



December 2, 2015

Faxed to: 916/227-6282

Department of Transportation
Division of Engineering Services
Office Engineer, MS43
1727 30th Street
P.O. Box 168041
Sacramento, CA 95816-8041

Attn: John McMillan, Deputy Division Chief

RE: 04-2G8504 – For Construction on State Highway in Alameda County Near Livermore 2.0 Miles East of North Flynn Road At Stone Cut Underpass

Subj: Bid Protest

Dear Mr. McMillan,

In response to RGW Construction, Inc.'s ("RGW") response to Granite Construction Company's official protest to RGW being awarded the above referenced contract Granite responds as follows:

As explained more fully in Granite's original protest, RGW's bid is nonresponsive because it failed to comply with the Department's mandatory requirements for subcontractor listing and impermissibly failed to identify the scope of subcontracted work for bid items 32 – Remove Concrete Paving and Base, 33 – Remove Base and Surfacing, and 36 – Roadway Excavation. RGW listed the percentages subcontracted for these items as 5%, 23% and 5% respectively. No further information was given as is required when a subcontractor is listed as performing work on an item which is less than 100% of the item.

RGW's response acknowledges its failure to comply with the Subletting and Subcontracting Fair Practices Act but argues its failure was 1. an inadvertent mistake and 2. that the mistake did not provide for bid shopping or bid peddling once the bid was opened. These are patently false on their face. RGW failed to correct its "mistake" within the allowed time frame and failed to address the mistake until Granite asserted its protest.

RGW implies it did not have to comply with the requirements of Subletting and Subcontracting Fair Practices Act or CALTRANS and provide a scope of work for Austin Enterprise ("Austin") because saw cutting is the only work that Austin could logically provide. However, Austin provides an array of services that could be contemplated for the bid (i.e. Joint Seal, Grinding/Grooving, Stripe Removal, Crack Treatment) The bid items Austin was listed for- remove concrete paving and base, remove base and surfacing and roadway excavation- contain

required operations outside of just saw cutting By leaving the scope of work blank in RGW's bid it was provided an unfair advantage over Granite's properly submitted bid.

In addition, RGW identified ABSL Construction in the subcontractor listing under items 33 and 36. RGW identified ABSL's scope of work as grinding and lists its percentages as 18% and 1% respectively. ABSL only provides grinding services and yet RGW felt obligated to identify its scope of work in contrast to its argument regarding its reason for failing to provide Austin's scope of work.

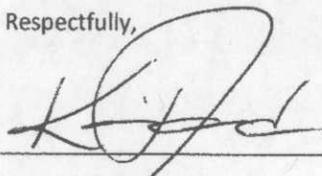
Public agencies may waive immaterial deviations from the bid specifications, if the deviation cannot have affected the amount of the bid or give a bidder a competitive advantage not allowed other bidders. (*MCM Construction, Inc. v City and County of San Francisco*, (1988) 66 Cal.App.4th 359, 374.) The mistaken omission of subcontractor information is a material deviation that may not be waived by a public entity. (*Valley Crest Landscape, Inc. v City Council*, (1996) 41 Cal.App.4th 1432, 1442) A bidder's mistaken omission of subcontractor information could provide a competitive advantage by (i) facilitating bid shopping and allowing the bidder to withdraw the bid. (*MCM Construction, Inc. v City and County of San Francisco*, (1988) 66 Cal.App.4th at 375.) A bid containing a material deviation must be rejected as non-responsive.

Here, RGW admits to failing to provide a responsive bid. The defects in its bid violated minimum State mandates and afforded RGW with the opportunity to bid shop a significant element the Project and potentially obtain lower pricing to perform the work after bid opening.

Because Granite provided the low, responsive and responsible bid, it should be awarded the Contract. Granite is fully prepared to perform this job in its customary dependable and high quality manner.

Thank you for your additional time and consideration of this matter. Please do not hesitate to contact me at (408) 327-7010 if you require additional information.

Respectfully,



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Company: <u>CALTRANS</u>	Date: <u>12-2-15</u>
Fax: <u>916 227-6282</u>	Total Pages (including cover page): <u>3</u>
Phone: _____	Sender's Reference Number: _____
RE: <u>04-2G8504</u>	Your Reference Number: _____

- Urgent For Review Please Comment Confirm Receipt

Notes and Comments: