GRANITE™

December 10, 2014

Facsimile: (916) 227-6282

State of California
Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
Sacramento, CA 95816
Attn: Mr. John C. McMillan, Deputy Division Chief

State of California
Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
Sacramento, CA 95816
Attn: Mr. Earl Seaberg, Contract Awards Branch Chief

RE: Hwy 101 near Laytonville
Contract 01-4154U4 (Contract)
Bid Date 11/5/2014
Response to Bid Protest

Dear Mr. McMillan and Mr. Seaberg:

On Wednesday, November 5th, 2014, Granite Construction Company (GCC) timely submitted a responsive bid for the above referenced project. Granite understands that on or about November 19, 2014, Ghilotti Construction Company, Inc. ("Ghilotti") submitted a protest of Granite's bid. Granite's bid is fully responsive. As further discussed below, Ghilotti's protest lacks merit and should be rejected.

Ghilotti alleges that by listing Apex Fence Co. to perform 0.00% of Mobilization, Granite improperly revised its Subcontractor List Form. These allegations are without factual or legal support and Ghilotti's protest must be rejected. Granite's Subcontractor List complies with the governing subcontractor listing laws and the Contract specifications, and Granite's bid is fully responsive.

Granite's Subcontractor List Satisfies the Subcontractor Listing Law and the Contract Specifications

The Subletting and Subcontracting Fair Practices Act, California Public Contract Code 4100 et seq. ("Subcontractor Listing Law') requires bidders for public contracts to list the name, the location of place of business, and the California contractor license number of each subcontractor who will perform work in an amount in excess of one-half of one percent of the prime contractor's total bid or $10,000, whichever is greater. Cal. Pub. Contract Code, § 4104(a). The bidder must also set forth the portion of the work that will be done by each subcontractor. Cal. Pub. Contract Code, § 4104(b).

The Department's Subcontractor List form instructs bidders to submit the following information with the bid: (a) the name, (b) the location of the place of business, (c) the California contractor license number, and (d) the portion of work of each subcontractor who is required to be listed under the Subcontractor Listing Law. Additionally, the Department's Subcontractor List form requires the bidders to "submit within 24 hours of the bid opening the bid item numbers with percentages of the portion of work subcontracted."

The purposes of competitive bidding are to guard against favoritism and corruption, to prevent the waste of public funds, to obtain the best economic result for the public, and to stimulate advantageous market place competition. Competitive bidding provisions must be read in light of the reason for their enactment and applied in a sensible, practical way to accomplish those purposes fairly and reasonably. *Ghilotti Constr. Co. v. City of Richmond* (1996) 45 Cal. App. 4th 897, 909. Likewise, responsiveness considerations "must be evaluated from a practical rather than a hypothetical standpoint, with reference to the factual circumstances of the case. They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder" hoping to prevail by contriving irregularities in the winning submission. Id., at 908-09 (1996) (citing *Judson Pacific–Murphy Corp. v. Durkee* (1956) 144 Cal.App.2d 377, 383). It would be a "disservice to the public" if a losing bidder were allowed to comb through the bid of the low bidder after the fact, in an effort to cancel the low bid on minor technicalities, with the hope of securing acceptance of its higher bid. "Such construction would be adverse to the best interests of the public and contrary to public policy." *Durkee*, 144 Cal. App. 2d at 383. Here, it is clear that Ghilotti is simply combing through Granite's bid in an effort to concoct a deficiency where none exists.

Granite timely submitted its bid and accompanying Subcontractor List for the Contract. Granite's Subcontractor List fully complies with the requirements of the Subcontractor Listing Law and the Contract specifications. There is no irregularity in Granite's bid. Granite did not change subcontractors or the description of subcontracted work on its Subcontractor List. The descriptive terms set forth in Granite's Subcontractor List are consistent with each of the bid item numbers listed within 24 hours of the bid opening.

The Bid Item Numbers and Percentages Listed for Apex Fence Co. are Consistent with the Description of Portion of Work Listed for that Subcontractor

Granite listed Apex Fence Co. ("Apex") on the Subcontractor List submitted with its bid and listed "Treated Wood Waste, Remove MBGR, Reconstruct MBGR, Metal Beam Guard Rail (Wood Post), Vegetation Control, Alternative In-Line Terminal System, and Mobilization" as the description of portion of work. In its proposal, Apex did not separate out the mobilization component of its work, but rather, included the mobilization component of its work within its various work items. As reflected on Granite Bid Item List, Bid Item 47 (Mobilization) totals $860,000. Because Apex did not parse out and separately price the mobilization component of its work, Apex's percentage of Bid Item 47 (Mobilization) was 0%. As Caltrans explains in its Construction Manual, "When a portion of an item is subcontracted, apply the percentage of the bid item subcontracted to the prime contractor's item bid price as the dollar amount for the form." (See e.g. Caltrans Construction Manual Section 3-507). Accordingly, on the Subcontractor List submitted within 24 hours of bid opening, Granite properly indicated that Apex's percentage of Bid Item 47 (Mobilization) was 0.00%. Granite's approach is supported by several prior Caltrans' determinations, which have recognized mobilization is an integrated component of subcontract work.

For example, Caltrans has consistently determined that Mobilization is not required to be listed separately within the description of portion of work. This is evidenced by the following examples:

For Contract 04-2A2504, Granite Rock Company ("GRC") protested the bid submitted by Bay Cities Paving & Grading, Inc. ("Bay Cities"). Among other things, GRC alleged that Bay Cities expanded the scope of work for Flatiron Electric, Central Striping, and Drill Tech Drilling when it included the bid item number for Mobilization, but had not listed Mobilization as the description of portion of work for those three subcontractors. The Department determined that GRC's protest lacked merit and stated, "**Mobilization is relative to the scope of work performed by these subcontractors as they must first mobilize onto the Project site in order to complete their work, and mobilization, by itself, is not considered work requiring a contractor's license**." (See Attached).

For Contract 07-1218W4, Atkinson Constructors, LP (Atkinson") protested the bid submitted by Security Paving Company, Inc. ("Security"). Among other things, Atkinson alleged that Security changed the scope of work for High Light Electric, Inc. and Becho Inc. when Security listed the bid item number for Mobilization, but had not listed Mobilization within the description of portion of work for those two subcontractors. The Department determined that Atkinson's protest lacked merit and stated, "**Concerning Mobilization not being a component of Electrical or CIDH Concrete Piling, Isolation Casing and Tie Downs, Caltrans determination is that Mobilization is a component of all bid items**." (See Attached)

For Contract 06-0P1804, Papich Construction Co., Inc. protested Granite's bid, alleging, in pertinent part, that Granite improperly expanded Super Seal and Stripe and St. Francis Electric's respective scopes of work by adding mobilization on its 24 hour submittal. Caltrans rejected Papich's protest, explaining "**Caltrans reviewed the bid documents and determined that Granite was not required to list Mobilization. This service is not defined by the Business and Profession Code for that of a subcontractor and is not considered work subject to the Public Contract Code 4100 (et seq.)**." (See Attached)

Similarly here, Ghilotti's allegation that Granite improperly revised its Subcontractor List form by identifying 0% as Apex's percentage for Bid Item 47 (Mobilization) on the 24 hour submittal has no merit. Granite correctly identified Apex's percentage of the overall mobilization bid item (based on Apex's portion of the bid price). Because Apex included mobilization within its substantive scopes of work and did not separately price the mobilization component, Apex's proportion of the mobilization bid item was 0%. As the Department has previously recognized and determined, Mobilization is a component of all items of work, as the subcontractors must first mobilize onto the project site in order to complete the work. Moreover, such issue is immaterial as bidder's are not even required to list mobilization as such services are not defined by the Business and Profession Code for that of a subcontractor and is not considered work subject to the Subcontractor Listing Law.

In summary, Granite's Subcontractor List satisfies the requirements of the Subcontractor Listing Law and the Contract specifications, and Granite's bid is fully responsive. Granite respectfully requests that Caltrans reject Ghilotti's protest as without merit.

Thank you for your time and consideration of this matter. Please feel free to contact me at (707) 467–4107 if you require additional information.

Sincerely,

GRANITE CONSTRUCTION COMPANY

John G. Boies
Construction Operations Manager

Attachments:

- Caltrans' Determination Letter for Contract No. 04-2A2504
- Caltrans' Determination Letter for Contract No. 07-1218W4
- Caltrans Determination Letter for Contract No. 06-0P1804

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
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May 29, 2014

Facsimile: (408) 365-8349

Paul L. Cianciarulo, Estimator
Granite Rock Company
120 Granite Rock Way
Riverside, CA 92503

04-2A2504
04- 04-SCl-152-0.1/5
B.O. 04/29/2014

Dear Mr. Cianciarulo:

The Department of Transportation (Caltrans) received the attached letter dated May 6, 2014, from Granite Rock Company (Granite Rock) protesting the bid submitted by Bay Cities Paving & Grading, Inc. (Bay Cities). The protest alleges that Bay Cities impermissibly expanded the scope of work for ABSL when it listed Bid Item 51 (Roadway Excavation) to work initially listed as AC Grinding. In addition, included Bid Item 145 (Mobilization) to work subcontracted to Flatiron Electric, Central Striping and Drill Tech Drilling. Granite Rock is requesting that Caltrans find the bid submitted by Bay Cities nonresponsive and the award the contract to Granite Rock.

Caltrans reviewed the bid documents as well as this protest and finds that Bay Cities properly followed the bidding instructions on bid date by identifying the subcontractor and the description of work for AC Grinding. On the 24 hour submittal Bay Cities provided the same information and the corresponding bid item numbers to that description of work. It is the opinion of Caltrans that by including 2% of bid item 51, Roadway Excavation on the 24 hour submittal, Bay Cities did not expand the scope of work set forth for ABSL in the bid day submission of the Subcontractor list as AC Grinding is a component of the Roadway Excavation on this Project.

With respect to the protest as it relates to Flatiron, Central Striping and Drill Tech Drilling, Mobilization is relative to the scope of work being performed by these subcontractors as they must first mobilize onto the Project site in order to complete their work, and mobilization, by itself, is not considered work requiring a contractor's license.

Based on the above, Caltrans finds that Granite Rock's protest lacks merit and will award the contract to the lowest responsive bidder.

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
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November 29, 2012

Facsimile: (949) 855-9923

John Harrington, Vice President
Atkinson Contractors, LP.
27422 Portola Parkway, Suite 250
Foothill Ranch, CA 92610

07-1218W4
07-LA-5-29.4/31.6
B.O. 10/4/12

Dear Mr. Harrington:

The Department of Transportation (Caltrans) received the attached letter dated November 20, 2012 from Atkinson Contractors, LP., (Atkinson Contractors) protesting Security Paving Company, Inc's., (Security Paving) Subcontractor List form. The protest states that bid item 284 Delineator (Class 1) and bid item 296 Crash Cushion (React 9CBB) was added to Ace Fence on the revised Subcontractor List form though it was not present on the Subcontractor list form submitted with the bid. In addition Atkinson Contractors alleges that the change from "Hilite Electric, Inc." to "High Light Electric, Inc." on the revised Subcontractor List form is a revision. Atkinson also claims that bid item 348 Mobilization does not fall under the scope of Electrical or CIDH Concrete Piling, Isolation Casing and Tie Downs. Finally Atkinson Contractors alleges that Security Paving is not able to self perform bid item 344 Modify Lighting and Sign Illumination. Atkinson Contractors requests Caltrans find Security Paving nonresponsive.

Caltrans has reviewed the protest and has determined that both item 284 Delineator (Class 1) and bid item 296 Crash Cushion (React 9CBB) are components of Guard Rail. Concerning the name correction from "Hilight" to "High Light", this is a clerical correction and not a revision as the address remained the same on both the Subcontractor List form and the revised Subcontractor List form. Concerning Mobilization not being a component of Electrical or CIDH Concrete Piling, Isolation Casing and Tie Downs, Caltrans determination is that Mobilization is a component of all bid items. Lastly, concerning Security Paving not being able to self perform bid item 344 Modify Lighting and Sign Illumination, Security Paving has a Class A license and as such can perform the scope of work listed in bid item 344.

Based on the above, Caltrans finds Atkinson Contractors' protest lacks merit and will award the contract to the lowest responsive bidder.

If you have any questions, please contact Dave Neumann, Contract Awards Senior, at (916) 227-6285.

Sincerely,

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

Attachment

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
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Serious drought. Help save water!

December 3, 2014

Facsimile: (805) 481-5966

David Cruce
Papich Construction Co., Inc.
P. O. Box 2210
Pismo Beach, CA 93448

06-0P1804
06-Kin-5-9.0/16.5
B.O. 10/29/2014

Dear Mr. Cruce:

The Department of Transportation (Caltrans) received a letter dated November 12, 2014, from Papich Construction Co., Inc. (Papich) protesting the bid submitted by Granite Construction Company (Granite). The protest alleges that Granite listed Super Seal and Stripe for work described as Pavement Delineation and St. Francis Electric for work described as Electrical on its Subcontractor List form at time of bid, but added Mobilization on the 24 hour submittal. Papich also alleges that on bid day, Granite did not include the portion (percentage) of work to be performed by A.C. Dike and KRC Safety (KRC). Papich requests Caltrans find the bid submitted by Granite nonresponsive and award the contract to Papich.

Caltrans reviewed the bid documents and determined that Granite was not required to list Mobilization. This service is not defined by the Business and Profession Code for that of a subcontractor and is not considered work subject to the Public Contract Code 4100 (et.seq).

In addition, Granite identified the subcontractor and the work to be performed per the bidding instructions. The bid items numbers and portion of work is not required to be submitted at time of bid, rather the 24 hour submittal.

And based on the above Caltrans will proceed to award this contract to the lowest responsive and responsible bidder.

If you have any questions, please contact Melissa Smith, Contract Awards Analyst, at (916) 227-6228.

Sincerely,

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

GRANITE™

FAX

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Ukiah, CA 95482
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To: JOHN C. MCMILLAN	From: JOHN G. BOIES
Company: CALTRANS	Date: 12/10/2014
Fax: 916-227-6282	Total Pages (*including cover page*): 8
Phone:	Sender's Reference Number: 04-4154U4
RE: BID PROTEST	Granite Job Number:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Confirm Receipt

Please see the following Bid Protest for 01-4154U4, which bid on 11/05/2014.

Original to follow via FedEx overnight service.

Thank you.