

GENERAL CONTRACTOR  
LICENSE NO. 116307 A C12  
FAX: 818.362.9300

# SECURITY PAVING COMPANY, INC.

13170 TELFAIR AVENUE  
SYLMAR, CA 91342  
TEL. 818.362.9200

December 12, 2014

State of California, Department of Transportation  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> Street  
P.O. Box 168041  
Sacramento, CA 95816

Attention: John McMillan, Deputy Division Chief

Re: **Bid Protest by Security Paving Company, Inc. to Award of Contract to Skanska-Teichert JV**  
Contract No. 08-043514  
Bids Opened: November 14, 2014  
Lowest Responsive Bidder: Security Paving Company, Inc.  
Non-Responsive Bidder: Skanska-Teichert JV

Dear Mr. McMillan:

Pursuant to the bid protest procedures established by the State of California, Department of Transportation ("Caltrans"), as well as the California Public Contract Code, please accept this letter as Security Paving Company, Inc.'s ("Security Paving") formal protest of the bid submitted by Skanska-Teichert JV ("Skanska") for Caltrans Contract No. 08-043514 (the "Contract"). Skanska's bid violates the Subletting and Subcontracting Fair Practices Act, California Public Contract Code section 4100 et. seq., (the "Act") and must be rejected as non-responsive. As demonstrated below, Skanska's bid fails to comply with the mandatory requirements for subcontractor listing established by the Act and Caltrans' bidding requirements.

Skanska's bid day and twenty-four hour subcontractor listings are materially inconsistent. In its twenty-four hour subcontractor submittal, Skanska included additional scope of work to be performed by subcontractors that was not previously identified in its bid day subcontractor submittal. By changing the scope of work to be performed by subcontractors, Skanska has obtained an unfair competitive advantage over other bidders and, therefore, its bid must be rejected as non-responsive. Security Paving respectfully requests that Caltrans award the above-referenced Contract to Security Paving as the lowest *responsive*, responsible bidder.

#### **A. Subcontractor Listing Requirements**

California Public Contract Code, section, 4104 states that public project specifications or general bidding conditions for highway projects must require persons making bids to set forth the names and locations of subcontractors which will perform work in excess of one-half of one percent one-half of the prime

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contractor's total bid or ten thousand dollars, whichever is greater. The bidding contractor must also set forth the portion of the work which will be done by each subcontractor. The prime contractor may list only one subcontractor for each portion as is defined in his or her bid.

Caltrans' Subcontractor List form further provides the following requirements of bidders:

Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Neither the Act, nor Caltrans' Subcontractor list form, permits a contractor to alter the initially subcontracted scope of work between the "Bid Day" Subcontractor List and the "24 Hour" Subcontractor Submittal. Similarly, Caltrans' DBE Commitment form requires a bidder's listing of First Tier DBE Subcontractors to be consistent with the Bid Day Subcontractor List. The instructions on Caltrans' Subcontractor listing form, as well as the DBE Commitment form, are an essential and material part of the bid documents and a failure to comply with the instructions renders a bid non-responsive. Caltrans is required to follow its own rules when it has a ministerial duty to do so. (See *Pozar v. Dept. of Transportation*, 145 Cal.App.3d 269 (1983) (holding that Caltrans was required to follow its published procedure for resolving discrepancies in bid figures)).

Skanska failed to properly submit its Subcontractor List and therefore its bid must be rejected.

## **B. Skanska's Inconsistent Subcontractor Lists**

Skanska submitted its Subcontractor List with its bid. As required by Caltrans' instructions, Skanska completed columns 1 and 4 by providing the name, location and description of the work to be performed by the identified subcontractor ("Bid Day Submittal")<sup>1</sup>. After bid opening, Skanska completed columns 2 and 3 as required by Caltrans and submitted the additional subcontractor information by including the bid numbers and percentages for each listed subcontractor ("24 Hour Submittal")<sup>2</sup>. A bidder is not permitted to make changes with respect to subcontractors or their scopes of work as part of the 24 Hour Submittal. Any changes violates the Act. Further, Caltrans has consistently held on prior bids and contract awards that no revisions are permitted to the Subcontractor List as part of the 24 Hour Submittal. Skanska's 24 Hour Submittal included additional scope of work to be performed by subcontractors that was not previously identified in its Bid Day Submittal and, therefore, its bid must be rejected as non-responsive

In its Bid Day Submittal, Skanska listed Quality Hydroseed & Restoration ("Quality") as a subcontractor. Skanska identified and committed the following scopes of work to Quality in its Bid Day Submittal: "Erosion Control and Related." In its 24 Hour Submittal, Skanska disclosed that Quality would be performing work as to Bid Items 17, 66, and 67. The scope of work associated with Bid Item 17 is

<sup>1</sup> Relevant pages from Skanska's Bid Day Submittal are attached as Exhibit A.

<sup>2</sup> Relevant pages from Skanska's 24 Hour Submittal are attached as Exhibit B.

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Temporary Soil Binder. Bid Item 17, Temporary Soil Binder, is part of Water Pollution Control, not Erosion Control. On bid day, Skanska described Quality's scope of work as Erosion Control, not Water Pollution Control. By adding Water Pollution Control line items to Quality's proposed scope of work, Skanska has improperly changed the scope of work to be performed by Quality. Such a revision is not permitted and Quality's bid is non-responsive and must be rejected.

Caltrans recently rejected a bid that on these very same grounds. On November 14, 2014 Caltrans rejected the bid of Gordon N. Ball, Inc. ("Gordon Ball") on Contract No. 04-2G8604<sup>3</sup>. In rejecting Gordon Ball's bid, Caltrans noted that on bid day Gordon Ball identified Selby's Soil Erosion Control ("Selby's") as a subcontractor and described the work to be performed by Selby's as "Erosion Control (Partial)". In its 24 Hour Submittal, Gordon Ball included Bid Item 14, Temporary Hydraulic Mulch (Water Pollution Control) to Selby's scope of work. Caltrans determined that Temporary Hydraulic Mulch was part of Water Pollution Control, not Erosion Control, and Gordon Ball's subcontractor lists were inconsistent:

Bid Item #14, Temporary Hydraulic Mulch (Water pollution control) – 100% is not part of Erosion Control as described in the initial "Description of Work" but is in fact part of Water Pollution Control. Since Selby's was only to do work described as Erosion Control (Partial) as stated on the form submitted at the time of Bid Opening, the addition of Bid Item #14 relating to Water Pollution Control on the 24 Hour Subcontractor List expanded the work to be performed by Selby's. The addition of Bid Item #14 is inconsistent with the original Subcontractor List, and is a material error and therefore renders the bid nonresponsive.

Similarly, on November 14, 2014 Caltrans rejected a separate bid by Gordon Ball on Contract No. 04-1SS024<sup>4</sup>. In examining Gordon Ball's bid, Caltrans once again determined that there were material inconsistencies between the Subcontractor List and 24 Hour Submittal. Specifically, Gordon Ball made the following material error in its bid: RMT Landscape was listed on the Subcontractor List to perform "Erosion Control (Partial)" and on the 24 Hour Submittal the work was expanded to include 100% of Bid Items 69-72 for the Erosion Control work. Gordon Ball argued that Caltrans was in error because Bid Items 10-23 were also Erosion Control and, therefore, the subcontractor's work was, in fact, partial. Caltrans rejected Gordon Ball's argument and determined that Bid Items 10-23 were part of Water Pollution Control, not Erosion Control. The work was not related. Again, Caltrans found that submitting inconsistent Subcontractor Lists and 24 Hour Submittals were material errors that rendered Gordon Ball's bid non-responsive.

Skanska has committed the same material error on this Contract. On bid day Skanska only committed Quality to perform "Erosion Control" work, not "Water Pollution Control." Bid Item 17, Temporary Soil Binder, is not part of Erosion Control, but is in fact part of Water Pollution Control. Since Quality was only to do work described as Erosion Control as stated in the form submitted at the time of Bid Opening, the addition of Bid Item 17 relating to Water Pollution Control on the 24 Hour Subcontractor List expanded the scope of work to be performed by Quality. The addition of Bid Item 17 is inconsistent

<sup>3</sup> A copy of Caltrans' November 14, 2014 letter re: Contract No. 04-2G8604 is attached hereto as Exhibit C.

<sup>4</sup> A copy of Caltrans' November 14, 2014 letter re: Contract No. 04-1SS024 is attached hereto as Exhibit D.

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with Skanska's original Subcontractor List, and is a material error. Skanska's bid is, therefore, non-responsive and must be rejected.

### C. Skanska's Defect Cannot Be Waived

Skanska made impermissible, material changes to the Subcontractor List form that renders its bid non-responsive. Bid defects cannot be waived if they could have affected the amount of the bid or if they resulted in a bidder having an unfair advantage. The purpose of the Act is to ensure that the integrity of a subcontractor's bid stands throughout the bidding process. In other words, the purpose is to provide fair, competitive bidding and to prevent bid shopping and bid peddling after submission of the bids. If Skanska is permitted to change the scope of work assigned to subcontractors after its Bid Day Submittal, then the purpose of the Act has been disregarded. Allowing Skanska the opportunity to refine a subcontractor listing post-bid is an advantage that was not afforded to other bidders. This is precisely why California law precludes waiver of the defect in Skanska's bid.

Caltrans has consistently rejected bids where, like Skanska, the bidder has altered a subcontractor scope of work in its post-bid submission. Caltrans has strictly enforced its subcontractor listing requirements in the past. Caltrans' rejection of Gordon Ball's bids on Contract No. 04-2G8604 and Contract No. 04-1SS024 are directly analogous to the material error committed by Skanska on this Contract. Erosion Control and Water Pollution Control are separate, distinct scopes of work. By listing a subcontractor to perform "Erosion Control" on bid day, and subsequently adding "Water Pollution Control" bid items to the scope of work, constitutes an inconsistent, material error rendering the bid non-responsive. Skanska's bid is non-responsive for this very same reason and must be rejected.

Security Paving urges that Caltrans should remain consistent on all contracts and projects throughout the State so that all bidders are competing on a level playing field. Inconsistency in determinations regarding errors in completing the Subcontractor List, 24 Hour Submittal, and DBE Commitment form creates confusion and uncertainty for bidders. By maintaining a strict, consistent practice across the board, bidders are better informed and the strict requirements of the Subletting and Subcontracting Fair Practices Act as well as Caltrans' instructions on the Subcontractor List form are better enforced. Changing the scope of work after bid day creates an advantage over other bidders and such a defect cannot be waived.

Security Paving urges that Caltrans remain consistent with prior, similar determinations on other contracts and strictly enforce Caltrans' bidding instructions as well as the Public Contract Code. Security Paving respectfully asserts that Caltrans should find Skanska's bid to be non-responsive, disqualify Skanska's bid on that basis, and award Contract No. 08-043514 to Security Paving, the lowest *responsive*, responsible bidder.

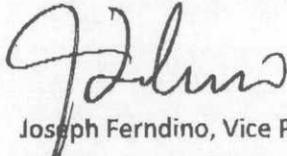
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If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Joseph Ferndino, Vice President  
Security Paving Company, Inc.

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 08-043514 Project ID: 0800000010

Bidder Name: Skanska-Teichert a Joint Venture Bidder ID: VC1500001346

SUBCONTRACTOR LIST

DES-OE-0102.2B (REV 5/2014)

Bidding Firm: Skanska-Teichert a Joint Venture

Under Public Contract Code 4100 et seq., the Bidder must set forth in the bid the name, the location of the place of business, the California contractor license number, and the portion of work of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

The Bidder must submit within 24 hours of the bid opening the bid item numbers with percentages of the portion of work subcontracted.

a Not required on contracts with Federal-Aid.

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 08-043514 Project ID: 0800000010

Bidder Name: Skanska-Teichert a Joint Venture Bidder ID: VC1500001346

List this sub? Yes

2) Business Name Quality Hydroseed & Restoration

Location City RAMONA State CA

California Contractor License Number (a) 473694

Description of Portion of Work

EROSION CONTROL AND RELATED

Bid Item Numbers

Percentage of Bid Item Subcontracted

**EXHIBIT A**

Received

Nov 14 2014 03:30pm

NOV/14/2014/FRI 04:46 PM

P. 002

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 08-043514 Project ID: 0800000010

Bidder Name: Skanska-Teichert a Joint Venture

Bidder ID: VC1500001346

SUBCONTRACTOR LIST

DES-OE-0102.2B (REV 5/2014)

Bidding Firm: Skanska-Teichert a Joint Venture

Under Public Contract Code § 4100 et seq., the Bidder must set forth in the bid the name, the location of the place of business, the California contractor license number, and the portion of work of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

The Bidder must submit within 24 hours of the bid opening the bid item numbers with percentages of the portion of work subcontracted.

a Not required on contracts with Federal-Aid.

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 08-043514 Project ID: 0800000010

Bidder Name: Skanska-Teichert a Joint Venture

Bidder ID: VC1500001346

List this sub? Yes

- 2) Business Name: Quality Hydroseed & Restoration
- Location: City: RAMONA State: CA
- California Contractor License Number (a): 473694
- Description of Portion of Work

~~PROSPECTIVE SUBCONTRACTOR LIST~~

Bid Item Numbers

17, 66, 67

Percentage of Bid Item Subcontracted

100, 94, 99

Bid Item Numbers

Percentage of Bid Item Subcontracted

*Per Contract's  
04-155024  
\$ 04 - 268604*

*Bid Item #17  
Temporary Soil  
Binders*

*is part of the  
water pollution  
control items  
and not part  
of the Erosion  
control items  
#66, 67*

**EXHIBIT B**

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF ENGINEERING SERVICES**  
 OFFICE ENGINEER  
 1727 30<sup>th</sup> STREET, MS-43  
 SACRAMENTO, CA 95816-8041  
 PHONE (916) 227-6299  
 FAX (916) 227-6282  
 www.dot.ca.gov/hq/esc/oe



Serious drought.  
Help save water!!

November 14, 2014

Facsimile: (925) 838-5915

Hal Stober, President  
 Gordon N. Ball, Inc.  
 333 Camille Avenue  
 Alamo, CA 94507

04-2G8604  
 04-A1a-580-R33.4  
 B.O 10/16/2014

Dear Mr. Stober:

The Department of Transportation (Caltrans) received the attached letter dated November 4, 2014, from Gordon N. Ball, Inc. (Gordon Ball) in response to a nonresponsive bid determination on the above contract. Gordon Ball requested Caltrans reconsider that determination. Based on that request, Caltrans re-examined Gordon Ball's bid. During this examination, Caltrans found additional material errors in the Subcontractor List/24-Hour Submittal as well as the DBE Commitment Form. These errors further support a finding that Gordon Ball's bid is nonresponsive. The errors are as follows:

**Caltrans' Findings:**

With Bid: Subcontractor/ Description of Work	24 Hour Subcontractor List submittal w/Bid Item(s) number and %.
Chrisp • Striping	Chrisp Bid Item 1(P) 50% (note: this is the lead compliance plan and is not considered subcontracted work, but is included in the total of the amount provided to the subcontractor) Bid Items #5-#7, #23, #29-#30, #104-#106 - 100% Bid Item #112(P) - 5% (note: this item is mobilization)
Bid Item #7, Channelizer (Surface Mounted) - 100%, was not described in the initial "Description of Portion on Work", submitted at time of Bid Opening, but added on the 24 Hour Subcontractor List thus expanding the work to be performed by Chrisp. The addition of Bid Item #7 is inconsistent with the original Subcontractor List, and is a material error; therefore, renders the bid nonresponsive.	
Selby's Soil Erosion Control (Selby's) • Erosion Control (Partial)	Selby's Bid Item #14, Temporary Hydraulic Mulch (Water pollution control) - 100% Bid Item #71, Fiber Rolls, (Erosion control) - 100% Bid Item #71 was the soil erosion control item on the project.
Bid Item #14, Temporary Hydraulic Mulch (Water pollution control) - 100% is not part of Erosion Control as described in the initial "Description of Portion of Work" but is in fact part of Water Pollution Control. Since Selby's was only to do work described as Erosion Control (Partial) as stated on the form submitted at time of Bid Opening, the addition of Bid Item #14 relating to Water Pollution Control on the 24 Hour Subcontractor List expanded the work to be performed by Selby's. The addition of Bid Item #14 is inconsistent with the original	

Hal Stober  
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November 14, 2014

Subcontractor List, and is a material error and therefore renders the bid nonresponsive. Bid Item #71 is the only Erosion Control Bid Item for the Project. At the time of Bid Opening the work to be performed by Selby's for Erosion Control is listed as (Partial), however on the 24 Hour Submittal Bid Item #71 is listed as 100%. Since Bid Item #71 is the only Bid Item relating to Erosion Control for the Project, increasing the percentage of work to 100% is inconsistent with the original Subcontractor List, and is a material error and therefore renders the bid nonresponsive.

JJ Nguyen • Landscaping	JJ Nguyen Bid Items #44-#70 Bid Item #110 - 100% Bid Item #112(p) - 3% (note: this item is mobilization)
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Bid Item #28, Remove Irrigation Facility, was not listed on the Subcontractor List, but listed on the DBE Commitment form. The DBE Commitment form instructions states: "If applicable under Pub Cont Code § 4100 et. sec., the names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontractor List". The omission of Bid Item #28, is inconsistent with the original Subcontractor List, is a material error and therefore renders the bid nonresponsive.

*"Public Contract Code 4104 (a) (1) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California ..."*

Based on the above, Caltrans upholds its determination that Gordon Ball's bid is nonresponsive and will proceed to award this contract to the lowest responsible bidder, provided that all requirements have been met.

If you have any questions, please contact Irene Beckham, Contract Award Analyst, at (916) 227-6284.

Sincerely,



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

STATE OF CALIFORNIA - CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

**DEPARTMENT OF TRANSPORTATION**  
 DIVISION OF ENGINEERING SERVICES  
 OFFICE ENGINEER  
 1727 30<sup>th</sup> STREET, MS-43  
 SACRAMENTO, CA 95816-8041  
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 FAX (916) 227-6282  
 www.dot.ca.gov/hq/ecs/oc



Serious drought.  
 Help save water!!

November 14, 2014

Facsimile: (925) 838-5915

Hal Stober, President  
 Gordon N. Ball, Inc.  
 333 Camille Avenue  
 Alamo, CA 94507

04-1SS024  
 04-A1a-13-8.3  
 B.O 10/21/2014

Dear Mr. Stober:

The Department of Transportation (Caltrans) received a letter dated November 4, 2014, from Gordon N. Ball, Inc. (Gordon Ball) in response to a nonresponsive bid determination on the above contract. Gordon Ball requested Caltrans reconsider that determination. Based on that request, Caltrans re-examined Gordon Ball's bid. During this examination, Caltrans found additional material errors in the Subcontractor List/24-Hour Submittal Form. These errors further support a finding that Gordon Ball's bid is nonresponsive. The errors are as follows:

Caltrans's findings:

With Bid: Subcontractor/ Description of Work	24 Hour Subcontractor List submittal w/Bid Item(s) number and %.
Bayside Stripe & Seal (Bayside)	Bayside
• Striping.	Bid Items #3-#5 - 100% Bid Items #25, #28, #29 - 100% Bid Items #106-109 - 100% Bid Item #127 - 34% Bid Item #128(P) 1.7%
Bid Item #4, Channelizer (Surface Mounted), Bid Item #5, Temporary Pavement Marker, and Bid Item #29, Remove Pavement Marker are all items that are not considered Striping items and were therefore not included in the initial "Description of Portion of Work" submitted at time of Bid Opening as Striping. These items were added on the 24 Hour Subcontractor List thus expanding the work to be performed by Bayside. The addition of Bid Items #4, #5, and #29 on the 24 Hour Subcontractor List is inconsistent with the original Subcontractor List, is a material error, and renders the bid nonresponsive.	
RMT Landscape (RMT)	RMT
• Erosion Control (Partial)	Bid Items #69-#72 - 100%
The change from partial to 100 % expands the scope of work to be performed by RMT, is inconsistent with the original Subcontractor List, is a material error and renders the bid nonresponsive. Gordon Ball alleges that there are other Erosion Control items that are not included in the work for RMT landscape. Upon further examination of the Bid Item list, it is Caltrans' response that Bid Items #69-#72 are part of Erosion Control as described in the initial "Description of Portion of Work" but Bid Items #10-#23 are in fact part of Water Pollution Control not Erosion Control.	

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"

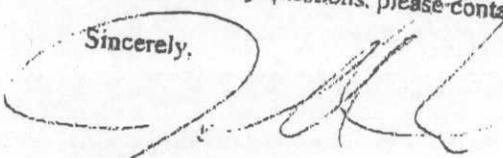
**EXHIBIT D**

Hal Stober  
Page Two  
November 14, 2014

Based on the above, Caltrans will proceed to award this contract to the lowest responsible bidder, provided that all requirements have been met.

If you have any questions, please contact Irene Beckham, Contract Award Analyst, at (916) 227-6284.

Sincerely,



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

# SECURITY PAVING COMPANY, INC.

P. O. BOX 1489 SUN VALLEY, CA. 91353-1489 PH.(818) 767-8418 FAX(818) 767-3169

## \* Fax Cover Sheet \*

Date: 12/12/14

To: John McMillan

Phone: \_\_\_\_\_

Company: Caltrans

Fax: (916) 227-6282

From: Joe Ferrndino

Subject: Bid Protest

REGARDING: 08-043514

This cover page is 1 of 12 pages.

\*IF THERE IS ANY OTHER INFORMATION YOU NEED PLEASE LET ME KNOW.

OFFICE# (818)767-8418 OR FAX# (818)767-3169.

THANK YOU