



Granite Construction Company  
1900 Glendale Avenue  
Box 2087  
Sparks, NV 89431

T 775 358 8792  
F 775 358 0372

graniteconstruction.com

February 13, 2013

Department of Transportation  
Attn: John McMillian  
1727 30<sup>th</sup> Street MS-43  
Sacramento, CA 95816

Via US Mail & Fax

**RE: Caltrans Contract #03-1A7324**  
**Subject: Garcia's Moot Bid Protest**

Dear Mr. McMillian,

Granite Construction Company (Granite) is in receipt of Don Garcia Excavating & Paving, Inc.'s (Garcia) protest of Caltrans' determination that Granite's bid for the above referenced Contract is responsive. (Protest Letter Attached as Exhibit A) On December 4, 2012, Granite timely submitted the low bid on the Contract, which complied with all material bid requirements as defined by California State law. Granite's bid was for \$4,388,388.00, a sum of \$125,588.00 less than Garcia's bid. Garcia's protest adds nothing to the issues already analyzed, addressed and rejected by Caltrans. Caltrans' determination that Granite's bid is responsive makes any further argument moot. Significantly, Caltrans found that any anomaly in Granite's bid was immaterial, and thus, Granite remains the lowest responsive bidder.

Caltrans' determination that Granite's bid is responsive is fully supported by and consistent with governing law and the public policy concerns underlying competitive bidding. 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 identifying "minor technicalities" in the winning submission. **"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 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) (emphasis added).

Garcia claims that the failure to include the revised bid sheet rendered Granite's bid non-responsive. This is the exact issue that was considered, analyzed and ruled upon by Caltrans in its January 23rd Determination of Responsiveness. (Attached as Exhibit B). In its bid submission, Granite fully acknowledged all the addenda (Nos. 1, 2, 3) to the contract. (See page 2 of the Bid Book, attached as Exhibit C.) Granite, as such, agreed to be and was in fact bound by the addenda's terms. The only question was whether the mere failure to include a revised bid sheet constituted a material deviation. After thoroughly evaluating Granite's bid and the arguments Granite presented in support of its bid, Caltrans found such deviation to be immaterial. Caltrans further concluded that Granite did not gain

any competitive advantage over other bidders. The minor difference resulting from the failure to include the revised bid sheet would not have changed the rank order of the bid. Granite's bid remains substantially less than Garcia's. Granite is still the low bidder.

The revised bid sheet is a mere a formality. This is demonstrated by the very terms of Caltrans' bid solicitation. The unit pricing is material, the bid quantities are not. No one questions Granite's unit pricing. Only the bid quantities are at question due the original bid quantities being used as opposed to the revised quantities. The bid solicitation contemplates and provides an explicit avenue to rectify the issue at hand. Section 2.1 of the solicitation provides: "If a discrepancy between the unit price and the item total exists, **the unit price prevails.**" (See page 1 of the Bid Book, attached as Exhibit D, (emphasis added).) Significantly, **Section 2.1 specifically allows a responsive bid to contain a discrepancy between unit price and the bid total.** This is the exact circumstance at hand. Granite's unit price does not match the correct bid total. Since this was contemplated by the instructions under Section 2.1, the instructions' methodology controls.

As previously noted in its December 14, 2012 letter, Granite refers Caltrans to a similar protest for another Caltrans' project, Contract 12-0F0314. (Attached as Exhibit E.) Ruling on that protest, Caltrans found that the contractor's bid was in fact responsive even though the contractor failed to include a revised bid sheet issued in the addendum. Caltrans found that such an irregularity was not material because the contractor gained no competitive advantage over the other bidders. Caltrans awarded the contract accordingly.

In that protest of Contract 12-0F0314 as in this matter, Caltrans' ruled that a revised bid sheet is a mere formality that does not affect the responsiveness of the bid. Specifically, under the circumstances at hand, Section 2.1 of the bid solicitation provides that an anomaly in a bid package which affects quantities does not alter the final price. The final price is based on unit pricing, not the quantities. Moreover, such an anomaly did not give Granite an advantage over other bidders, nor did it act as a vehicle for favoritism. All bidders enjoyed the same protections under Section 2.1.

As Caltrans recognizes, the purposes of the competitive bidding statutes is to guard against favoritism, fraud and corruption, avoid misuse of public funds, stimulate competition, and secure the best work or supplies at the lowest price practicable. Here none of those purposes are in jeopardy. There is no evidence of favoritism, corruption, fraud, extravagance, or uncompetitive bidding practices. Rejecting Granite's superior bid based on the subject minor discrepancy would not advance these purposes. In fact, to reject Granite's bid would only serve to decrease competition, impede economy and waste public funds. Since the bid solicitation contemplated the present scenario and Granite's bid conforms to the governing standards, Caltrans properly accepted Granite's bid as responsive.

The minor irregularity in Granite's bid package was not material. More importantly, Caltrans has already examined the issue raised by Garcia and ruled that the anomaly was not material. Garcia's February 8, 2013 letter adds nothing new to this discussion and thus is moot in light of Caltrans previous ruling. The Modern Building matter cited by Garcia is distinguishable on numerous grounds, not the least of which is a lack of a provision similar to Section 2.1. Nothing alleged by Garcia changes Caltrans' January Determination of Responsiveness or the fact that Granite submitted the lowest responsive bid. Granite should therefore be awarded the contract.

If you have any questions or require additional information please contact me at your convenience.

Sincerely,



**Chris Burke**  
Chief Estimator – Nevada Region  
1900 Glendale Ave. | Sparks, NV 89431  
Direct 775.358.8792 | Cell 775.813.0907 | Fax 775.358.0372

Enclosed:     Exhibit A – Garcia Protest Letter dated February 8, 2013 (2 pgs.)  
                  Exhibit B – Caltrans Letter dated January 23, 2013 (2 pgs.)  
                  Exhibit C – Page 2 of Granite Bid Book (1 pg.)  
                  Exhibit D – Page 1 of Granite Bid Book (1 pg.)  
                  Exhibit E – Granite Letter & Supporting Documents dated December 14, 2012 (13 pgs.)

## LAW OFFICES



SAM ROTH NAGLEY  
(1937 - 2003)

I N C

LAWRENCE N. HENLEY  
JAMES C. EDWIN  
CHAD B. MACCLARHAN  
GREGORY A. MERRITT  
JANEY M. MERRITT  
ANDREA M. MILLER

February 8, 2013

**SENT OVERNIGHT, BY FEDERAL EXPRESS**

Tracking No.: 7947 1521 6352

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

Re: Caltrans Contract No.: 03-1A7324  
Bid Protest On Behalf of Don Garcia Excavating & Paving, Inc.  
Our File No.: D1049-101

Dear Mr. McMillan:

Don Garcia Excavating & Paving, Inc. hereby protests the awarding of the above described contract to Granite Construction on the grounds that their original bid was non-responsive and therefore not eligible to be the low bidder on the contract.

Granite Construction was named low bidder on this contract after it was initially determined to be non-responsive/irregular. Granite protested this finding on the basis that its failure to comply with the bidding process by not incorporating the proper bid quantities from Addendum No. 1 was immaterial, citing a bid protest from 2010 in support of the Department making such a finding. However, Granite acknowledged that its bid was not responsive as a result of their failing to include that revised bid sheet.

Addendum No. 1 specifically states that the bidder must submit bids "for this work with the understanding and full consideration of this addendum. The revisions declared in this addendum are an essential part of the contract" and "you must comply with the requirements of this letter before submitting your bid." Granite did not do so, necessitating the finding of Granite as non-responsive/irregular.

The Department has made similar findings more recently than the bid protest cited by Granite. In fact, in 2011, in bidding for Contract No. 06-0A9704, found that failing to address an acknowledged addendum in a bid proposal by Modern Building, Inc. rendered their bid non-responsive. See Attached letter dated March 17, 2011. During the bidding on another contract (11-2T0864), CalTrans also found another contractor nonresponsive due to their failing to acknowledge and fully consider the addendum to the contract. See Letter dated June 21, 2011.

John McMillan  
**Bid Protest on Contract No. 03-1A7324**  
February 8, 2013

Page 2

Additionally, when the bidsheets were initially submitted, Granite's bid had two different totals written on it. The second amount was over \$300,000 less than what Granite lets its bid at in its bid protest. See Granite Bld attached. This lower amount is what was listed in the bid summary, attached hereto. No explanation is given for this anomaly.

As is the case presently, under California law, a bid that deviates from bid requirements must be rejected as non-responsive. Courts have consistently explained that bidders "were entitled to expect bids which did not meet the specifications would be rejected in favor of those which did or the contract would be rebid." See Konica Business Machines v. Regents of the University of California (1988) 206 Cal.App.3d 449, 457. California's policy of strict compliance is intended to eliminate favoritism, fraud, corruption, and misuse of public funds. See Domar Elec. v. City of Los Angeles (1994) 9 Cal.4th 161, 173. As explained in Konica,

"[B]ecause of the potential for abuse arising from deviations from strict adherence to standards which promote these public benefits, the letting of public contracts universally receives close judicial scrutiny and contracts awarded without strict compliance with bidding requirements will be set aside . . ." pp. 456.

Based upon the above facts, the bid of Granite Construction should be deemed unresponsive and rejected. Failure to so do would result in the appearance of "favoritism" to which the public contract code and California policy abhors.

Don Garcia Excavating & Paving, Inc. appreciates your time and consideration of this matter. If you have any questions or wish to discuss the matters raised herein please do not hesitate to contact Don Garcia Excavating & Paving, inc., myself or Gregory A. Meredith of this office.

Very truly yours,

NAGELEY, MEREDITH & MILLER, INC.



James C. Keowen

Enclosures: As stated.  
cc: Mike Garcia  
JCK:emfh

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF ENGINEERING SERVICES**  
 OFFICE ENGINEER, MS 43  
 1727 30<sup>th</sup> STREET  
 P. O. BOX 168041  
 SACRAMENTO, CA 95816-8041  
 PHONE (916) 227-6280  
 FAX (916) 227-6282  
 TTY 711



*Flex your power!  
 Be energy efficient!*

January 23, 2013

Facsimile: (775) 358-0372

Chris Burke, Chief Estimator  
 Granite Construction Company  
 1900 Glendale Avenue  
 Box 2087  
 Sparks, NV 89431

03-1A7324  
 03-ED-50-73.7/75.4  
 B.O. 11/27/2012

Dear Mr. Burke:

The Department of Transportation (Caltrans) received the attached protest letters dated December 7 and 14, 2012, from Granite Construction Company (Granite) in response to Caltrans's nonresponsive bid finding. The protest states that Granite fully acknowledged Addendum 1, 2 and 3 and failed to include the modified Bid List. The protest also states that the revised item total was immaterial and that the revised Bid List was a mere formality. Granite is requesting that Caltrans reconsider its nonresponsive finding and award the contract to Granite.

Caltrans receives many responses to our solicitations and strives to maintain the integrity of the contract bidding process. It is the sole responsibility of the bidder to adhere to the requirements/specifications and Addendums of each project prior to submitting a bid. Addendum 3 provided a revised bid item list specifically revising the quantity of bid item 6, Silt Fence, from 3900 lf to 5200 lf. Although Granite acknowledged Addendum 3, the bid submitted by Granite did not contain the revised Bid List. Therefore, Caltrans found Granite's bid nonresponsive.

After further review, the bid submitted by Granite reflects the original quantity of 3900 lf at \$2.55lf for a total cost of \$9,945. If Granite had used the revised quantity of 5220 lf at the same cost of \$2.55lf, the total cost for bid item 6 would have been \$13,260, a difference of \$3,315. If Granite had used the revised quantity costs, its bid would have increased from \$4,388,388 to \$4,391,703, the result of which would not have changed the rank order of the bid. Granite would still be the low bidder on the contract.

Based upon the above factors, Caltrans has re-evaluated Granite's bid and found the difference to be immaterial. In addition, Caltrans concludes that an immaterial finding will not provide a gain or provide Granite a competitive advantage over other contract bidders. Therefore, Caltrans will withdraw its nonresponsive finding.

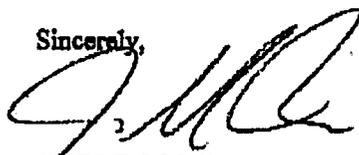
This contract was written using the Standard Specifications of 2006. However, should Granite be awarded this contract, bid item 6 is excluded from Section 4-1.03B.

A copy of this notice will be given to the Resident Engineer for contract administration and compliance.

C. Burke  
January 23, 2013  
Page 2

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,



JOHN C. McMILLAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**BID TO THE DEPARTMENT OF TRANSPORTATION**  
DES-OE-0102.1 (REV. 3/2011)

- 2.6. For a lump sum based bid, the item total is the bid amount the Department uses for bid comparison.  
For a unit price based bid, the sum of the item totals is the bid amount the Department uses for bid comparison.  
For a cost plus time based bid, the sum of the item totals and the total bid for time is the bid amount the Department uses for bid comparison.

2.7. The Department's decision on the bid amount is final.

3. Bidder has and acknowledges the following addenda:

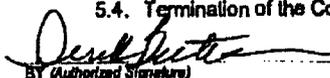
1, 2, 3

4. Bidder submits this bid with one of the following forms of bidder's security equal to at least 10 percent of the bid:

Cash \$ \_\_\_\_\_, Cashiers Check, Certified Check, Bidder's Bond

5. Bidder's signature is an affirmation of the included certifications. Bidder is cautioned that making a false certification may result in one or more of the following:

- 5.1. Criminal prosecution
- 5.2. Rejection of the bid
- 5.3. Rescission of the award
- 5.4. Termination of the Contract



BY (Authorized Signature)

**Derek Betts, Construction Manager**

PRINTED NAME AND TITLE OF PERSON SIGNING

12/4/12 

DATE SIGNED (Do not type)

11-27-12

**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Contract No. 03-1A7324

GRANITE CONSTRUCTION COMPANY

A2

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**BID TO THE DEPARTMENT OF TRANSPORTATION**  
 DES-OE-0102.1 (REV. 3/2011)

**CONTRACT NO. 03 - 1A7324**

**NAME OF BIDDER** GRANITE CONSTRUCTION COMPANY  
**BUSINESS P.O. BOX** P.O. BOX 50085  
**CITY, STATE, ZIP** WATSONVILLE, CA 95077-5085  
**BUSINESS STREET ADDRESS** 585 WEST BEACH STREET  
(include even if P.O. Box used)  
**CITY, STATE, ZIP** WATSONVILLE, CA 95076  
**TELEPHONE NO:** AREA CODE ( 831 ) 724-1011  
**FAX NO:** AREA CODE ( 831 ) 768-4021  
**CONTRACTOR LICENSE NO.** 89 A, B

1. Bidder agrees, if this bid is accepted, to enter into a contract with the Department, in the form included in the Standard Specifications, to perform the work provided in the Contract under the terms of the Contract for the price or prices bid.

For a lump sum or unit price based bid, Bidder additionally agrees to perform the work within the number of working days shown on the *Notice to Bidders*.

For a cost plus time based bid on a contract without a plant establishment period, Bidder additionally agrees to perform the work within the number of working days bid.

For a cost plus time based bid on a contract with a plant establishment period, Bidder additionally agrees to perform the non-plant establishment work within the number of working days bid for non-plant establishment work.

2. For a lump sum based bid, Bidder submits this bid with a total price in the total bid space provided on the Bid Item List. For a unit price or cost plus time based bid, Bidder submits this bid with a unit price and the item total (the product of the unit price and the quantity) for each item and a total price (the sum of the item totals) in the spaces provided on the attached Bid Item List. For a unit price with additive item based bid, Bidder submits this bid with a unit price and an item total for each item and a total base bid (the sum of the item totals) and the additive items in the spaces provided on the attached Bid Item List. Additionally, for a cost plus time based bid, Bidder submits this bid with working days bid for non-plant establishment work, total bid for time, and total bid for bid comparison in the spaces provided on the Bid Item List. Bidder agrees:

- 2.1. If a discrepancy between the unit price and the item total exists, the unit price prevails except:

2.1.1. If the unit price is illegible, omitted, or the same as the item total, item total prevails and the unit price is the quotient of the item total and the quantity.

2.1.2. If a decimal error is apparent in the product of the unit price and the quantity, the Department will use either the unit price or item total based on the closest by percentage to the unit price or item total in the Department's Final Estimate.

- 2.2. If the unit price and the item total are illegible or are omitted, the bid may be determined nonresponsive. If a lump sum total price is illegible or is omitted, the bid may be determined nonresponsive.

- 2.3. Bids on lump sum items are item totals. If a unit price for a lump sum item is entered and it differs from the item total, the item total prevails.

