



# COFFMAN SPECIALTIES, INC.

GENERAL AND ENGINEERING CONTRACTORS

January 20, 2015

Sent via facsimile: 916 227-6282

E-mail and U.S. Mail

John C. McMillan, Deputy Division Chief, Office Engineer  
California Dept. of Transportation  
P.O. Box 168041, MS-43  
Sacramento, CA 95816-8041

Re: Caltrans Contract #11-407004; Federal Aid Project # ACNHPI-008-1(315)E  
Response to Granite Construction's Protest of Coffman Specialties, Inc.'s Low Bid

Dear Mr. McMillan:

Coffman Specialties, Inc.'s (Coffman) bid was fully responsive to the Department of Transportation's (Caltrans) contract bid documents. Caltrans has no choice but to award the contract to Coffman. Coffman opposes the untimely protest filed by Granite Construction (Granite) concerning Coffman's bid for Caltrans Contract No. 11-407004 to construct the Rte. 8/67 Separation Project; the arguments raised in Granite's protest are implausible and without merit. Coffman completed every aspect of the bid in strict accordance with the bid instructions.

## I. BID RESULTS

Caltrans received and opened bids on December 18, 2014. Coffman was the apparent lowest responsible bidder. The three bids submitted were:

Bid Rank	Contractor	Bid Amount	Δ from low bid (\$)	Δ from low bid (%)
1	Coffman Specialties	\$ 34,885,000.00	<i>LOW BID</i>	<i>LOW BID</i>
2	Granite Construction	\$ 34,938,548.00	\$ 53,548.00	0.2%
3	API	\$ 39,597,000.00	\$ 4,712,000.00	11.8%

## II. COFFMAN PROPERLY COMPLETED THE SUBCONTRACTOR LIST FORM

Coffman electronically submitted a responsive bid with an accurate Subcontractor List on bid opening day. Within 24 hours, Coffman submitted its 24 hour submittal providing the additional information required by the bid instructions (Bid Items and percentage of work subcontracted). Within 72 hours thereafter, Coffman sent Caltrans its DBE Commitment form which included subcontractor J. Francis Company's (J. Francis) Proposal.

Granite argues that Coffman's bid is nonresponsive because Coffman's "description of portion of work" at bid time for J. Francis' scope of work – "Bridge Deck Repair, treatment" – was "enlarged" by including Bid Items 44 and 45 in the 24 hour submittal. Granite's protest is incorrect and improper because:



WBE

1. Coffman never enlarged the scope of J. Francis' work. Bid Items 44 (Joint Seal (MR ½")) and 45 (Joint Seal (MR 1")) are in the nexus of the bridge repair work and fall within Coffman's stated description of J. Francis' subcontracted work; and
2. Items 44 and 45 are worth less than 0.5 % of Coffman's total bid price and did not have to be listed at bid time (i.e. Caltrans may not reject a bid as nonresponsive on the grounds that a subcontractor's scope by work was "enlarged" by work worth less than 0.5 %).

### **III. CALTRANS MUST AWARD THE CONTRACT TO THE LOWEST RESPONSIBLE BIDDER**

Caltrans is required to administer the competitive bidding process in a fair and equitable fashion in strict accordance with Part 2 of the California Public Contract Code and Chapter 1 of Title 23 of the United States Code. Caltrans must award contracts to the lowest responsible bidder. (Pub. Cont. Code § 10180, 23 U.S.C. 112). (All subsequently cited code sections are to the California Public Contract Code unless otherwise stated.)

This federally-aided contract is bound by 23 U.S.C. § 112 "Letting of contracts" which says in relevant part:

(b) Bidding Requirements.—

(1) .... Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

A bidder is responsible if it can perform the contract as promised. A bid is responsive if it promises to do what the bidding instructions require. Usually, whether a bid is responsive can be determined from the face of the bid without outside investigation or information. (*Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal. App. 4th 1432, 1438.) Coffman's bid promised to do what the bid instructions required.

Caltrans must administer the bidding process in a uniform, consistent manner "to the maximum extent possible." (§ 102) A review of bid protests filed with Caltrans over the past few years demonstrates the great detrimental effect of its subjective test of the acceptability of a bidder's "description."

#### **A. J. Francis' Scope Of Work Was Not Enlarged.**

1. **Coffman's Description of J. Francis' Portion of Work Includes the Items Identified in the 24-Hour Submittal.**

Coffman neither enlarged nor changed J. Francis' portion of work from the time of bid to the time of submitting the 24 hour submittal. Items 44 and 45 were always included in the description Coffman gave for J. Francis' work. Items 44 and 45 are associated with "Bridge Deck Repair and treatment" and within the scope of J. Francis' bid-time work description.

Granite uses the buzz words to fuel its protest, but a review of Coffman's bid proves there is no support for Granite's hollow allegations. Granite's assertions that Coffman did not comply with the Bid Instructions to "provide complete information in columns 1 through 4" of the Subcontractor List, that the 24 hour submittal is "materially inconsistent" with Coffman's description of J. Francis' portion of work, that Coffman "revised its Subcontractor list," and that "joint seal work is not associated with bridge deck repair and treatment" are all absolutely incorrect and contrary to what Coffman's bid, the 24 hour submittal, and the bid documents show.

Joint Seal (MR ½") and Joint Seal (MR 1") relate directly to and are commonly associated with bridge rehabilitation, and on this bid are within "Bridge Deck Repair, treatment." They are located at the ends of the bridge deck, and will be inserted by J. Francis as part of and in association with the bridge repair work. The Project Plans indicate bridge repair work, as shown on the sheet entitled "Approach Slab/Deck Rehabilitation" (General Plan No. 1, Attachment "1"). On this Plan Sheet, the bridge repair work is indicated; it includes a legend delineating the work within the nexus of repair work, including joint seals, deck treatment, and approach slabs. The joint seals are physically attached to the bridge deck. J. Francis considers Items 44 and 45 as part of its core work as demonstrated by its inclusion of the Items in its Proposal (submitted to Caltrans with Coffman's DBE information) (Attachment "2").

The Act permits the prime contractor to define the "portion" of work to be done by each subcontractor. (Pub.Contract Code, § 4104, subd. (b).) (*Valley Crest Landscape, Inc. v. City Council, supra*, at 1440.) At bid time, Coffman and J. Francis considered Items 44 and 45 as work within J. Francis' defined portion of work, as evidenced by the inclusion of these items in J. Francis' Proposal, Coffman's inclusion of J. Francis' proposed costs in Coffman's bid, and the absence of the Items from any other subcontractor's work description or scope in Coffman's Subcontractor List.

Caltrans gives a "description" of the contract work in its Notice to Bidders as follows: "General work description: Cold plane, RHMA overlay, and replace approach slabs." (Notice to Bidders and Special Provisions, pg. 1.) Caltrans' description does not even mention bridge deck repair and treatment work. Caltrans' own definition of "description," evidenced by the Notice, is very broad. It has no basis to hold bidders to a different, but silent standard.

**2. Caltrans has no discretion to judge the prime contractor's defined "description."**

Granite asserts that Bid Items 44 and 45 in the 24 Hour Submittal are "not associated with bridge deck repair and treatment, therefore Coffman has enlarged the scope of work by including [them] on its 24 hour subcontractor listing." As stated above, Coffman included Items 44 and 45 in its

“bridge deck repair and treatment” description, and Caltrans included the Joint Seal Items in the “Approach Slab/Deck Rehabilitation” Plan Sheet. Caltrans may not use a subjective test not set forth in the bid instructions to determine whether the description defined by the bidder is related to the Items included in the 24 hour submittal. It is a long and well-established rule that where municipal contracts are required to be let upon public bidding, the proposals and specifications inviting such bids must be sufficiently detailed, definite and precise so as to provide a basis for full and fair competitive bidding upon a common standard and must be free of any restrictions tending to stifle competition. (*Baldwin-Lima-Hamilton Corp. v. Superior Court In & For City & Cnty. of San Francisco*, 208 Cal. App. 2d 803, 821 (Ct. App. 1962).)

Granite misleadingly gives labels to J. Francis’ Proposal’s price groupings. The Proposal shows that Group I is not called “bridge deck repair,” Group II is not called “bridge deck treatment,” and Group III is not called “bridge joint seal work.” This argument is deceptive. J. Francis considers all items as part of its potential core work” and therefore included them all in its Proposal.

The ‘description’ provision in Caltrans’ bid instructions does not afford a basis for consistent, uniform “full and fair competitive bidding” upon which a bid could be legally rejected as nonresponsive. It cannot be reasonably concluded that prospective bidders could infer from the bid instructions that, despite clear statutory language saying the prime contractor “defines” the description, Caltrans staff members can subjectively decide if they think a bidder’s description adequately includes later-listed Bid Items.

The court in *Valley Crest* was asked to decide if “portion” in § 4104 required listing the percentage of the subcontracted work item. The Appellate Court “declined to add a requirement not found in the statute” and held § 4104 did not require listing percentages of work, reasoning:

“If the Legislature intended “portion” to mean percentage, it could have simply used the term “percentage” instead. By using the different term “portion,” the reasonable inference is the Legislature intended a different meaning than percentage.”

(*Valley Crest Landscape, Inc. v. City Council, supra*, at 1439.) Similarly, if a bidder’s description was required to have specific language, or terms, or matching the categories laid out in the contract specifications, the statute (or the bid instructions) would have said so, but it didn’t.

**B. The Portion Of Work At Issue (Items 44 And 45) Amounts To Less Than ½ Of 1 Percent And Was Not Required To Be Listed In The Bid.**

The Act contains certain restrictions relative to work valued at more than 0.5% of the contractor’s total bid price. For example:

1. The Act requires a bid to list each subcontractor who will perform work, 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. (§ 4104)

2. The Act forbids subcontracting of any portion of work in excess of one-half of 1 percent of the prime contractor's total bid for which no subcontractor was designated in the original bid, except in cases of public emergency or necessity. (§ 4109)
3. If a prime contractor fails to specify a subcontractor for a portion of work exceeding one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that it is qualified to perform that portion itself, and that it will perform that portion itself. (§ 4106)
4. A prime contractor whose bid is accepted may not substitute a subcontractor in place of the subcontractor listed in the original bid, except with consent from the owner. (§ 4107)

- Nowhere does the Code forbid a prime contractor from subcontracting any portion of work that does not exceed 0.5 % without listing it in the Subcontractor list.

- Nowhere does the Code forbid a prime contractor from subcontracting a portion of work – after bid time – that was not part of an originally listed subcontractor's work.

- Nowhere does the Code require a prime contractor list subcontractors whose work is under 0.5%.

Assuming arguendo that Caltrans' assertion (that Bid Items 44 and 45) were not part of J. Francis' "portion" of work at bid time (it was), the fact that Coffman disclosed that J. Francis was going to perform those Items is legally irrelevant.

Coffman was not obligated to list a subcontractor to perform Items 44 and 45 because the work amounts to less than one-half of 1 percent of the total bid. Items 44 and 45 are worth \$60,858 and \$39,040 (a combined amount of \$ 99,898). One half of one percent of Coffman's total contract price is \$174,425. Since the law does not require that this work be listed at all, no law forbids Coffman from giving Items 45 and 46 to anyone, including J. Francis, because Coffman had not subcontracted the work to a listed subcontractor.

No bid instruction was violated by Coffman's actions. The requirement to submit the Subcontractor List and 24 hour Submittal arise from the Subletting and Subcontracting Fair Practices Act (the Act) (§ 4100-§ 4114). Section § 4104 of the Act requires listing, at bid time, subcontractors whose work exceeds one-half of 1 percent of the prime contractor's total bid (or \$10,000, whichever is greater); and the "portion" of the work that each subcontractor will do.

The purpose of the Act is to prevent bid shopping (when a prime contractor uses the bid of a listed subcontractor to pressure other subcontractors to do work for even less, to the contractor's profit), and "bid peddling" (when subcontractors undercut a known listed subcontractor's bid), after award of a public contract, and to give the awarding authority the opportunity to investigate and approve the initial subcontractors and any replacements, because "bid shopping" and "bid peddling" often result in poor quality of material and workmanship, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils. (§ 4104; § 4101, *Valley Crest Landscape, Inc. v. City Council, supra*, at 1439, and *R.J. Land & Assoc. Const. Co. v. Kiewit-Shea* (1999) 69 Cal. App. 4th 416, 419-20.)

The conduct Granite complains of -- enlarging a subcontractor's scope of work -- (which Coffman

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didn't do) did not, and could not have permitted bid shopping or bid peddling, as evidenced by the inclusion of Items 44 and 45 in J. Francis' Proposal.

"Portion of work" as used in § 4104 is not defined. Section 4104 states allows prime contractors to decide, in their discretion, the description used. This allows contractors to organize their bids in their own way (utilizing the terms they choose) and to carry their organizational method into the bid papers, leading to an efficient, competitive bid.

In light of the mandatory requirement that Caltrans award to the lowest responsible bidder, it is incumbent upon Caltrans to look at available evidence concerning allegations of "nonresponsiveness" relating to § 4104 before it awards to someone other than the lowest responsible bidder.

J. Francis quoted various items of work. Since the Bid Instructions call for a 'description' of the "portion" of subcontracted work—not the full scope of work or even a "detailed" description—Coffman described J. Francis' "portion" of work as "Bridge Deck Repair, treatment." Such a description was proper. Items 44 and 45 were included in Coffman's description as Caltrans could have verified by the Proposal and the 24 hour submittal.

No legal or contractual authority exists for Caltrans' staff to subjectively to give notice to "re-define" Coffman's defined descriptions of portions of subcontracted work as not including this item, when Caltrans knew, from prior Coffman bids, that Coffman's contractor's defined descriptions did include this item of work. Caltrans does not have the authority to intentionally misinterpret Coffman's bid, and based on such misinterpretation, label the bid nonresponsive.

#### **IV. CALTRANS' PAST DECISIONS MENTIONED BY GRANITE ARE UNPERSUASIVE IN THIS PROTEST**

Granite argues that, because Caltrans found past bids nonresponsive on the grounds that Bid Items included in the 24 hour submittal impermissibly "expanded the scope" of the subcontracted work. First, the facts of each case are different and none are directly on point.

Second, Caltrans should never subjectively determine what a prime contractor's self-defined "description" of a portion of subcontracted work may or may not have included and, on that basis that is undefined in the bid instructions, declare a bid nonresponsive. Such conduct is not authorized by law and leads to disparity, inconsistency, non-uniformity in the bidding process. It requires bidders to be clairvoyant in knowing how the specific Caltrans staff member assigned to the protest might feel about that work and what a suitable description may be.

The recent Coffman matter referenced by Granite was incorrectly decided, and disputed by Coffman. Caltrans never provided notice of nonresponsiveness to Coffman and therefore Coffman was never given an opportunity to be heard on the matter of responsiveness – particularly concerning Item 65 and whether it relates to the description of Statewide's subcontracted work (the basis Caltrans found the bid nonresponsive) (which was not raised by the bid protest, but only cited in Caltrans' decision letter). This decision, too, is unpersuasive.

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The most one can discern from the Caltrans decisions attached to Granite's protest and the wealth of protests on file with the Department over the same issue (whether a subcontractor's scope was expanded), is that Caltrans' subjective interpretations of prime contractor's "descriptions" has muddied the bidding process and inspired a multitude of non-low bidders to file protests in the hopes of gaining a windfall. (But, in this case, there is no doubt that the Joint Seal Items are associated with the description, and the subcontractor's work was not expanded.)

Caltrans' inconsistent evaluations of prime contractors' bids (using unspecified and unwritten terms like "relates to," "is relevant to" has a nexus with," or "expands the scope of" that are not found anywhere in the Act or the bid instructions cause prime contractors to make inconsistent arguments to the State to try to keep or take a contract – depending on whether they are the one challenged or the challenger. See, for example, Granite's argument that "joint seal" relates to "raise bridge" in its opposition filed in Contract 03-3E1004 (Attachment 3, p. 6 (without exhibits).)

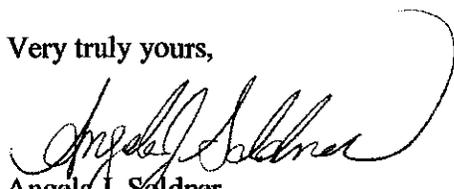
"It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy." (*Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 908-909.)

#### V. CALTRANS MUST AWARD THE CONTRACT TO COFFMAN

Granite's argument regarding good faith efforts is inapplicable, because Coffman does not need to self-perform the work – its bid was responsive and it included J. Francis' work as indicated in the bid. Granite argues that the actions it complains of "created an advantage for Coffman" by claiming Coffman was able to claim more DBE participation than it was entitled. This argument is misplaced. Coffman is entitled to claim the participation that it did because its bid was proper. There was absolutely no unfair advantage involved.

Since Items 45 and 46 amount to less than 0.5 % of Coffman's total bid price, Coffman's self-defined description for J. Francis' work did include those Items, and the Contract Plan Sheet shows that the Joint Seals are within the nexus of the bridge repair work, Coffman's bid was responsive. Coffman therefore submitted the lowest bid, and the contract must be awarded, if at all, to Coffman. We request that you find that Coffman's low bid was responsive, and proceed to award to Coffman as the lowest responsible bidder. Thank you for your attention to this matter.

Very truly yours,



Angela J. Soldner  
General Counsel

Encls.

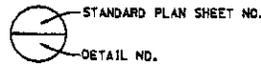
# ATTACHMENT 1

**INDEX TO PLANS**

Sheet No.	Title
1	GENERAL PLAN NO. 1
2	GENERAL PLAN NO. 2
3	GENERAL PLAN NO. 3
4	GENERAL PLAN NO. 4
5	JOINT SEAL DETAILS NO. 1
8	JOINT SEAL DETAILS NO. 2
7	STRUCTURE APPROACH TYPE R(30D)

**STANDARD PLANS DATED 2010**

A10A	ABBREVIATIONS (SHEET 1 OF 2)
A10B	ABBREVIATIONS (SHEET 2 OF 2)
A10C	LINES AND SYMBOLS (SHEET 1 OF 3)
A10D	LINES AND SYMBOLS (SHEET 2 OF 3)
A10E	LINES AND SYMBOLS (SHEET 3 OF 3)
RSP B6-21	JOINT SEALS (MAXIMUM MOVEMENT RATING = 2")



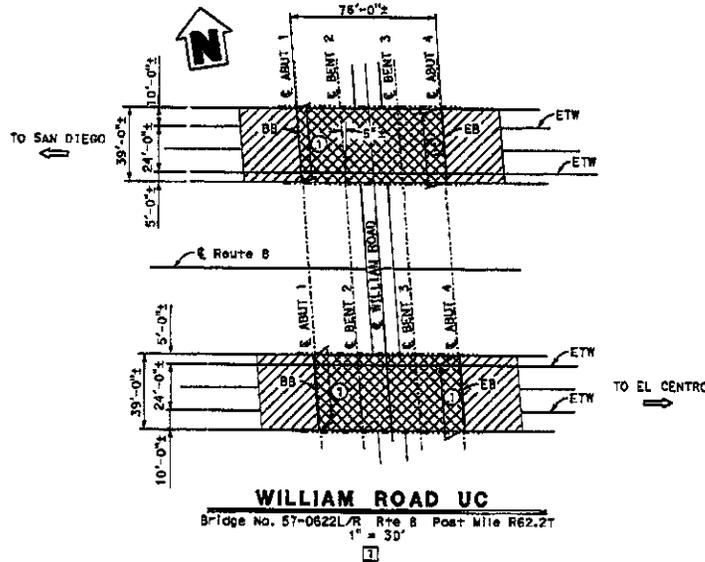
DETAIL NO.

**LEGEND**

- Indicates Existing Structures
- Indicates location of new Joint Seal.
- [Hatched Box] Indicates Limits of Approach Slab Type R(30D)
- (O) Limits of Paving Notch Extension
- (X) Structure Location, see Joint Seal Table on "JOINT SEAL DETAILS" sheet.
- [Vertical Lines Box] Indicates Limits of Prepare and Treat Bridge Deck with Methacrylate. See "Deck Repair Detail" on "JOINT SEAL DETAILS No. 2" sheet.
- [Cross-hatched Box] Indicates Limits of AC Overlay Removal and Prepare and Treat Bridge Deck with Methacrylate. See "Deck Repair Detail" on "JOINT SEAL DETAILS No. 2" sheet.

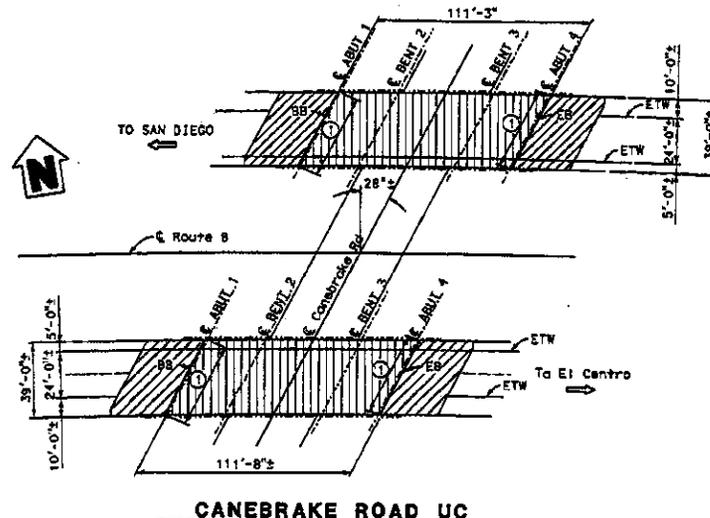
DIST	COUNTY	ROUTE	POST MILES TOTAL PROJECT	SHEET NO.	TOTAL SHEETS
11	SD	8	R61.2/R77.6	65	71

**REGISTERED CIVIL ENGINEER**  
 DATE: 09/21/14  
 PLANS APPROVAL DATE: 09-28-14  
 CIVIL ENGINEER: [Signature]  
 STATE OF CALIFORNIA



**QUANTITIES**  
BRIDGE NO. 57-0622L/R

RAPID SETTING CONCRETE (PATCH)	30	CF
REMOVE ASPHALT CONCRETE SURFACING	5,948	SOFT
REMOVE UNSOUND CONCRETE	30	CF
PREPARE CONCRETE BRIDGE DECK SURFACE	5,946	SOFT
TREAT BRIDGE DECK	5,946	SOFT
FURNISH BRIDGE DECK TREATMENT MATERIAL	66	GAL
AGGREGATE BASE (APPROACH SLAB)	17	CY
STRUCTURAL CONCRETE, APPROACH SLAB (TYPE R)	174	CY
PAVING NOTCH EXTENSION	117	CF
JOINT SEAL (NR1/2")	157	LF



**QUANTITIES**  
BRIDGE NO. 57-0588L/R

PREPARE CONCRETE BRIDGE DECK SURFACE	9,638	SOFT
TREAT BRIDGE DECK	9,638	SOFT
FURNISH BRIDGE DECK TREATMENT MATERIAL	118	GAL
AGGREGATE BASE (APPROACH SLAB)	20	CT
STRUCTURAL CONCRETE, APPROACH SLAB (TYPE R)	198	CY
PAVING NOTCH EXTENSION	132	CF
JOINT SEAL (NR1/2")	177	LF

NOTE:  
THE CONTRACTOR SHALL VERIFY ALL CONTROLLING FIELD DIMENSIONS BEFORE ORDERING OR FABRICATING ANY MATERIAL.

DESIGN BY: R. Anderson	CHECKED BY: D. Azman	DATE: 09/22/14	LOAD & RESISTANCE FACTOR DESIGN	LIVE LOADING PER AASHTO DESIGN VEHICLE	STATE OF CALIFORNIA	DIVISION OF ENGINEERING SERVICES	STRUCTURES SECTION	DESIGN BRANCH 10	APPROACH SLAB/DECK REHABILITATION
DESIGN ENGINEER: Daniel T. Adams	CHECKED BY: D. Azman	DATE: 09/22/14	LAYOUT BY: R. Anderson	INCHES: 1/8"	DEPARTMENT OF TRANSPORTATION	PROJECT NUMBER & PHASE: 110020292	CONTRACT NO.: 11-407001	SHEET 1 OF 7	GENERAL PLAN No. 1

# ATTACHMENT 2

cut  
JD

**J. FRANCIS COMPANY**  
 16197 Krameria Ave., Riverside, CA 92504  
 Lic.585103 Ph. (951)776-9100 Fx. (951)776-9174 jfranciscompany.com  
**DBE Certification # 38326**

December 17, 2014

PROPOSAL

CDOT Contract #11-407004 1 ADM Noted  
Bids 12/18/2014 at 2 PM PT

Furnish and install the following line items for the above referenced project:

**Group I: 6 shifts**

Item 16: 150310 Rapid Setting Concrete (Patch)	102 CF x 300 =	30,600
Item 21: 153223 Remove Unsound Concrete	102 CF x 250 =	<u>25,500</u>
<b>SUBTOTAL:</b>		<b>56,100</b>

**Group II: 10 Shifts** \*Complete Removal of AC overlay and traffic stripes are required prior to move-in. Concrete Patches must be complete prior to our move-in.

Item 22: 153226 Prepare Concrete Bridge Deck*	102,157 x .30 =	30,647
Item 23: 153233 Treat Bridge Deck	102,157 x .60 =	61,294.1
Item 24: 153234 Furnish Bridge Deck Treatment Material 1135G x 54=		<u>61,290.2</u>
<b>SUBTOTAL:</b>		<b>\$153,231.30</b>

\* Alternate Add for PSP Omitted Item 150100: \$5200 for one test one location.

**Group III: 18 Shifts**

Item 44: 519081 Joint Seal (MR ½" Type B)	966 LF x 63 =	60,858
Item 45: 519088 Joint Seal (MR 1" Type B)	610 LF x 64 =	<u>39,040</u>
<b>SUBTOTAL:</b>		<b>99,898</b>

**TOTAL OF GROUPS 1-3: \$ 309,229.30 and 32 shifts.**

Groups may be contracted individually.

\* Discount 5% If all items are contracted together.

Union Labor and Insurance are included. Bond Rate is 2%.

Customer to Provide:

1. Traffic control, safety requirements and measures as needed.
2. Staging Area
3. Lighting
4. Trash bins
5. 2 week notice for scheduling
- 6.

Signed,  
Diana Hanna  
Project Director

diana@jfranciscompany.com

# ATTACHMENT 3



December 5, 2013

**VIA FACSIMILE (916) 227-6282 AND OVERNIGHT MAIL**

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

RE: Caltrans Contract No. 03-3E1004 (the "Contract")  
Bid Opening: 11/06/2013

Dear Mr. McMillan:

Granite Construction Company ("Granite") timely submitted a fully responsive bid for the above-referenced Contract and is the apparent low bidder. Granite understands that on or about November 25, 2013, RGW Construction, Inc. ("RGW") filed a protest, relating to Granite's Subcontractor List for the Contract. Granite's bid is \$351,223.00 less than RGW's bid. As further discussed below, RGW's protest lacks merit and should be rejected.

RGW alleges (a) that Granite included Bid Items for three subcontractors on the Subcontractor List submitted by Granite within 24-hours of the bid opening which were not within the description of work on the Subcontractor List submitted by Granite with its bid; and (b) that Granite should have listed a subcontractor for striping work on its Subcontractor List. These allegations are without factual or legal support. For the reasons explained below, Granite's Subcontractor List complies with the governing subcontractor listing laws and the Contract specifications, and Granite's bid is fully responsive.

**Granite's Subcontractor List Satisfies the Subcontractor Listing Law and the Contract Specifications**

The Subletting and Subcontracting Fair Practices Act, California Public Contract Code §§4100 et seq. ("Subcontractor Listing Law") requires bidders for public contracts to list the names and locations of all subcontractors who will perform work in an amount in excess of one-half of one percent of the prime contractor's total bid or \$10,000, whichever is greater. Cal. Pub. Contract Code, § 4104(a). The bidder must also set forth

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the portion of the work which will be done by each such subcontractor. Cal. Pub. Contract Code § 4104(b).

The Department's Subcontractor List Form instructs bidders to: "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."

The purposes of competitive bidding are to guard against favoritism and corruption, to prevent the waste of public funds, to obtain the best economic result for the public, and to stimulate advantageous market place competition. Competitive bidding provisions must be read in light of the reason for their enactment and applied in a sensible, practical way to accomplish those purposes fairly and reasonably. *Ghilotti Constr. Co. v. City of Richmond* (1996) 45 Cal. App. 4th 897, 909. Likewise, responsiveness considerations "must be evaluated from a practical rather than a hypothetical standpoint, with reference to the factual circumstances of the case. They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder" hoping to prevail by contriving irregularities in the winning submission. *Ghilotti Constr. Co. v. City of Richmond*, 45 Cal. App. 4th 897, 908-09 (1996) (citing *Judson Pacific-Murphy Corp. v. Durkee* (1956) 144 Cal. App. 2d 377, 383). It would be a "disservice to the public" if a losing bidder were allowed to comb through the bid of the low bidder after the fact, in an effort to cancel the low bid on minor technicalities, with the hope of securing acceptance of its higher bid. "Such construction would be adverse to the best interests of the public and contrary to public policy." *Durkee*, 144 Cal. App. 2d at 383. Here, it is clear that RGW is simply combing through Granite's superior bid in an effort to concoct a deficiency where none exists.

Granite timely submitted its bid and accompanying Subcontractor List for the Contract. Granite's Subcontractor List fully complies with the requirements of the Subcontractor Listing Law and the Contract specifications. There is no irregularity in Granite's bid. Granite did not change subcontractors or the description of subcontracted work on its Subcontractor List. The descriptive terms set forth under column 4 of Granite's Subcontractor List are consistent with each of the specific Bid Item numbers listed in column 2 of the Subcontractor List Granite submitted within 24-hours of the bid opening. Moreover, Granite's Subcontractor List properly lists the subcontractors Granite will be utilizing for this Contract and is consistent with its DBE submittal and governing law.

**The Bid Items Listed in Column 2 for ABSL are Consistent with the Description of Subcontracted Work Listed in Column 4 for ABSL**

Granite listed ABSL ("ABSL") on the Subcontractor List submitted with its bid and listed "Cold Plane AC" as the description of subcontracted work in column 4 of the Subcontractor List. In full compliance with the Subcontractor Listing Law and the Contract specifications, in its 24-hour submittal, Granite properly identified the Bid Items encompassed within this general scope of work. Specifically, ABSL will be performing 45% of Bid Item 65 (Cold Plane Asphalt Concrete Pavement) and 10.5% of Bid Item 81 (Roadway Excavation). With respect to Roadway Excavation, ABSL's only responsibility will be to cold plane the existing AC pavement. Granite's bid-day Subcontractor List and 24-hour submittal with respect to ABSL are completely consistent. This is similar to a recent Caltrans determination.

On Caltrans Contract No. 02-4E5204, Knife River Construction ("Knife River") protested the bid of Flat Top Grading ("Flat Top"), claiming that Flat Top's revised subcontractor listing was inconsistent with its bid day submission. On its bid-day Subcontractor list, Flat Top had listed Darren Taylor Construction for "AC Paving and Cold Plane AC" work. On the Subcontractor List submitted within 24-hours of the bid opening, Flat Top included Bid Items for traffic control, shoulder backing, replace asphalt concrete surfacing and tack coat. In a letter dated April 25, 2013, Caltrans rejected Knife River's protest, stating "Caltrans engineers have determined that the items of work listed are relative to the description of work to be performed by the subcontractor." The contract was awarded to Flat Top. (A copy of Caltrans' determination is attached hereto as Exhibit A and incorporated herein).

Likewise, here, RGW's challenge to Granite's listing of ABSL has no merit and should be rejected. The items of work listed for ABSL fall squarely within the scope of work specified in Granite's bid-day Subcontractor List form. On bid day, ABSL was listed as performing "Cold Plane AC" work. Consistent with the Subcontractor Listing Law and the Contract specifications, in its 24-hour submittal, Granite properly identified the Bid Items encompassed within this scope of work, namely, 45% of Bid Item 65 and 10.5% of Bid Item 81. RGW has no basis for its protest.

**The Bid Items Listed in Column 2 for Nitta Erosion Control are Consistent with the Description of Subcontracted Work Listed in Column 4 for Nitta Erosion Control**

RGW's protest states that Granite, in its 24-hour Subcontractor List, added work to Nitta Erosion Control ("Nitta") when Granite listed Nitta for Bid Item 89 (Pine Needle Mulch). Contrary to RGW's contention, Granite's bid-day Subcontractor List and 24-hour submittal with respect to Nitta are entirely consistent.

On bid day, Granite listed Nitta to perform "Erosion Control." In full compliance with the Subcontractor Listing Law and the Contract specifications, in its 24-hour submittal, Granite properly identified the Bid Items encompassed within the "Erosion Control" general scope of work, namely, Bid Items 21, 22, 89, 100, 101, 102, 103 and 104. RGW asserts that Bid Item 89, Pine Needle Mulch, is not covered by the general description "Erosion Control" because Pine Needle Mulch is referenced in Special Provision Section 20, Landscape. This assertion is a red herring and undermined by the realities of the subject work. "Erosion Control" work clearly includes the Bid Item for Pine Needle Mulch, which is a form of erosion control.

Notably, RGW's present argument directly contradicts the arguments it raised in its defense to a protest on Caltrans Contract No. 04-3A9214. Ghilotti Brothers, Inc. ("Ghilotti") protested RGW's bid, claiming that RGW revised its Subcontractor List Form by adding subcontracted work that was not listed on its bid day form. RGW originally listed Marina Landscape to perform "Erosion Control." In its 24-hour submittal, RGW included bid item 5, Temporary Fence, as part of the work subcontracted to Marina Landscape. In defending against Ghilotti's protest, RGW argued:

"Ghilotti Brothers, had it read all of the plans and specifications, would see that Temporary Fence (Type ESA) fence is shown on sheet BC-1 page

74 of 760 EROSION CONTROL PLAN. If Ghilotti Brothers were to review project plan sheets EC-6 EROSION CONTROL PLAN, they would be able to determine where the Temporary Fence (Type ESA) is to be installed. For Ghilotti Brothers to claim that Temporary Fence (Type ESA) is not erosion control work, when Cal Trans shows the work on the EROSION CONTROL plans is incorrect!"<sup>1</sup>

After reviewing the plan sheets EC-1 and EC-6, Caltrans determined that bid item 5, Temporary Fence (Type ESA) is a component of Erosion Control. (A copy of Caltrans' September 14, 2012 determination letter is attached hereto as Exhibit C and incorporated herein).

Similarly, here, had RGW reviewed the Erosion Control Plans, it would see that Pine Needle Mulch is a component of Erosion Control. The Erosion Control Plan Sheets 52, 61, and 63 (attached hereto as Exhibit D and incorporated herein) reflect that the use of Pine Needle Mulch is for erosion control purposes. Moreover, Nitta bid on a variety of erosion control items, expressly including Bid Item 89, Pine Needle Mulch. Accordingly, Bid Item 89 is, in fact, encompassed within the "Erosion Control" scope of work.

**The Bid Items Listed in Column 2 for Myers and Sons Construction are Consistent with the Description of Subcontracted Work Listed in Column 4 for Myers and Sons Construction**

Granite listed Myers and Sons Construction ("Myers and Sons") on the Subcontractor List submitted with its bid and listed the following general categories of work for the description of subcontracted work in column 4: "Polyester Concrete," "Bridge Removals," "Raise Bridge," "Structural Concrete," "Drill & Bond Dowel," "Bridge Barrier," and "Bar Reinforcing Steel (Bridge Related)." It is common in the industry and generally accepted by Caltrans for bidders to simply list general categories of work in column 4 of the Subcontractor List form. In full compliance with the Subcontractor Listing Law and the Contract specifications, in its 24-hour submittal, Granite properly identified the Bid Items encompassed within this scope of work. RGW takes issue with the listing of Bid Items 5 (Traffic Control) (30.4%), 32 (Temporary Concrete Washout) (100%), 56 (Remove Asphalt Concrete Surfacing) (100%), 72 (Access Opening, Soffit) (100%), 127 (Joint Seal (MR 1")) (100%), and 163 (Chain Link Railing (Type 6)) (100%).

The descriptive phrases "Polyester Concrete," "Bridge Removals," "Raise Bridge," "Structural Concrete," "Drill & Bond Dowel," "Bridge Barrier," and "Bar Reinforcing Steel (Bridge Related)" are consistent with each of the specific Bid Items listed in column 2 of Granite's Subcontractor List.

- Bid Item 5, Traffic Control (30.4%), is an integral part of many of the items of Myers and Sons' work. Traffic control will be a necessary component of performing the Polyester Concrete, Bridge Removals, Raise Bridge, Structural Concrete, Bridge Barrier and Bar Reinforcing Steel work.

<sup>1</sup> A copy of RGW's September 11, 2012 letter is attached hereto as Exhibit B and incorporated herein.  
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- Similarly, Bid Item 32 (Temporary Concrete Washout) is necessary component of the Structural Concrete work. Indeed, the Temporary Concrete Washout is solely a function of the "Structural Concrete" work.
- Likewise, the descriptive phrase "Bridge Removals" is consistent with and encompasses both (a) Bid Items 56 (Remove Asphalt Concrete Surfacing) as asphalt concrete surfacing is being removed from the bridge deck, and (b) Bid Item 72 (Access Opening Soffit) as the primary scope of work for this Bid Item is "removing portions of bridges to provide cell access" (please see Standard Specification 15-4.02A, which is attached hereto as Exhibit E and incorporated herein).
- Moreover, Bid Item 127 (Joint Seal) falls within the descriptive phrases "Raise Bridge," "Structural Concrete," and "Polyester Concrete" as this is a Bid Item with a minor subcontracted value that becomes necessary as a result of raising the bridge, increasing the height of the abutment backwall within structural concrete and placing a ¾" polyester concrete overlay. Because the elevation of the bridge is increased, new joint seals are necessary.
- Bid Item 163 (Chain Link Railing (Type 6)) is part and parcel of the "Bridge Barrier" work. This chain link railing is to be installed integrated with the Concrete Barrier Type 26 and is an integral part of the barrier system. As such the "Bridge Barrier" descriptor properly encompasses this Bid Item.

This is similar to the situation presented on Caltrans Contract No. 06-442624. Security Paving Company, Inc. ("Security Paving") protested MCM Construction, Inc.'s ("MCM") Subcontract List form, contending that MCM added additional items of work to Granite on its revised Subcontractor List form. Granite was initially listed for Roadwork, AC Pave and Underground" work. On its 24-hour submittal, MCM listed Granite for bid items for Temporary Fence, Construction Site Management, Temporary Fiber Roll, Temporary Silt Fence, Temporary Construction Entrance, Temporary Drainage Inlet Protection, Street Sweeping, Traffic Control System, Portable Changeable Message Sign, Temporary Railing, Clearing and Grubbing, Rock Slope Protection, Rock Slope Protection Fabric, Erosion Control, K-Rail, etc. Caltrans determined that all those items of work were "associated with Roadwork" and awarded the project to MCM. (A copy of Caltrans' October 10, 2012 determination letter is attached hereto as Exhibit F and incorporated herein).

Similarly, here, Granite's bid-day Subcontractor List and 24-hour submittal with respect to Myers and Sons are consistent and Granite's bid is responsive. All of the specified Bid Items are associated with and fall within the scope of work descriptions set forth in Column 4, namely, "Polyester Concrete," "Bridge Removals," "Raise Bridge," "Structural Concrete," "Drill & Bond Dowel," "Bridge Barrier," and "Bar Reinforcing Steel (Bridge Related)."

Interestingly, in response to a protest raised against RGW's bid on Contract No. 04-3A9214, RGW balked at Knife River's protest as a frivolous fishing expedition. (Please see Exhibit E). Yet, that is exactly what RGW is engaged in here. Caltrans should not entertain RGW's transparent attempt to concoct irregularities in Granite's superior bid which is fully responsive.

**Granite's Subcontractor List and DBE Commitment Form are Consistent; Central Striping's Work is Less than 1/2 of 1 Percent of the Total Bid**

RGW also contends that Granite should have listed Central Striping Service as a subcontractor on its Subcontractor List form. However, Granite is only required to list subcontractors who will perform work in an amount in excess of one-half of one percent of the prime contractor's total bid or \$10,000, whichever is greater [Cal. Pub. Contract Code, § 4104(a)] and the value of Central Striping's scope of work will be less than 0.5% of Granite's total bid. The total of Granite's bid is \$20,292,292. One-half of one percent of Granite's total bid equals \$101,461.46. Central Striping's work will not exceed that amount.

Granite intends to self-perform the temporary striping work (Bid Items 5, 7, 8, 9, and 10). Granite owns the necessary equipment and is fully licensed and qualified to perform such work. Indeed, Granite has self-performed temporary striping work on many Caltrans projects (including, but not limited to, Contract No. 03-0P5904 on Interstate 5 in Elk Grove). Central Striping will only be performing the permanent striping and stripe removals work, which is valued at \$98,081.50. (Attached as Exhibit G, please find a copy of Central Striping's quote, reflecting the portions of work Granite will be self-performing and the portions of work Central Striping will be performing, which total \$98,081.50). The value of Central Striping's work is below the 0.5% subcontractor listing requirement, and thus, Granite was not required to list Central Striping on its Subcontractor List form.

In sum, Granite's bid is free of any defects that would preclude Caltrans from awarding the Contract to Granite. Granite's Subcontractor List satisfies the requirements of the Subcontractor Listing Law and the Contract specifications, and Granite's bid is fully responsive. Granite listed its subcontractors, and listed in general terms the work to be performed by each listed subcontractor. The individual line items in the completed Subcontractor List only list work incidental and/or related to the general categories of subcontracted work. Accordingly, Granite respectfully requests that Caltrans reject RGW's protest as without merit. Granite is fully prepared to perform this job in its customary dependable and high quality manner, using the properly specified services of the listed subcontractors.

Thank you for your time and consideration. If you have any questions or would like additional information, please contact me at 916-855-4466.

Respectfully Submitted,



Colin Crawford  
Chief Estimator