

GENERAL CONTRACTOR
LICENSE NO. 116307 A C12
FAX: 818.362.9300

SECURITY PAVING COMPANY, INC.

13170 TELFAIR AVENUE
SYLMAR, CA 91243
TEL. 818.362.9200

John McMillan, Deputy Division Chief
State of California Department of Transportation
Division of Engineering Services,
Office of Engineer, MS 43
1727 30th Street
Sacramento, CA 95816-8041

**Re: Contract No. 10-0V6604
Bid Protest of Bay Cities Paving**

Dear Mr. McMillan:

This correspondence is in response to Bay Cities Paving's response to Security Paving Company, Inc.'s protest of Bay Cities Paving's bid for the above-referenced project.

Bay Cities' response to Security Paving's bid protest boils down to "other contractors have been permitted to provide bid item numbers in lieu of an actual description of work for subcontractors in the description of work section and therefore, Bay Cities should be permitted to do the same."

Bay Cities' argument fails for two reasons. First, the examples used by Bay Cities to support its position are distinguishable from the way in which Bay Cities completed its Bid Day Subcontractor List and 24 Hour Submittal. Second, the fact remains that when a contractor only provides bid item numbers in the description of work section for each subcontractor, said contractor retains the ability to alter the amount of work that they wish to give to each subcontractor.

Retaining the ability to alter the amount of work subcontractors are given between the Bid Day Subcontractor List and the 24 Hour Submittal stands in direct contravention to the Subletting and Subcontracting Fair Practices Act's (*California Public Contract Code* section 4100 *et. seq.*) (the "Act") mandatory requirements for subcontractor listing and the purpose behind these requirements. As such, the bid from Bay Cities must be rejected as non-responsive for violation of the Act.

Bay Cities points to the bid of Shimmick Construction on Contract No. 12-0F96E4 as standing for the proposition that simply identifying a subcontractor's scope of work with bid item numbers is acceptable. It is important to note that Shimmick Construction's manner of bidding differs from Bay Cities' in that Shimmick Construction gave 100% of each bid item to the subcontractor whose scope of work was identified solely by bid item numbers.

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Bay Cities points to the bid of STL Landscape on Contract No.07-278204 as standing for the same proposition. However, STL Landscape only used bid item numbers to describe a subcontractor's scope of work for those bid items which STL Landscape gave 100% of the bid item to the subcontractor. In fact, the one bid item which STL Landscape only gave 60% of the bid item to the subcontractor, STL Landscape described said bid item with words.

Finally, Bay Cities references the bid of Las Vegas Paving for the same point. However, the focus of Chester Bros.' bid protest and Caltrans' response thereto was focused on whether describing a bid item by number and not words was acceptable. In other words, the bid protest only addressed whether bid item numbers were sufficiently descriptive. The heart of the issue was not addressed, i.e. whether identifying a subcontractor's scope of work by number and then assigning said subcontractor less than 100% of the bid item violates the Act. More broadly stated; whether identifying a subcontractor's scope of work by bid item number violates the Act because it leaves open the possibility that a contractor will negotiate a greater or lesser portion of work to be completed by the subcontractor after the submittal of the contractor's Bid Day Subcontractor List.

When one considers the true heart of the matter, the Act is clear that a contractor may not alter the initially subcontracted scope of work of a subcontractor between the Bid Day Subcontractor List and the 24 Hour Submittal. Here, in particular, Bay Cities only provided bid item numbers in the description of work section for each subcontractor, with no further description of work. The only reasonable and compliant interpretation when a contractor limits the description of the work to the bid item number is that all of that work for that bid item will be done by that subcontractor listed. However, if a contractor is permitted to then reduce the percentage of the bid item work actually given to the subcontractor from 100%, that contractor gains an unfair competitive advantage in clear contravention of the purpose of the Act.

It is important to remember that 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 the submission of the Bid Day Subcontractor List. This explicit purpose of the Act is defied if a contractor is permitted to identify a subcontractor's scope of work with a bid item number but then reduce or increase the work assigned to a subcontractor between the Bid Day Subcontractor List and the 24 Hour Submittal.

If Caltrans were to permit a contractor to simply list a bid item number, giving the impression that the entire bid item number is to be performed by a certain subcontractor, but then allow said contractor to reduce or increase the percentage of the work to be performed by said subcontractor after the contractor's Bid Day Subcontractor List has been submitted, the integrity of the subcontractor's bid cannot be guaranteed. To permit this would be to permit the contractor to pressure the subcontractor to lower its price for the bid item or face receiving a lower percentage of the work and for which the contractor could simply self-perform, thereby giving the contractor a significant unfair advantage. An open and transparent bidding process becomes a closed one.

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This is exactly what the Act is meant to protect against and to permit otherwise would violate the very purpose of the Act.

Accordingly, Bay Cities' bid must be rejected as non-responsive and Security Paving respectfully requests Caltrans award Security Paving the project as the lowest responsive bidder.

Should you have any questions regarding the above, please do not hesitate to contact the undersigned.

Respectfully,



Joseph Ferdino
V. P. Security Paving Co. Inc

SECURITY PAVING COMPANY, INC.

P. O. BOX 1489 SUN VALLEY, CA. 91363-1489 PH.(818) 767-8418 FAX(818) 767-3169

* Fax Cover Sheet *

Date: 9/24/14

To: John McMillan
Company: Caltrans

Phone: _____
Fax: (916)227-6282

From: Joe Ferrndino

Subject: 10-0V6604

REGARDING: _____

This cover page is 1 of 4 pages.

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

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

THANK YOU