



Via Facsimile (916) 227-6282

June 11, 2015

Department of Transportation
Division of Engineering Services
P.O. Box 168041, MS-43
Sacramento, CA 95816-8041

ATTN: John McMillan, Deputy Division Chief
REF: Caltrans Contract No. 10-0W1404
SUBJECT: Response to Bay Cities Paving & Grading Letter

Mr. McMillan:

Granite Construction Company (Granite) has reviewed the letter submitted by Bay Cities Paving and Grading, Inc. (Bay Cities) in response to Granite's previous letter dated May 28, 2015 regarding the above referenced project. The fact remains that Bay Cities' DBE Commitment Form overstates its DBE participation.

A.C. Dike's Work is Not Subject to Nighttime Rates

Bay Cities claims that A.C. Dike's work will begin at 5:00 am, before sunrise and therefore is subject to nighttime rates. Bay Cities is incorrect in its claim that work which begins before sunrise is subject to nighttime labor rates. A.C. Dike is signatory to the Local 3 Operating Engineers, as is Bay Cities (and Granite). Sections 06.04.00 and 6.04.03 of the Local 3 Master Labor Agreement, both of which are applicable to A.C. Dike's work, clearly state that "the regular starting times of the single shift shall be between 5:00 am and 10:00 am." (Emphasis added). According to the Labor Agreement, to which A.C. Dike and Bay Cities (and Granite) are bound, a shift starting at 5:00 am is a regular starting time and does not require special pay rates.

Dragon's Participation

As stated in our previous letter, Bay Cities has incorrectly included sales tax when calculating Dragon's participation. In its response, Bay Cities is attempting to increase the scope of work for Dragon by now claiming that Dragan will provide 668 tons of liquid asphalt instead of the 500 tons originally claimed. Caltrans cannot allow a bidder to increase the scope of work for a vendor after the deadline for submitting the DBE Commitment Form. Bay Cities' (and all bidders) DBE submittals (including commitment forms and good faith efforts documentation) must be evaluated based on the documentation submitted within the specified deadline, i.e. "No later than 4 p.m. on the 4th business day after bid opening." Changes made by a bidder after bid time and the deadline set for submission of the DBE commitment forms and good faith efforts documentation cannot be taken into consideration in determining the responsiveness of the bid and DBE submittal. To do so would give such bidder a substantial advantage not afforded other bidders (namely, additional time to prepare its bid packet).

Additionally, the DBE Commitment Form requires bidders to "Attach written confirmation from each DBE shown stating that it will be participating in the contract to perform the *specific work shown for the specific amount agreed to.*" (Emphasis added). The cover letter dated May 18, 2015 submitted by Bay

John McMillan, Deputy Division Chief

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Cities with its DBE Commitment Form states "Bay Cities has included copies of the quotes of DBE's who will be performing work on the Project attached to this letter as confirmation that these DBE's will participate in the contract." The quote included as confirmation from Dragon confirms that they will be participating in the contract by providing 500 tons of liquid asphalt. There is no confirmation from Dragon that they will provide 668 tons of liquid asphalt for the project. Only the specific amount of participation that has been confirmed can be counted for participation on the DBE Commitment Form.

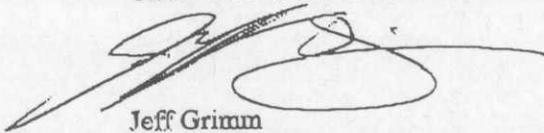
Conclusion

As explained in our previous letter, Bay Cities did not achieve the DBE goal as claimed in its DBE Commitment Form. Bay Cities cannot be allowed to alter their DBE Commitment Form after the submission deadline by increasing the scope of work for a vendor. Doing so would allow an unfair competitive advantage.

Granite again requests that Caltrans correct Bay Cities' DBE participation based on information Bay Cities submitted with its DBE Commitment Form and then evaluate the merits of Bay Cities' Good Faith Efforts compared to other bidders who achieved the DBE Goal.

Please do not hesitate to contact me at (559) 441-5715 if you have any questions or require additional information.

Sincerely,
GRANITE CONSTRUCTION COMPANY



Jeff Grimm
Chief Estimator

Encl.: Section 06.04.00 & 06.04.02 of the Local 3 Operating Engineer's Master Labor Agreement
Bay Cities' DBE Commitment Form dated 5/15/2015
Bay Cities' DBE Information Cover Letter dated 5/18/2015

**2013-2016
OPERATING ENGINEERS
MASTER AGREEMENT**

hours. Saturday make-up work shall be performed on a voluntary basis only, and no Employee shall be discharged or otherwise disciplined for his refusal to perform such work.

06.01.03 The above Section shall not apply when working in conjunction with and/or in support of another craft employed by the Individual Employer and receiving overtime for Saturday work. Where such other craft is receiving overtime, the Employees covered by this Agreement shall be compensated on the same basis.

06.02.00 Not less than one-half (1/2) of a shift or a full shift from May 1st through October 31st and not less than one-half (1/2) of a shift, three-quarters (3/4) of a shift or a full shift from November 1st through April 30th at the applicable rate shall be paid for the work performed on any one (1) shift subject to Section 06.22.00 of this Section. However, on the first (1st) day of employment; on jobs of less than one (1) day's duration; on the last day of the job; and on any day that the work on a job or project is suspended on account of weather conditions, by written order of the Contracting Authority, or by any Governmental agency having the authority to suspend the work, by the unavailability of fuel, power or water, and on days on which there is a major mechanical breakdown (i.e., Employees directly affected by such breakdown), not less than four (4) hours at the applicable rate shall be paid for work performed and any time thereafter shall be reckoned by the hour.

06.03.00 *Reckoning of Time.*

Straight-time hours of employment shall be reckoned by the half (1/2) shift and the full shift from May 1st through October 31st and by the half (1/2) shift, three-quarters (3/4) shift and the full shift from November 1st through April 30th, except as otherwise provided in Section 06.02.00 above. Overtime hours of employment before and after a shift shall be reckoned by the hour and half-hour at the applicable overtime rate. Overtime on Saturdays, Sundays or holidays shall be reckoned as provided in Section 06.22.00. If an Employee quits work on his own, he shall be paid only for actual time worked.

06.03.01 Provided, however, in cases of emergency, Employees called out to work "the second half of the shift" during the normal straight-time hours shall receive not less than four (4) hours at the applicable overtime rate.

06.03.02 Employees who work on a chip seal job shall be paid not less than four (4) hours at the applicable rate. Work performed in excess of four (4) hours up to a full shift shall be reckoned by the hour.

06.04.00 *Staggered Starts.*

On a single shift, eight (8) consecutive hours or ten (10) consecutive hours (exclusive of meal period) shall constitute a shift's work; the regular starting times of the single shift shall be between 5:00 a.m. and 10:00 a.m. An earlier or later starting time may be established by agreement between the Union and the Individual Employer. The Individual Employer may, by mutual agreement with the Union, stagger individual crews starting times at the Employee's regular rate of pay within the regular established starting times of this Section. There shall be no more than two (2) staggered start times on any Project and no more than one (1) hour between the staggered start times. The Individual Employer shall not engage in any scheme, device or subterfuge to circumvent Sections 06.04.01 and/or 06.14.01, including, but not limited to changing Employees from one piece of equipment to another, or from one assignment to another, moving equipment and/or Employees from one work site to another, or using a different piece of equipment to perform the work.

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06.04.01 The Heavy Duty Repairman and/or Welder performing a particular heavy duty repair assignment shall be given the first choice to perform the assignment before or after the shift.

06.04.02 *Paving, Soil Stabilization or Pipelaying Crews only.*
The regular starting times of the single shift shall be between 5:00 a.m. and 10:00 a.m.

06.04.03 *Special Single Shift.*
When the Individual Employer produces evidence in writing to the Union of a bona fide job requirement for a public agency or a public utility which certifies that some or all of work can only be done other than during the normal shift hours, and notifies the union during the prejob conference or by FAX, E-MAIL, or certified mail at least three days (3) before the start of such special shift (except in the case of emergency), the Individual Employer may initiate such special shift of eight (8) consecutive hours (not in conjunction with any other shift) (exclusive of meal period), Monday through Friday.

Such shift shall be in accordance with the provisions of Section 06.02.00.

1. Provided, however, if, by direction of the Contracting Authority, the bid specifications require it, or congestive traffic conditions on Fridays are such that working conditions would be unsafe for Employees, or counterproductive to the performance of work, the special single shift may commence on Sunday with double (2) time to be paid from 8:00 p.m. Saturday up to and including 8:00 p.m. Sunday and the applicable straight-time rate paid from 8:00 p.m. Sunday until completion of the eight (8)-hour special single shift. If Sunday is the first day of the workweek as provided herein, all hours worked between 8:00 p.m. Friday and 8:00 p.m. Saturday shall be paid at time and one-half (1-1/2).
2. Flexible starting times shall be permitted for crews on a special single shift whenever an Operating Engineer Foreman is employed on the special single shift.

06.04.04 Employee's straight-time rate shall be the applicable wage rate set forth in 01.03.00, 01.03.01, 01.03.02, 01.03.03, 01.03.06 and 01.04.00 for Special Single Shift work.

