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August 09, 2013

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California Department of Transportation  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816

Attn: John C. McMillan, Deputy Division Chief  
Nicole Butler, Contract Awards Analyst

Subject: Nonresponsive Bid

Reference: Contract No. 03-0F2304 ("Contract")  
03-Sac-50-L1.3/L2.2  
B.O. 07/24/2013

Dear Mr. McMillan / Ms. Butler,

Granite Construction Company ("Granite") received your letter dated August 2, 2013, deeming Granite's bid for the above-referenced Contract non-responsive. Granite respectfully requests that Caltrans reconsider its initial assessment and withdraw its finding of non-responsiveness. Granite submitted the low bid on the Contract, which conforms to the material terms of the bid requirements. Granite's bid was for \$16,549,774.25, a sum of **\$772,800.50 less** than the second low bidder. For the reasons explained below, Granite's bid is responsive and its submittal of the SSPC-QP certifications beyond the deadline (i.e. by 4:00 p.m. on the 2nd business day after bid opening) was a minor irregularity and inconsequential: such delay did not in any way affect the amount of Granite's bid or give it a competitive advantage.

Granite timely submitted its bid and accompanying Subcontractor List for the Contract. Granite submitted the required SSPC QP certifications on August 6, 2013. At question is whether Granite's delay in submitting copies of the SSPC QP certifications relating to the Paint Column Casing work is material to Granite's bid. In its bid submission, Granite listed a qualified subcontractor for the Paint Colum Casing work that held (and continues to hold) the required SSPC QP certifications. Thus, at bid time, Granite committed itself to utilizing the services of a fully certified SSPC QP contractor. The delay in providing proof of such proper certification is a minor deviation that should be waived.

A bid is responsive if it conforms to the material terms of the bid packet and promises to do what the bidding instructions demand. *Menefee v. County of Fresno* (1985) 163 Cal. App. 3d 1175. In general, the material terms of a bid are those that affect price, quantity, quality or delivery. Here, Granite's bid includes and satisfies all material requirements of the bid packet and promises to perform everything required in the bidding instructions.

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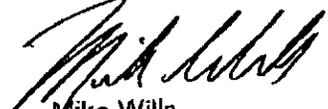
The submission of copies of the SSPC QP certifications within 2 business days of bid opening is a mere formality. Section 2-1.35 SSPC QP CERTIFICATION PREAWARD QUALIFICATION in the Standard Specification is intended to determine the qualification of a Contractor or Subcontractor prior to award. For Bid Item 65, Column Casing, Granite listed C.L. Industrial Coatings, Inc. ("C.L. Industrial") for Painting the Column Casing. C.L. Industrial was (and is) fully qualified to perform such work and, has at all relevant times, possessed the necessary SSPC QP certifications (valid from March 31, 2013 through March 31, 2014). Notably, C.L. Industrial had valid certifications on file with Caltrans for this Contract 03-0F2304 by 4:00 PM on the 2<sup>nd</sup> business day after the bid opening. Granite's delay in submitting copies of such SSPC QP certifications did not materially affect Granite's bid.

Granite respectfully asks that Caltrans reconsider its initial position. Submission of the SSPC QP certifications was a minor technicality that does not affect the responsiveness of Granite's bid. The late submission did not alter Granite's price, give Granite an advantage not allowed other bidders, or act as a vehicle for favoritism. As reflected in its Subcontractor List, Granite is bound to use and will use a certified SSPC painting contractor. As you know, the purposes of the competitive bidding statutes is to invite competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable. *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal. App. 4th 897, 909. Competitive bidding provisions should be construed and administered so as to accomplish such purposes fairly and reasonably. *Id.* Rejecting Granite's superior bid, which is **\$772,800.50 less** than the second low bidder, based on the subject minor deviation would not advance these purposes. Instead, such action would unnecessarily reduce competition and impede economy to the detriment of Caltrans and its taxpayers.

In sum, Granite's bid is responsive and its late submission of the SSPC certifications was not material. We therefore request that Caltrans withdraw its initial determination of non-responsiveness and find that Granite's bid is, in fact responsive. We appreciate your time and consideration of this matter and look forward to working with you on this Project. If you have any questions or require additional information, please do not hesitate to contact me at (916) 855 - 4414.

Sincerely,

GRANITE CONSTRUCTION COMPANY



Mike Wills  
Construction Manager



# FAX

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To: <u>NICOLE BUTLER</u>	From: <u>MIKE WILLS</u>
Company: <u>CT OFFICE ENG</u>	Date: <u>8/9/13</u>
Fax: <u>916 227-6282</u>	Total Pages (including cover page): <u>3</u>
Phone: _____	Sender's Reference Number: _____
RE: <u>03-OF2304</u>	Your Reference Number: _____

- Urgent     
  For Review     
  Please Comment     
  Confirm Receipt

Notes and Comments: