

GENERAL CONTRACTOR
LICENSE NO. 116307 A C12
FAX: 818.362.9300

SECURITY PAVING COMPANY, INC.

13170 TELFAIR AVENUE
SYLMAR, CA 91243
TEL. 818.362.9200

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

Re: Contract No. 07-295604
07-LA-5-19.2/28.9
Bid Protest of C.A. Rasmussen, Inc.
Lowest Responsive Bidder: Security Paving Company, Inc.
Non-Responsive Bidder: C.A. Rasmussen, Inc.

Dear Mr. McMillan:

This correspondence is in response to C.A. Rasmussen, Inc.'s response to Security Paving Company, Inc.'s protest of Rasmussen's bid for the above-referenced project.

Rasmussen's response to Security Paving's bid protest boils down to (1) the subcontractors at issue quoted the bid items in their original quote which were eventually given to them in the 24 Hour Submittal by Rasmussen and therefore, it does not matter that these bid items were not provided in the Bid Day Subcontractor List's description of work; and (2) the bid items that were not included in the Bid Day Subcontractor List's description of work are related to the work described in the Bid Day Subcontractor List because they are performed in temporal proximity to the work described or because they are located in similar sections of the Special Provisions for Contract No. 07-295604.

The Subletting and Subcontracting Fair Practices Act (*California Public Contract Code* section 4100 *et. seq.*) (the "Act") is clear that a contractor may not alter the initially subcontracted scope of work of a subcontractor between the Bid Day Subcontractor List and the 24 Hour Submittal. There are no exceptions to this rule permitted for subcontractors that originally quoted bid item work not described in the Bid Day Subcontractor List. Thus, it is irrelevant whether the subcontractors at issue originally quoted the work for which Rasmussen eventually gave them.

As the California Department of Transportation understands, the purpose of the Act is to provide fair competitive bidding and to prevent contractors from receiving an unfair advantage through bid shopping and bid peddling after the submission of the Bid Day Subcontractor List. This explicit purpose of the Act is defied if a contractor is permitted to add work to a subcontractor between the Bid Day Subcontractor List and the 24 Hour Submittal simply because the subcontractor originally quoted that work. By initially not assigning that work to any subcontractor, Rasmussen would have the opportunity to self-perform that work or decide within 24 hours of its submission of the Bid Day Subcontractor List to assign that work to the

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subcontractor that originally bid the items it alleges are related. This is exactly what the Act is meant to protect against and to permit otherwise would violate the very purpose of the Act.

There are also certainly no exceptions to the rule prohibiting changes in the scope of work between the Bid Day Subcontractor List and the 24 Hour Submittal permitted for bid items that are performed around the same time as the work described or because they are located in similar sections of the Special Provisions for a Caltrans contract. To find otherwise would again defy the explicit purpose of the Act because a contractor, by initially not assigning the work to any subcontractor, would have the opportunity to self-perform that work or decide within 24 hours of its submission of the Bid Day Subcontractor List to assign that work to the subcontractor that originally bid the items it alleges are related.

Rasmussen's argument that these items are related because they are performed in a close temporal proximity or because they are found in similar sections of the contract Special Provisions is irrelevant in light of the requirements and purpose of the Act.

For instance, these bid items are not sufficiently related to bind Rasmussen to hiring the subcontractor identified in its Bid Day Subcontractor List to perform these items. As such, Rasmussen is free to decide whether it wants to self-perform these items or assign the work to the subcontractor that originally bid the items it alleges are related. If Caltrans were to permit these actions, Rasmussen would be given a competitive advantage over the relevant subcontractors and the other contractors at issue. This is exactly what the Act seeks to prevent against.

Moreover, Rasmussen's argument that these items are related because they are performed in a close temporal proximity or because they are found in similar sections of the contract Special Provisions is simply incorrect. For example, Rasmussen contends that "Coldmill" is related to "Remove Asphalt Concrete Dike" because they are found in similar sections of the contract Special Provisions and because they have historically been done concurrently with the asphalt grinding operation. However, Rasmussen admits itself that the Special Provisions and Caltrans specifications do not specify a method to employ for removal of asphalt concrete dike. Rasmussen's planned method is one of many methods by which a contractor may decide to remove the asphalt concrete dike. Rasmussen's contention that the removal of asphalt concrete dike has historically been done in one manner is based on nothing more than opinion. Moreover, it is irrelevant; the removal of the asphalt concrete dike need not be performed by the same subcontractor.

Similarly, Rasmussen's argument that "Alternative Crash Cushion" is related to "Guardrail" or "Fence" because guardrail and fence subcontractors sometimes furnish and install alternative crash cushions ignores the simple truth that crash cushions do not fall under the scope of guardrail and fence. Moreover, the crash cushions here are entirely unrelated to the guardrail and fence as the crash cushions attach to the end of concrete barriers on this Project.

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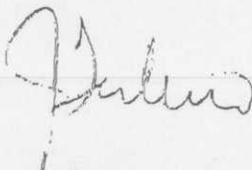
Finally, it is important to reiterate that Rasmussen was extremely detailed in its description of work for its subcontractors in its Bid Day Subcontractor List. On bid day, Rasmussen identified FBD Vanguard's subcontractor work as "JPCP (RSC), Slab Replacement, Spall Repair, Barrier Rail, Minor Concrete (Minor Structures), Remove Conc. Pavement & Base, Traffic Control & Related - Portion." However, in Rasmussen's 24 Hour Submittal, Rasmussen expanded FBD Vanguard's scope of work to include distinct and unrelated bid items for "Temporary Concrete Washout," "Alternate Treated Base," "Replace Base," and "Drill and Bond (Dowel Bar)." The detail of Rasmussen's own description of FBD Vanguard's original scope of work refutes Rasmussen's current attempt to describe these bid items as related work.

As demonstrated above, it is clear that Rasmussen's argument that the bid items added to Crown Fence, Cindy Trump, and FBD Vanguard Construction, Inc. in the 24 Hour Submittal are related to the scope of work described for these subcontractors in the Bid Day Subcontractor List is incorrect. Furthermore, Rasmussen's focus on this argument is misguided. The fact remains that Rasmussen's variations between the Bid Day Subcontractor List and the 24 Hour Submittal would permit Rasmussen the opportunity to self-perform that work or decide within 24 hours of its submission of the Bid Day Subcontractor List to assign that work to the subcontractor that originally bid the items it alleges are related, thereby giving Rasmussen an unfair competitive advantage in violation of the Act. The Act is blind to a contractor's actual intent.

In light of the above, Security Paving respectfully asserts that Caltrans should find Rasmussen's bid to be non-responsive and disqualify Rasmussen's bid, and award the subject contract to Security Paving as the lowest responsive bidder.

Should you have any questions regarding the above, please do not hesitate to contact the undersigned.

Sincerely,



Joe Ferndino
Vice President Security Paving Company