- 2.4. Entries are to be expressed in dollars or decimal fractions of a dollar. Symbols such as commas and dollar signs are ignored and have no significance in establishing unit price or item total.

- 2.5. Unit prices and item totals are interpreted by the number of digits and decimal placement. Do not round item totals or the total bid.

Contract No. 03-1A7324

1

GRANITE CONSTRUCTION COMPANY

# GRANITE

## FAX TRANSMITTAL SHEET

- ❖ ATTENTION: John McMillian MS-43
- ❖ COMPANY: Department of Transportation
- ❖ FAX: 916-227-6282
- ❖ DATE: 12-14-2012

NUMBER OF PAGES: 8  
 (INCLUDING TRANSMITTAL)

❖ FROM: Caleb Juve  
 GRANITE CONSTRUCTION COMPANY  
 1900 GLENDALE AVE/P.O. BOX 2087  
 SPARKS, NV 89432  
 PHONE (775)358-8792  
 FAX (775)358-0372

RE: Caltrans #03-1A7324 Bid Protest

MESSAGE: Please find the attached Bid  
Protest and supporting Documentation for  
Contract 03-1A7324



Granite Construction Company  
1908 Glendale Avenue  
Box 2087  
Sparks, NV 89431

t 775 358 8792  
f 775 358 0372

graniteconstruction.com

December 14, 2012

Department of Transportation  
Attn: John McMillian  
1727 30<sup>th</sup> Street MS-43  
Sacramento, CA 95816

**RE: Caltrans Contract #03-1A7324**  
**Subject: Bid Protest**

Dear Mr. McMillian,

Upon the recent discovery of new supporting information, Granite Construction Company (Granite) hereby requests to modify the bid protest letter submitted to the Department on December 7, 2012 for contract #03-1A7324 to include additional information and findings.

Granite would like to refer you to Caltrans Contract 12-0F0314, which involved a similar bid protest. That protest provides guidance for Granite's current matter. We have attached herewith a Caltrans letter dated September 22, 2010, which discusses the same situation as Granite's ongoing protest. In that matter, Contract #12-0F0314, the low bidder failed to include in its bid submission a revised bid sheet which was part of an addendum. Like Granite, however, the contractor acknowledged the associated addendum which changed the bid quantity of an item of work. Caltrans found that the contractor's bid was in fact responsive, holding the failure to use the revised page as issued in the addendum was not a material defect. It was reasoned that the contractor gained no competitive advantage over the other bidders. Accordingly, Caltrans awarded the contract to the low bidder. Granite believes that its situation is analogous to the protest of Contract #12-0F0314.

We ask that Caltrans consider its precedent established in the Contract #12-0F0314 protest, and award Granite Contract #03-1A7324 based on the immateriality of the alleged irregularity.

If you have any questions or require additional information please contact me at your convenience. Thank you for your consideration.

Sincerely,

Chris Burke  
Chief Estimator  
Granite Construction Company - Nevada Region  
Direct 775.352.1938 | Cell 775.813.0907 | Fax 775.358.0372

Enclosed: Granite's letter dated December 7, 2012  
Caltrans letter dated September 22, 2010



Granite Construction Company  
1800 Glendale Avenue  
Box 2087  
Sparks, NV 89431

t 775 358 6792  
f 775 358 0372

graniteconstruction.com

December 7, 2012

Department of Transportation  
Attn: John McMillian  
1727 30<sup>th</sup> Street MS-43  
Sacramento, CA 95816

RE: **Caltrans Contract #03-1A7324**  
Subject: **Bid Protest**

Dear Mr. McMillian,

Granite Construction Company (Granite) hereby protests Caltrans' rejection of Granite's bid for the above referenced Contract. On December 4, 2012, Granite submitted the low bid on the Contract, which substantially complies with the bid requirements as defined by law. Granite's bid was for \$4,388,388.00, a sum of \$125,588.00 less than the second low bidder.

At question is whether the failure to include a revised bid sheet is material to Granite's bid. In its bid submission, Granite fully acknowledged all the addenda (Nos. 1, 2, 3) to the contract. See page 2 of the Bid Book, attached hereto as Exhibit A. Granite, as such, agreed to be and was in fact bound by the addendum's terms.

Addendum No. 1 revised a bid quantity and included an associated revised bid sheet. In its bid submission, Granite failed to include the modified bid sheet, which revised the bid quantity for Bid Item #6, Silt Fence from 3900 lf to 5200 lf. Granite's bid reflected a unit price of \$2.55/lf for Bid Item #6. Using the original bid sheet with the quantity of 3900 lf, Granite's total for Bid Item #6 was \$9,945.00. This created a discrepancy because the addendum's revised quantity would have resulted in a total which was \$3,315.00 more. Granite is still the low bidder with this increase. However, since Granite acknowledged Addendum No. 1 and its governance over the Contract, the revised item total was immaterial. The revised bid sheet was merely a formality.

The terms of Caltrans bid solicitation contemplates and provides an explicit avenue to rectify the issue at hand. Section 2.1 of the solicitation provides:

**If a discrepancy between the unit price and the item total exists, the unit price prevails**  
except:

2.1.1 If the unit price is illegible, omitted, or the same as the item total, item total prevails and the unit price is the quotient of the item total and the quantity.

2.1.2 If a decimal error is apparent in the product of the unit price and the quantity, the Department will use either the unit price or the item total based on the closest by percentage to the unit price or item total in the Department's Final Estimate.

See Exhibit A, pg. 1 (emphasis added). Significantly, Section 2.1 allows a responsive bid to contain a discrepancy between unit price and the bid total. This is the exact circumstance at hand. Granite's unit price does not match the correct bid total. Since this was contemplated by the instructions, the

Received

Dec 14 2012 02:43pm

775-358-0372

Sparks Main Fax

Granite Constructin 775-358-03

14:49:56 12-14-2012

4 / 8

instructions' methodology under 2.1 should control. (Section 2.1 also provides for two exceptions to the general rule. While the exceptions are inapplicable under the current circumstance, both provide further instruction to Caltrans as to how to calculate the bidder's intent in other circumstances where a discrepancy is apparent. These purpose and rationale underlying the exceptions further supports that Caltrans intended to correct any issue between the unit price and item total.)

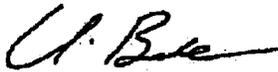
The solicitation then provides that if an item total is illegible or omitted (Section 2.2), Caltrans may deem the bid nonresponsive. Like the two exceptions to 2.1 above, this provision is inapplicable under the current circumstance. However, it is significant, not for what is included, but for the notion that Caltrans failed to include a similar provision governing the issue at hand. No provision exists, either in the original instruction or addenda, that allows Caltrans to deem a bid omitting a revised bid sheet, such as Granite's bid submission, as nonresponsive. If Caltrans intended to possess this type of discretion, it could have done so. It however did not. Since Caltrans specifically and expressly reserved such a right for other circumstances, its omission confirms the applicability of Section 2.1 under these circumstances. Thus the procedure set forth in Section 2.1, requiring the unit price to be used in circumstances of discrepancies, should prevail.

Granite respectfully requests that Caltrans reconsider its initial position. The revised bid sheet was a mere formality that does not affect the responsiveness of Granite's bid. It did not alter Granite's price; give Granite an advantage not allowed other bidders; nor act as a vehicle for favoritism. Granite is not requesting a change to its pricing due to the addenda sheet not being used in its bid package. Consequently, there is no change Granite's bid price nor any advantage. Lastly, favoritism cannot be argued. All contractor's bidding the project enjoyed the same protections under Section 2.1. Granite merely asks Caltrans to follow Section 2.1's instructions.

Per the state statutes public bidding is intended to eliminate favoritism, fraud and corruption, avoid misuse of public funds, and stimulate competition. Here none of the purposes are in jeopardy. There is no evidence of favoritism, corruption, fraud, extravagance, or uncompetitive bidding practices. In fact, to reject Granite's bid would only serve to decrease competition and waste public funds. Since the bid solicitation contemplated the present scenario and Granite's bid conforms to the governing standards, Granite's bid should be accepted as responsive. The above discussion shows that Granite's alleged error was not material. Granite requests that Caltrans waive the deviation as immaterial to Granite's bid.

If you have any questions or require additional information please contact me at your convenience.

Sincerely,



Chris Burke  
Chief Estimator  
Granite Construction Company - Nevada Region  
Direct 775.352.1938 | Call 775.813.0907 | Fax 775.358.0372

Enclosed: Exhibit A - Granite's Bid Book Pages 1 and 2

12/7/2012

2 of 2

Received

Dec 14 2012 02:44pm

775-358-0372

Sparks Main Fax

Granite Constructin 775-358-03

14:50:21

12-14-2012

5 / 8

**Exhibit A**

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**BID TO THE DEPARTMENT OF TRANSPORTATION**  
 DES-05-0102.1 (REV. 3/2011)

CONTRACT NO. 03 - 1A7324

NAME OF BIDDER GRANITE CONSTRUCTION COMPANY  
 BUSINESS P.O. BOX P.O. BOX 50085  
 CITY, STATE, ZIP WATSONVILLE, CA 95077-5085  
 BUSINESS STREET ADDRESS 585 WEST BEACH STREET  
(Indicate even if P.O. Box used)  
 CITY, STATE, ZIP WATSONVILLE, CA 95076  
 TELEPHONE NO: AREA CODE (831 ) 724-1011  
 FAX NO: AREA CODE (831 ) 788-4021  
 CONTRACTOR LICENSE NO. 89 A, B

1. Bidder agrees, if this bid is accepted, to enter into a contract with the Department, in the form included in the Standard Specifications, to perform the work provided in the Contract under the terms of the Contract for the price or prices bid.
 

For a lump sum or unit price based bid, Bidder additionally agrees to perform the work within the number of working days shown on the Notice to Bidders.

For a cost plus time based bid on a contract without a plant establishment period, Bidder additionally agrees to perform the work within the number of working days bid.

For a cost plus time based bid on a contract with a plant establishment period, Bidder additionally agrees to perform the non-plant establishment work within the number of working days bid for non-plant establishment work.
2. For a lump sum based bid, Bidder submits this bid with a total price in the total bid space provided on the Bid Item List. For a unit price or cost plus time based bid, Bidder submits this bid with a unit price and the item total (the product of the unit price and the quantity) for each item and a total price (the sum of the item totals) in the spaces provided on the attached Bid Item List. For a unit price with additive item based bid, Bidder submits this bid with a unit price and an item total for each item and a total base bid (the sum of the item totals) and the additive items in the spaces provided on the attached Bid Item List. Additionally, for a cost plus time based bid, Bidder submits this bid with working days bid for non-plant establishment work, total bid for time, and total bid for bid comparison in the spaces provided on the Bid Item List. Bidder agrees:
  - 2.1. If a discrepancy between the unit price and the item total exists, the unit price prevails except:
    - 2.1.1. If the unit price is illegible, omitted, or the same as the item total, item total prevails and the unit price is the quotient of the item total and the quantity.
    - 2.1.2. If a decimal error is apparent in the product of the unit price and the quantity, the Department will use either the unit price or item total based on the closest by percentage to the unit price or item total in the Department's Final Estimates.
  - 2.2. If the unit price and the item total are illegible or are omitted, the bid may be determined nonresponsive. If a lump sum total price is illegible or is omitted, the bid may be determined nonresponsive.
  - 2.3. Bids on lump sum items are item totals. If a unit price for a lump sum item is entered and it differs from the item total, the item total prevails.
  - 2.4. Entries are to be expressed in dollars or decimal fractions of a dollar. Symbols such as commas and dollar signs are ignored and have no significance in establishing unit price or item total.
  - 2.5. Unit prices and item totals are interpreted by the number of digits and decimal placement. Do not round item totals or the total bid.

Contract No. 03-1A7324  
 1

GRANITE CONSTRUCTION COMPANY

Exhibit A

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
BID TO THE DEPARTMENT OF TRANSPORTATION  
DES-GE-0102.1 (REV. 3/2011)

- 2.6. For a lump sum based bid, the item total is the bid amount the Department uses for bid comparison.  
For a unit price based bid, the sum of the item totals is the bid amount the Department uses for bid comparison.  
For a cost plus time based bid, the sum of the item totals and the total bid for time is the bid amount the Department uses for bid comparison.
- 2.7. The Department's decision on the bid amount is final.

3. Bidder has and acknowledges the following addenda:

1, 2, 3

4. Bidder submits this bid with one of the following forms of bidder's security equal to at least 10 percent of the bid:

Cash \$ \_\_\_\_\_, Cashiers Check, Certified Check, Bidder's Bond

5. Bidder's signature is an affirmation of the included certifications. Bidder is cautioned that making a false certification may result in one or more of the following:

- 5.1. Criminal prosecution
- 5.2. Rejection of the bid
- 5.3. Rescission of the award
- 5.4. Termination of the Contract

*Derek Betts*  
BY (Authorized Signature)

**Derek Betts, Construction Manager**

PRINTED NAME AND TITLE OF PERSON SIGNING

12/14/12  
DATE SIGNED (do not type)  
*[Signature]*

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 894-8418 or TDD (916) 894-8530 or write Records and Forms Management, 1120 H Street, MS-82, Sacramento, CA 95814.

Contract No. 03-1A7324  
2

GRANITE CONSTRUCTION COMPANY

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF ENGINEERING SERVICES**  
**OFFICE ENGINEER, MS 43**  
**1727 30<sup>TH</sup> STREET**  
**P. O. BOX 168041**  
**SACRAMENTO, CA 95816-8041**  
**PHONE (916) 227-6280**  
**FAX (916) 227-6282**  
**TTY (916) 227-8454**



*Flex your power!  
 Be energy efficient!*

September 22, 2010

FACSIMILE (714) 978-1156

Bob Schneider, Operations Manager  
 C. C. Myers, Inc.  
 1822 S. Lewis Street  
 Anaheim, CA 92805

12-OF0314  
 12-Ora-57-16.2/18.6  
 B.O. 7/22/10

Dear Mr. Schneider:

The Department received the attached letter dated August 6, 2010 from C. C. Myers, Inc. (CCM) protesting the award of Contract 12-OF0314 to Beador Construction Company, Inc. (Beador). CCM's protest alleges Beador's bid is non-responsive based on Beador's failure to submit its bid using the required bid forms and as a result of various issues related to irregularities in Beador's listing of unit prices.

The Department requested Beador to respond to your protest. Beador's response is attached. The Department reviewed CCM's protest and Beador's response and has determined that Beador's failure to use the replacement bid page no. 14 issued in Addendum No. 4 is not a material defect because Beador gained no competitive advantage over other bidders. At the time of bid submittal, Beador acknowledged Addendum No. 4 which changed the quantity of Item No. 236, Concrete Barrier (Type 60) from 7,430 linear feet to 3,820 linear feet. The item total in Beador's bid for Item No. 236 was \$118,420; this item total divided by Beador's specified unit price of \$31 yields the correct item quantity of 3,820. Furthermore, had Beador requested a relief of bid due to a claimed error related to bidding Item No. 236, such request would not have been considered because the error would not have been significant.

With regards to CCM's allegations related to irregularities in Beador's listing of unit prices, the Department has determined that it was able to apply its guidelines as specified in its bid documents to determine the unit prices and item totals for each of the bid items in Beador's bid. In the instance of Beador's use of the "¢" symbol, it is apparent that Beador intended to indicate that the unit price was expressed in cents; therefore, the guideline related to decimal errors was applied to confirm Beador's item total. In regards to Item No. 252, despite Beador's failure to use the "¢" symbol, the guideline related to decimal errors was again applied to confirm Beador's item total and Beador's apparent intent to indicate that the unit price was expressed in cents.

Mr. Schneider  
September 22, 2010  
Page 2

Based on the above, the Department finds CCM's protest lacks merit and will proceed to award the contract to Beador provided the award requirements are met.

If you have any questions, please contact Kris Kuhl Chief, Office of Contract Awards and Services, at (916) 227-6280.

Sincerely,



JOHN McMILLAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

Attachments

c: Beador Construction Company, Inc.  
26320 Lester Circle  
Corona, CA 92883



Telephone: (714) 978-2728 / Fax: (714) 978-1156

August 6, 2010

California Department of Transportation  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> Street  
P.O. Box 168041  
Sacramento, CA 95816-8041

Attn: John McMillan

Re: Bid Protest Re: Construction On State Highway 57 In Orange County In Placentia And Fullerton From .2 Miles South Of Orangethorpe Ave. To .2 Miles North of Yorba Linda Blvd.; Contract No. 012-0F0314; Bids Opened July 22, 2010

Dear Mr. McMillan:

C.C. Myers, Inc. ("CCMI") hereby submits this protest to the bid submitted by the apparent low bidder, Beador Construction Company, Inc. ("Beador") on the above referenced project. CCMI submits this protest pursuant to Public Contract Code sections 10166, 10343 and other applicable California law on the grounds that: (1) Beador's bid is not responsive for failure to submit its bid using the required bid forms; and (2) CCMI is the lowest responsive and responsible bidder when Caltrans' own bidding requirements are followed.

1. Beador's Bid Is Non-Responsive

Beador failed to complete and submit all Caltrans addenda required by the bid documents and California law. Specifically, on July 9, 2010, Caltrans issued Addendum No. 4 which stated that "[t]he revisions declared in this addendum are an essential part of the contract." In addition, Addendum No. 4 directed bidders to "[r]eplace the entire page 14 of the "Bid Item List" in the Bid book with the attached revised page 14 of the Bid Item List. The revised Bid Item List is to be used in the bid."

The Bid Item List was a standard proposal form that is consistent with the requirements of Section 2-1.05 of the Standard Specifications, which states in part as follows:

The proposal shall set forth the item prices and totals, in clearly legible figures, in the respective spaces provided, and shall be signed by the bidder, who shall fill out all blanks in the proposal form as therein required.

The requirements of Section 2-1.05 are further clarified by Section 1-1.32 of the Standard Specifications which defines "proposal form" as "[t]he approved form upon which the Department of Transportation requires formal bids be prepared and submitted."

- a. The bid shall be disregarded pursuant to Public Contract Code section 10166

Despite bid instructions and Addendum No. 4 expressly identifying which forms are required to be included in the bid, Beador failed to comply by submitting its bid without replacing page 14 of the Bid Item List. A brief review of page 14 of Beador's bid confirms that it does not include the required revised bid list and does not include the phrase "REVISED PER ADDENDUM NO. 4 DATED JULY 9, 2010" at the bottom as set forth in the revised Addendum page required by Caltrans. In short, Beador submitted a non-compliant bid by omitting the replacement bid item sheet required by Addendum No. 4.

Pursuant to Public Contract Code section 10166, "[b]ids not presented on forms so furnished shall be disregarded." There is no question that for this reason alone, Beador's bid "shall be disregarded" and is non-responsive.

- b. The bid is also non-responsive for failure to include material components required by the bidding documents

As an initial matter, bid responsiveness is determined from the face of the bid (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331) and any bid that varies materially from the requirements of the bid package must be rejected (*Stimson v. Hanley* (1907) 151 Cal. 379).

In addition to violating section 10166, by omitting the bid item list required by Addendum No. 4, Beador also failed to include a material component which is required for a responsive bid. The applicable legal principles are clear and further confirm that Beador simply failed to meet Caltrans' bidding requirements. As Caltrans is aware, competitive bid submissions in California must be both responsive and submitted by a responsible bidder. *Valley Crest Landscape, Inc. v. City of Davis* (1996) 41 Cal.App.4th 1432. Bid responsiveness focuses on the bid documents. Accordingly, responses to an invitation for bid proposals by a public agency must be responsive to the material terms of the bid package. *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175.

Although Caltrans and other agencies have discretion to waive immaterial irregularities, a "responsive" bid is one that strictly complies in all material aspects with the requirements of the bid documents. *Valley Crest Landscape, Inc. v. City of Davis* (1996) 41 Cal.App.4th 1432; *Konica Business Machines v. Regents of University of California* (1988) 206 Cal.App.3d 449. Material terms are those that effect important aspects of the bid such as price, quantity, quality, time and any terms that a bid package identifies as mandatory. *Pozar v. Department of Transportation* (1983) 145 Cal.App.3d 269.

Here, Beador's bid omitted a material Addendum that, as expressly stated in the document itself, is "an essential part of the contract" and "is to be used in the bid." There can be no question that the failure to include a material part of the contract in the bid cannot be dismissed as an immaterial irregularity. Indeed, by that omission Beador has submitted a bid with the wrong quantities for Bid Item List 236 (7,430 versus 3,820) and, to further confuse matters, paragraph 3 of Beador's bid acknowledges the existence of Addendum 4 along with the other Addenda, but failed to include it in the bid. There is no authority permitting Caltrans to guess what caused the omission or what Beador truly intended by the unit price and total for that item in its bid. To do so would not only violate the Public Contract Code and Caltrans' own bidding documents and Standard Specifications, it would also be fundamentally unfair to CCMi and all bidders that complied with required instructions and submitted bids based on the correct contract documents, including all quantities in Bid Item List.

## 2. CCMI Is The Lowest Responsible And Responsive Bidder

It is well established that while Caltrans may include guidelines in its bid documents to address certain discrepancies, Caltrans must follow those rules. *Pozar v. Department of Transportation*, 145 Cal.App.3d at 271 ("Here, as in the Glendale case, we are concerned with a ministerial duty. Caltrans' own rules obligate it to accept the per-unit price in the absence of specified circumstances, none of which are here present. The per-unit price of \$20 is neither ambiguous, unintelligible, uncertain, nor otherwise within any exception to the rule.")

In this instance, paragraph 2 of Caltrans' form bid document sets forth the following rules:

2.1 If a discrepancy between the unit price and the item total exists, the unit price prevails, except:

2.1.1 If the unit price is illegible, omitted, or the same as the item total, item total prevails and the unit price is the quotient of the item total and the quantity.

2.1.2 If a decimal error is apparent in the product of the unit price and the quantity, the Department will use either the unit price or item total based on the closest by percentage to the unit price or item total in the Department's Final Estimate.

[...]

2.4 Entries are to be expressed in dollars or decimal fractions of a dollar. Symbols such as commas and dollar signs are ignored and have no significance in establishing unit price or item total.

In sum, the rule is that the unit price prevails if there is a discrepancy between the unit price and the item total, unless the exceptions in 2.1.1 or 2.1.2 apply.

- a. CCMI is the lowest responsible bidder when Caltrans' rules are properly applied

There are numerous instances where Beador's bid failed to follow those instructions by using a variety of symbols rather than decimal points in its bid unit prices and item totals. Rather than ignoring those symbols as required by Bid Sheet instruction paragraph 2.4, Caltrans apparently assumed that certain symbols were intended to convey dollars and cents and made handwritten changes to the bid item total and/or unit price throughout Beador's bid. After making various adjustments to the bid, Caltrans revised Beador's total bid to \$28,581,800.

In order to arrive at that figure, however, Caltrans violated its own bidding rules and incorrectly determined that Beador was the low bidder. Specifically, Bid Item 252 (Item Code 840550) on the Bid Sheet includes an estimated quantity of 6,720. Beador provided a unit price of 50, but the item total was listed as 3360. There is a clear discrepancy between the unit price and the item total since the unit price of 50 multiplied by the stated quantity of 6,720 amounts to \$336,000. Under paragraph 2.1 of the Caltrans rules, if a discrepancy between the unit price and the item total exists, the unit price prevails.

Applying that rule, the total for Item 252 must be \$336,000, and not the \$3,360 utilized by Caltrans to arrive at Beador's bid total. Even if we utilize Caltrans' revised Beador bid amount of \$28,581,800, which includes other improper adjustments, adding the required amount for Item 252 increases Beador's total bid amount to \$28,891,440 (\$28,581,800+\$336,000-\$3,360).<sup>1</sup> Given that CCMI's total bid was \$28,729,083.45, CCMI is the lowest responsive and responsible bidder.

Indeed, if Caltrans' own rules are uniformly applied throughout Beador's bid, the actual bid total is \$29,247,116. Regardless, applying Caltrans' discrepancy bid rules to Bid Item 252 alone confirms that CCMI, and not Beador, was the low bidder.

- b. Bid Item 252 does not fall within the two exceptions to the default unit price rule

The default rule requiring Caltrans to utilize the stated unit price when there is a discrepancy between the unit price and item total has two exceptions that have no application here. The first exception in paragraph 2.1.1 is applicable only when "the unit price is illegible,

<sup>1</sup> Notably, the total bid amount submitted by Beador was \$28,583,300. The revised bid amount of \$28,581,800 was presumably calculated by Caltrans and is identified on page 17 of the enclosed copy of Beador's bid.

omitted, or the same as the item total." There is no question that Beador's stated unit price is legibly 50 and that its stated item total is legibly 3360. From the face of the bid itself, rule 2.1.1 has no application here.

The second exception in paragraph 2.1.2 is applicable only when "a decimal error is apparent in the product of the unit price and the quantity." Item 252 of Beador's bid includes no decimal point at all so there is no basis to invoke the decimal error exception. Moreover, contrary to rule 2.4, Beador apparently included a cent symbol ("¢") after certain unit prices, but neglected to do so in Item 252. Thus, even if Caltrans disregards rule 2.4 and chooses to interpret and not "ignore" the use of certain symbols (which is expressly disallowed), there is no "¢" to interpret in Item 252. The bottom line is that Item 252 contains no decimals and the product of the unit price and the quantity confirm only that there is a discrepancy, which places Item 252 squarely within the general rule (paragraph 2.1) that the unit price prevails.

Finally, as confirmed by the court in *Pozar v. Department of Transportation*, 145 Cal.App.3d 269, when Caltrans issues rules in its bid document stating how it will address discrepancies between unit prices and price totals, Caltrans must follow its own rules and cannot deviate. (*Pozar*, 145 Cal.App.3d at 145 [holding that Caltrans violated its own bidding discrepancy rules by concluding that a bidder who included a unit price of \$200 intended to include \$20 where the per-unit-price of \$20 was "neither ambiguous, unintelligible, uncertain, nor otherwise within any exception to the rule."].)

Here too, Caltrans must follow its own discrepancy rules and cannot selectively enforce some but not others. All bidders rely on Caltrans to uniformly apply their own rules and, in this instance, Caltrans' failure to do so would reward a contractor for failing to comply with bid instructions while eliminating the true lowest and responsive bidder – CCMI.

Based on the facts provided above, we request that Caltrans (1) reject Beador's proposal as non-responsive, and (2) award the above noted project to the lowest responsible and responsive bidder, CCMI. This result is compelled by the Public Contract Code and by Caltrans' own bidding rules and Standard Specifications in order to uphold the purpose and integrity of California's public contract bidding procedures.

Please feel free to contact me at (714) 978-2726, (714) 412-3882, or email [bschneider@ccmyersinc.com](mailto:bschneider@ccmyersinc.com) if you have any further questions or need additional information.

Sincerely,



Bob Schneider,  
Southern California Area Manager

Enclosures: (1) Beador's bid; (2) Addendum 4; and (3) *Pozar v. Department of Transportation* (1983) 145 Cal.App.3d 269.



**FAX TRANSMITTAL SHEET**

❖ ATTENTION: JOHN McMILLIAN

❖ COMPANY: CALTRANS  
1727 30TH ST., MS-43  
SACRAMENTO, CA 95816

❖ FAX: (916) 227-6282

❖ DATE: 02.13.2013

NUMBER OF PAGES: 23  
(INCLUDING TRANSMITTAL)

❖ FROM: CHRIS BURKE  
GRANITE CONSTRUCTION COMPANY  
1900 GLENDALE AVE/P.O. BOX 2087  
SPARKS, NV 89432  
PHONE (775)358-8792  
FAX (775)358-0372

RE: CALTRANS CONTRACT # 03-1A 7324

MESSAGE: PLEASE SEE ATTACHED

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_