

**BAY CITIES PAVING & GRADING INC.**

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September 26, 2014

**FAXED**

Department of Transportation, MS 43  
 Attn: John McMillan, Deputy Division Chief  
 1727 30<sup>th</sup> Street  
 Sacramento, CA 95816

Project: 10-0V6604  
 Bid Opening: 09/03/14  
 Re: Response to 2<sup>nd</sup> Protest Letter of Security Paving Company, Inc.

Dear Mr. McMillan,

On September 24, 2014, Security Paving Company ("SPC") submitted a second protest of Bay Cities' bid. In this letter, SPC offers no relevant arguments that would support its protests. SPC's argues that Caltrans' decisions and statutory law should be overlooked so that SPC can be awarded the Contract. For Contract, 07-278204, Caltrans wrote that:

"With respect to the protest as it relates to the Subcontractors List and DBE Commitment forms, it is acceptable for a bidder to use the descriptions as noted from the bid item list to complete the description of work to be performed."

Caltrans' position may seem fuzzy to SPC but there is no ambiguity in Caltrans' holdings: bid items can be used to complete the description of work performed. Contractors have been using bid items as descriptions for subcontractor work not because they have somehow sneaked this use past Caltrans' blind eyes but because Caltrans has explicitly approved this use. If Bay Cities' bid describes ABSL's work as Item 20 and Item 20 is listed in the Bid Documents as "Remove Asphalt Concrete Dike," Caltrans has a description of ABSL's work. In fact, the bid item numbers provide narrower and more detailed descriptions of subcontractor work than commonly accepted general descriptions such as "electrical," "sitework," or "bridgework."

In support of its claim, SPC makes a strange argument that "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 of the Subletting and Subcontracting Fair Practices Act." In fact, Caltrans acceptance of percentages is specifically supported by the Act. Historically, the Act only required three types of information on bid day: the name of the subcontractor, the subcontractor's location, and a description of the work to be performed by the subcontractor. In 1998, the Legislature amended the Act to allow public entities to request additional subcontractor information within 24 hours of the bid opening. Caltrans has exercised its options under the Act and requires that Bidders provide the percentages of subcontractors' bid items within 24 hours of the bid opening. Contrary to SPC's position, Caltrans' procedure-- which allow Bidders to list their subcontractor's bid items percentages within 24 hours of the bid opening-- is expressly authorized by the Act.

SPC also argues that listing a bid item number as a description provides a bidder some unexplained advantage over other bidders. Under SPC's theory, if a bidder lists a subcontractor for Item No. 4 (Construction Area Signs), then that bidder will have the secret ability to shop the subcontractor's price

John McMillan  
September 26, 2014  
Page 2

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which it would not have had if that bidder has listed the subcontractor's work as "Construction Area Signs." SPC's argument is novel in that it fails to apply any facts, reason or logic to support its position that using bid numbers makes a difference or allows any advantage. If a Bidder describes a subcontractor's work as "Item No. 4" on Bid Day and then lists that subcontractor's percentage of work as 90% within 24 hours, that bidder is in the same exact position as another bidder who lists the subcontractor's work as "Construction Area Signs" and then lists the percentage of that subcontractor's work as 90% within 24 hours. There is no difference. The use of the bid item number serves as an abbreviated description of work not unlike bidders use of "CAS" to describe "Construction Area Signs" or "CIDH" to describe "Cast In Drilled Holes."

Caltrans bid documents require bidders provide subcontractors names, locations, and bid descriptions and percentages of bid items (within 24 hours). Bay Cities provided all the information required by the Act, by Caltrans and by the bid documents. SPC's protest is without merit and should be rejected. If you have any questions about this, please contact me.

Sincerely,



Marlo Manqueros  
Vice-President

cc: File

# facsimile

## TRANSMITTAL

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**to:** John McMillan/ Deputy Division Chief, Caltrans  
**fax #:** (916) 227-6282  
**re:** CDOT Contract 10-0V6604, Response to 2<sup>nd</sup> Security Paving Protest  
**date:** September 26, 2014  
**pages:** 3, including cover sheet.

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From the desk of...

**Mario Manqueros**  
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