

**PAPICH**  
**CONSTRUCTION, INC.**  
GENERAL ENGINEERING CONTRACTOR  
CAL. LIC. #787055  
P.O. BOX 2210, PISMO BEACH, CA 93448  
(805) 473-3018 OFFICE • (805) 481-5968 FAX

December 3, 2014

Department of Transportation  
Division of Engineering Services  
Office Engineer, MS43  
172730<sup>th</sup> Street  
P.O. Box 168041  
Sacramento, CA 95816-8041

Attention: John McMillan, Deputy Division Chief

RE: 06-0Q2504, Cold in Place recycling on State Route 198, In and Near Letmoore  
Bid opening October 29, 2014  
**SECOND FORMAL PROTEST OF BID SUBMITTED BY GRANITE  
CONSTRUCTION COMPANY, Inc. (GCC)**

Dear Mr. McMillan,

Papich Construction Company, Inc (PCI) has reviewed the response by Granite Construction Company, Inc (GCC) dated November 20, 2014 to our formal protest submitted by PCI for contract # 06-0Q2504 on November 12, 2014. GCC has failed to explain why they modified subcontracted amounts and scope on their 24 hour subcontractor listings, obtaining an unfair advantage over other bidders, rendering their bid non responsive. This competitive advantage additionally allowed manipulation of their DBF utilization ensuring they met the goal without grossly overcommitting as previously referenced in PCI's initial protest letter.

**Inconsistencies in GCC bid between bid item numbers listed and description of portion of work provided at bid time while listing Safety Striping Services**

Granite is correct that more than one lead compliance plan is required under bid item 1. However, these plans are for different scopes of the project. GCC's 24 hour bid item percentage for Safety Striping Services should **NOT** have exceeded 50% of the subcontracted portion of work. By exceeding 50% GCC has clearly listed Safety Striping Services for Lead compliance plans outside the "pavement Delineation" listed scope on their 24 hour subcontractor listing submittal, since pavement delineation only required 1 plan.

Granite states "if Granite had listed Adanta and Safety Striping for the same item of work (it did not)", admitting a clear distinct difference exists within the bid item scope of work. Their statement regarding the ability to self perform is irrelevant, in this case the two listed scopes are distinctly different, proven by their own backup provided, rendering their bid non responsive.

Please find attached project special provision section 15-2.02C(2) referencing (1) one lead compliance plan required for the "Pavement Delineation" scope (attachment A). Other lead compliance plans required are not related to pavement delineation, therefore GCC has expanded the scope of SSS. At least one additional lead compliance plan was required under special provision section 7-1.02K(6)(j)(iii) "Earth Material Containing Lead", or Earthwork scope, not related to "Pavement Delineation". (Attachment B)

**Inconsistencies in GCC bid between bid item numbers listed and description of portion of work provided at bid time while listing Pavement Recycling Services and St. Francis Electric**

In Papich's original protest, it was pointed out that when Granite provided the description of subcontracted work (Column 4 Subcontractor List Form), they failed to adequately describe all work being performed by two additional subcontractors. Pavement Recycling Systems was listed for "Cold In Place Recycling". St. Francis Electric was listed for "Electrical". On the 24-hour listing form, Granite added the additional scope of Mobilization to each subcontractor's listing (Column 2 Bid Item Nos.).

Adding scope to a subcontractor's listing after the initial bid submission is not permissible as Papich pointed out by referencing previous Caltrans non-responsive determinations. Conversely, Granite counters in citing the following previous Caltrans determinations:

**Contract 04-2A2504 Caltrans Determination:**

"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."

**Contract 07-1218W4 Caltrans Determination:**

"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."

Papich contends that while Granite and Caltrans are not wrong by citing the above arguments, both parties are not necessarily correct either. Further examination of the specific contract and subcontractor proposals in question are required in order to provide a definitive determination as to whether mobilization is a separate scope of work.

With regards to both determinations above, please consider that:

Section 9-1.16D Mobilization of the Standard Specifications states that "Mobilization is eligible for partial payments if the Contract includes a bid item for mobilization. The Department makes the partial payments under Pub Cont Code § 10264. If the Contract does not include a mobilization bid item, mobilization is included in the payment for the various bid items."

Essentially, on a contract by contract basis, Caltrans decides whether

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Please find attached project special provision section 15-2.02C(2) referencing (1) one lead compliance plan required for the "Pavement Delineation" scope (attachment A). Other lead compliance plans required are not related to pavement delineation, therefore GCC has expanded the scope of SSS. At least one additional lead compliance plan was required under special provision section 7-1.02K(6)(j)(ii) "Earth Material Containing Lead", or Earthwork scope, not related to "Pavement Delineation". (Attachment B)

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Adding scope to a subcontractor's listing after the initial bid submission is not permissible as Papich pointed out by referencing previous Caltrans non-responsive determinations.

Conversely, Granite counters in citing the following previous Caltrans determinations:

**Contract 04-2A2504 Caltrans Determination:**

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Papich contends that while Granite and Caltrans are not wrong by citing the above arguments, both parties are not necessarily correct either. Further examination of the specific contract and subcontractor proposals in question are required in order to provide a definitive determination as to whether mobilization is a separate scope of work.

With regards to both determinations above, please consider that:

Section 9-1.16D Mobilization of the Standard Specifications states that "Mobilization is eligible for partial payments if the Contract includes a bid item for mobilization. The Department makes the partial payments under Pub Cont Code § 10264. If the Contract does not include a mobilization bid item, mobilization is included in the payment for the various bid items."

Essentially, on a contract by contract basis, Caltrans decides whether

mobilization is classified as separate scope of work by either providing a mobilization bid item or not. In the case of Contract 06-0Q2504, Bid Item 81 was set aside by Caltrans for mobilization; thereby, specifically delineating it as a separate scope of work.

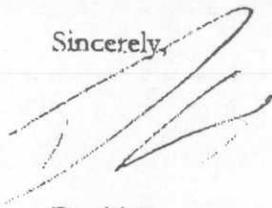
Further, Section 1-1.07 Definitions of the Standard Specifications defines mobilization as "Preparatory work that must be performed or costs incurred before starting work on the various items on the job site (Pub Cont Code § 10104)." While mobilization may be relative to or a component of some or all other bid items, one cannot simply make the determination that it is not a distinct scope of work. Reinforcing steel installation is both relative to and a component of concrete structure construction; however, it is also clearly recognized as a distinct scope.

The Caltrans determination from 04-2A2504

Finally, in reviewing subcontract proposals received prior to the bid, one can ascertain on a subcontractor by subcontractor basis whether or not mobilization should be classified as a separate scope of work. In the case of a contract with a mobilization item, such as the one in question here, subcontractors routinely submit proposals with and without mobilization pricing. This fact in itself provides further evidence as to whether or not mobilization should be considered a distinct scope of work. In a case where a subcontractor did not submit pricing for the mobilization item, mobilization is clearly not a separate scope of work as the subcontractor has decided that no preparatory work must be completed or that no costs will be incurred prior to starting the work. However, as in this case, both the proposals of Pavement Recycling Systems and St. Francis Electric included costs for mobilization as evidenced by Granite's post-bid listing.

Cal Trans has consistently found bidders non responsive for expanding the scope of listed subcontractors. For these reasons, GCC has made impermissible and material changes to their bid, rendering their bid non responsive. The project must be awarded to the next lowest responsible and responsive bidder, which is Papich Construction Co. Inc.

Sincerely,



David Cruce  
Area Manager  
Papich Construction Co. Inc.  
Cc: file, JP

Enclosures

## **Attachments**

Attachment A – Project special provision  
section 15-2.02C(2)

Attachment B – Project special provision  
section 7-1.02K(6)(J)(iii)

Attachment A

1. Equipped with a cutter head width that matches the planing width. If the cutter head width is wider than the cold plane area shown, submit to the Engineer a request for using a wider cutter head. Do not cold plane unless the Engineer approves your request.
2. Equipped with automatic controls for the longitudinal grade and transverse slope of the cutter head and:
  - 2.1. If a ski device is used, it must be at least 30 feet long, rigid, and a 1-piece unit. The entire length must be used in activating the sensor.
  - 2.2. If referencing from existing pavement, the cold planing machine must be controlled by a self-contained grade reference system. The system must be used at or near the centerline of the roadway. On the adjacent pass with the cold planing machine, a joint-matching shoe may be used.
3. Equipped to effectively control dust generated by the planing operation
4. Operated so that no fumes or smoke is produced.

Replace broken, missing, or worn machine teeth.

#### 15-2.02B(3)(c)(ii) Grade Control and Surface Smoothness

Furnish, install, and maintain grade and transverse slope references.

The depth, length, width, and shape of the cut must be as shown or as ordered. The final cut must result in a neat and uniform surface. Do not damage the remaining surface.

The completed surface of the planed asphalt concrete pavement must not vary more than 0.02 foot when measured with a 12-foot straightedge parallel with the centerline. With the straightedge at right angles to the centerline, the transverse slope of the planed surface must not vary more than 0.03 foot.

Where lanes are open to traffic, the drop-off of between adjacent lanes must not be more than 0.15 foot.

#### 15-2.02B(3)(c)(iii) Temporary HMA Tapers

If a drop-off between the existing pavement and the planed area at transverse joints cannot be avoided before opening to traffic, construct a temporary HMA taper. The HMA temporary taper must be:

1. Placed to the level of the existing pavement and tapered on a slope of 30:1 (horizontal:vertical) or flatter to the level of the planed area
2. Compacted by any method that will produce a smooth riding surface

Completely remove temporary tapers before placing permanent surfacing.

#### 15-2.02B(3)(c)(iv) Remove Planed Material

Remove cold planed material concurrent with planing activities so that removal does not lag more than 50 feet behind the planer.

#### 15-2.02B(3)(d) Payment

Payment for removal of pavement markers, thermoplastic traffic stripe, painted traffic stripe, and pavement marking within the area of cold planing is included in the payment for cold plane asphalt concrete pavement of the types shown in the Bid Item List.

Replace section 15-2.02C(2) with:

#### 15-2.02C(2) Remove Traffic Stripes and Pavement Markings Containing Lead

"Pavement delineation"

Residue from removing traffic stripes and pavement markings contains lead from the paint or thermoplastic. The average lead concentrations are less than 1,000 mg/kg total lead and 5 mg/L soluble lead. This residue:

1. Is a nonhazardous waste
2. Does not contain heavy metals in concentrations that exceed thresholds established by the Health and Safety Code and 22 CA Code of Regs
3. Is not regulated under the Federal Resource Conservation and Recovery Act (RCRA), 42 USC § 6901 et seq.

↓ *compliance plan required for "Pavement Detraction"*

Submit a lead compliance plan under section 7-1.02K(6)(j)(ii).

Payment for a lead compliance plan is not included in the payment for existing facilities work.

Payment for handling, removal, and disposal of pavement residue that is a nonhazardous waste is included in the payment for the type of removal work involved.

\*\*\*\*\*

**DIVISION III GRADING  
16 CLEARING AND GRUBBING**

**Add to section 16-1.03A:**

Clear and grub State-owned property. Do not use the State-owned property after clearing and grubbing is complete unless authorized. Clearing and grubbing off the job site is change order work.

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**19 EARTHWORK**

**Add to the 7th paragraph of section 19-9.02:**

If 100 percent RAP is used, the requirement for minimum unit weight of shoulder backing under California Test 212 does not apply.

\*\*\*\*\*

**21 EROSION CONTROL**

**Replace item 2 in the list in the 5th paragraph of section 21-1.02E with:**

- 2. Contain 3/8-inch fiber strands for at least 25 percent by total volume.

**Replace section 21-1.02M with:**

**21-1.02M Compost**

Compost must be derived from one or a combination of the following types of materials:

- 1. Green material consisting of chipped, shredded, or ground vegetation or clean, processed, recycled wood products
- 2. Biosolids

Attachment B

**Supplemental Project Information**

Means	Description
Included in the <i>Information Handout</i>	<ol style="list-style-type: none"> <li>1- Alternative In-line Terminal System</li> <li>2- Alternative Flared Terminal System</li> <li>3- Existing Pavement Information</li> </ol>
Available as specified in the <i>Standard Specifications</i>	Cross Sections: Original ground data in dwg Alignment data in XML Cross Sections in dwg and pdf

\*\*\*\*\*

**5 CONTROL OF WORK**

**Add to section 5-1.20A:**

During the progress of the work under this Contract, work under the following contracts may be in progress at or near the job site of this Contract:

**Coincident or Adjacent Contracts**

Contract no.	County-Route-Post Mile	Location	Type of work
06-487504	Kin-198-R16.5/R17.2	Hanford	Reconstruct Interchange
06-0P1604	Kin-198-R14.7/R17.9	Hanford	Cold in-place recycling and RHMA overlay
06-0P1504	Kin-198-0.0/7.2	Hanford	Cold plane AC pavement and HMA overlay

\*\*\*\*\*

**7 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC**

**Replace section 7-1.02K(6)(j)(III) with:**

"Earthwork"

**7-1.02K(6)(j)(iii) Earth Material Containing Lead**

Section 7-1.02K(6)(j)(iii) includes specifications for handling, removing, and disposing of earth material containing lead.

*(New) compliance plan for "Earthwork"*

Submit a lead compliance plan.

Lead is present in earth material on the job site. The average lead concentrations are below 1,000 mg/kg total lead and below 5 mg/L soluble lead. The material on the job site:

1. Is not a hazardous waste
2. Does not require disposal at a permitted landfill or solid waste disposal facility

Lead is typically found within the top 2 feet of material in unpaved areas of the highway. Reuse all of the excavated material on the right-of-way. Handle the material under all applicable laws, rules, and regulations, including those of the following agencies:

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### FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Caltrans	David Cruce
COMPANY:	DATE:
	12/3/14
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
916-227-6282	
RE:	YOUR REFERENCE NUMBER:
06-0Q2504	

- URGENT   
  FOR REVIEW   
  PLEASE COMMENT   
  PLEASE REPLY   
  PLEASE READ

Please find attached protest of Granite Construction's bid for the above referenced project.