06.04.05 For the purposes of this Section, Saturday shall begin at the close of the regularly established shift on Friday.

06.04.06 *Special Service and Maintenance Shift.*
Upon written notice to the Union, an Individual Employer may initiate a special service and maintenance shift (not to include heavy duty repair) other than during the normal shift hours. The Employees' straight-time wage rate for all work on such special service and maintenance shift shall be the applicable wage rate set forth in Group 4 of this Agreement. For the purpose of this Section, changing filters and belts and making minor adjustments are not considered to be heavy duty repair.

Once an Individual Employer has established a starting time for a special service and maintenance shift, it shall not be changed except by mutual consent of the Union and the Individual Employer.

Low Bidder

05-19-15A11:24 RCVD

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
DBE - COMMITMENT
DES-05-0102.100 (REV 12/2014)

CONTRACT NO: 10-0W1404

BID AMOUNT: 2,704,318.-

BID OPENING DATE: May 14, 2015

BIDDER'S NAME: Bay Cities Paving & Grading, Inc.

DBE GOAL FROM CONTRACT: 9

DBE PRIME CONTRACTOR CERTIFICATION: 9

TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE): 6

TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE): 1,010,129.-

BID ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED ²	WORK CATEGORY CODES ³	NAME OF DBE (Must be certified on the date bids are opened. Include California certification no., DBE address, and phone number. Show 2nd and last for subcontractors)	AMOUNT (\$)
13(P), 14, 15	Prepare SWPPP, storm water Annual Report, provide storm water pump	C8852 C8722	Tully Consulting Group 180 B. First St. Ste 9 Dixon CA 95620 707.693.1926 CT-038300	5,900.-
1(P)	Lead Compliance Plan for Earthwork	C8851	Adanta, Inc. 828 School St. Napa CA 94559 707.709.8894 CT-031357	1,250.-

Show all DBE firms being claimed for credit, regardless of tier. Attach written confirmation from each DBE showing stating that it will be participating in the contract to perform the specific work shown for the specific amount agreed to.

The names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontractor List (Pub Cost Code § 4100 et seq.).

¹Each DBE prime contractor must enter its certification number and show all work to be performed by DBEs, including work performed by its own forces.

²If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be performed or furnished.

³Use Work Category Codes from the California Unified Certification Program database.

Total Claimed Participation

\$ 243,743.-

9 %

The bidder acknowledges that it is committed to work the DBEs shown on this form to meet the contract goal (49 CFR 26.53).

Signature of Bidder

5/15/15
Date 925.687.6666
(Area Code) Tel. No.

Person to Contact

Ben L. Rodriguez Jr
(Please Type or Print)

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-80, Sacramento, CA 95814.

BAY CITIES PAVING & GRADING INC.

Bus: 1450 Civic Court, Bldg. B Suite #400, Concord, CA 94520
(925) 687-6666
Fax (925) 687-2122

Mall: Post Office Box 6227, Concord, CA 94524-6227

Low Bidder

05-19-15 A 11:24 RCVD

May 18, 2015

SENT VIA OVERNIGHT DELIVERY

MSC 43
Office Engineer
Department of Transportation
1727 30th Street
Sacramento, CA 95816-7005

Project: CONTRACT 10-0W1404
Bid Opening Date: May 14, 2015

Re: Submission of DBE Information Pursuant to Section 2-1.12 of the Special Provisions.

To Whom It May Concern,

Enclosed please find Bay Cities' completed "Caltrans Bidder-DBE Commitment" Form. The DBE goal for the Project is 9% and Bay Cities has met this DBE goal. Bay Cities has also enclosed a completed "Good Faith Efforts Documentation" form and attached documents evidencing Bay Cities' good-faith efforts to obtain DBE participation. Bay Cities has included copies of the quotes of DBE's who will be performing work on the Project attached to this letter as confirmation that these DBE's will participate in the contract. If you should have any questions regarding this, please contact me.

Sincerely,



Russ Olney
Estimator

cc: File



FAX

2716 Granite Court
Fresno, CA 93706
Phone: 559-441-5715
Fax: 559-441-5791
BID FAX 559-263-9601

To: <u>John McMillan</u>	From: <u>Jeff Grimm</u>
Company: <u>Caltrans</u>	Date: <u>6/11/2015</u>
Fax: <u>(916) 227-6282</u>	Total Pages (including cover page): <u>7</u>
Phone: _____	Sender's Reference Number: _____
RE: <u>Caltrans Contract No. 10-0W1404</u>	Your Reference Number: _____

- Urgent
 For Review
 Please Comment
 Confirm Receipt

Notes and Comments: