierce, & Robert B. Thum, *California Construction Contracts and Disputes*, vol. 1 § 4.45, 383 (3d ed.). “Whether an irregularity is of a substantial nature depends on *whether it gives the bidder an advantage over other bidders and affects the price*. The guiding criterion is whether waiver of the irregularity would constitute favoritism and would give an advantage to the ‘irregular’ bidder.” (*Id.* Emphasis added.) Public Contract Code section 4101 provides: “The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.”

Finally, Wood Bros., Inc. listed subcontractors in accordance with the Bid Documents and Public Contract Code section 4104. Kroeker Inc.’s DIR Registration Number was listed as 10000006246 in Wood Bros., Inc.’s bid instead of 1000006246; a clerical error that included six zeros instead of five. Kroeker Inc.’s License Number, substantiating Kroeker’s Class C-57 license, was listed with a clerical error as well; a quick search of the Contractor’s State License Board portal clearly shows that Kroeker’s license number is 621866 rather than 681866. Both are minor irregularities that have no impact on the price of the bid. King Pump & Well registered with DIR prior to the bid for the Project, and as evidenced by the attached email correspondence, DIR has confirmed that it should have been active as of October 4, 2024, and a system error prevented the correct status from appearing on the portal.

For the reasons set forth above, the County should deem G&J’s bid nonresponsive and award the contract to Wood Bros., Inc. as the lowest responsive bidder. Please notify this office to

Klein ▪ DeNatale ▪ Goldner

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acknowledge receipt of this letter. If you require further information, please advise promptly. Further, please provide us with notice of the date, time and location of any hearing at which this matter will be determined or the contract award is to be considered. Wood Bros., Inc. intends to have a representative present. Finally, please provide a copy of this letter to each Board member before any such hearing so that they may be fully apprised of Wood Bros., Inc.'s position in advance of the hearing.

Very truly yours,
/S/
Erin S. Sanchez

From: Jon Cosme <jon@kingpumpandwell.com>
Sent: Tuesday, October 22, 2024 4:24 PM
To: mike@woodbros.com <mike@woodbros.com>
Cc: Ryan king <ryank@kingpumpandwell.com>
Subject: Fw: Contract Bids 861

Good Afternoon,

We just received the response from the DIR in regard to our registration. Please refer to the forwarded email below. If you need any further information, please do not hesitate and we will get that to you asap.

Jon Cosme

From: DIR PublicWorks <publicworks@dir.ca.gov>
Sent: Tuesday, October 22, 2024 3:30 PM
To: Jon Cosme <jon@kingpumpandwell.com>
Subject: RE: Contract Bids 861

Hello Jon,

We have confirmed your registration should have been active as of 10/4/2024, the day you made your registration payment online. This was indeed due to a system error that prevented the correct status from appearing. The error has been corrected.

861

The foregoing has been provided for informational purposes only and does not constitute legal advice. Information contained here may not be relied upon or used as an official opinion of the Division of Labor Standards Enforcement (DLSE) in any forum. Access to, transmission or receipt of, or reliance upon this information from the DLSE does not create, and is not intended to create, an attorney/client relationship between you or any other person and the DLSE or between you or any other person.

From: Jon Cosme <jon@kingpumpandwell.com>
Sent: Monday, October 21, 2024 5:27 PM
To: DIR PublicWorks <publicworks@dir.ca.gov>
Subject: Contract Bids

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you receive them from a known sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Good Afternoon,

I'm reaching out in regard to a bid proposal that was rejected due to the primary contractor using our company as a Sub. The bid was protested in lieu of our involvement and subsequently the bid rejected. The primary contractor is Wood Bros. Inc.

I did speak with someone on the phone with the labor commission and they recommended I reach out via email. They expressed it is likely a system error due to the recent site rollout in June.

If there is any information I can provide to help rectify the situation please let me know and I will, ASAP.

Thank you in advance

King Pump & Well Inc.

PWCR; 2000003672

