

GENERAL CONTRACTOR
LICENSE NO. 116307 A C12
FAX: 818.362.9300

SECURITY PAVING COMPANY, INC.

13170 TELFAIR AVENUE
SYLMAR, CA 91342
TEL. 818.362.9200

December 23, 2014

State of California, Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
P.O. Box 168041
Sacramento, CA 95816

Attention: John McMillan, Deputy Division Chief

Re: **Response by Security Paving Company, Inc. in Support of Bid Protest**
Contract No. 08-043514
Bids Opened: November 14, 2014
Lowest Responsive Bidder: Security Paving Company, Inc.
Non-Responsive Bidder: Skanska-Teichert JV

Dear Mr. McMillan:

Security Paving Company, Inc. ("Security Paving") has reviewed the response by Skanska-Teichert JV ("Skanska") to Security Paving's formal protest of the bid submitted by Skanska for Caltrans Contract No. 08-043514 (the "Contract"). Skanska's response fails to satisfactorily explain the material inconsistencies between its bid day subcontractor submittal bid and its twenty-four hour subcontractor submittal. Changing a subcontractor scope of work from the bid day submission violates the bidding instructions and the Public Contract Code.

As Skanska admits, in its Bid Day Submittal, Skanska listed Quality Hydroseed & Restoration ("Quality") to perform work described as "Erosion Control and Related." However, in its 24 Hour Submittal, Skanska disclosed that Quality would be performing work as to Bid Items 17, 66, and 67. The scope of work associated with Bid Item 17 is Temporary Soil Binder. As Skanska admits, Bid Item 17, Temporary Soil Binder, falls under Section 13 of the Standard Specifications, which covers Water Pollution Control, not Erosion Control. By adding Water Pollution Control line items to Quality's proposed scope of work, Skanska has improperly changed the scope of work to be performed by Quality. Such a revision is not permitted and Quality's bid is non-responsive and must be rejected.

Skanska claims that its material change is proper because there is a "nexus" between temporary soil binder, erosion control, and hydroseed. However, Caltrans identifies "water pollution control" and "erosion control" as separate and distinct items of work, as demonstrated by the fact that they are governed by separate and distinct sections of the Specifications. The fact that one section of the Specifications refers to another section does not create a sufficient "nexus" between the items of work to substantiate a violation of the bidding laws. Further, the fact that the same subcontractor performs the work does not create a "nexus" sufficient to violate the bidding laws. If that were the case, a bidder could identify a concrete subcontractor to perform structural concrete work on bid day and subsequently expand the subcontractor's scope to include all concrete work, structural, minor, or

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otherwise. Clearly, this is not permissible, yet it is precisely what Skanska urges that Caltrans find in this instance.

Contrary to Skanska's position, Caltrans has not "historically" found a sufficient "nexus" between water pollution control items and erosion control items to justify violating the subcontractor listing laws. As support for its position, Skanska refers to two recent contract awards, Contract 08-3401U4 and Contract 11-257154. However, with respect to Contract 08-3401U4, Skanska protested the bid by the low bidder, but only raised an issue with respect to the "Cold Plane AC" work in the bid. Skanska did not raise any issue with respect to an inconsistency between the "water pollution control" and "erosion control" scopes of work. Similarly, with respect to Contract 11-257154, there was no protest filed with respect to the low bid. Accordingly, in each instance, if an inconsistency existed, it was not brought to Caltrans' attention and there is no evidence that Caltrans was made aware of the issue.

The same is not true, however, for the recent bid rejections that were referenced by Security Paving in its Bid Protest letter. In each instance the "erosion control" work was put at issue by the bid protest and was brought to Caltrans' attention. In each instance, Caltrans rejected the bids and found that "erosion control" and "water pollution control" were separate and distinct items of work. Caltrans did not find that there was a sufficient "nexus" between the work to justify a violation of the subcontractor listing laws. Although Skanska attempts to distinguish these decisions, there can be no doubt that they are clearly on point and address the very same error that Skanska has committed on this Contract.

With respect to Caltrans' rejection of Gordon Ball's bid on Contract No. 04-2G8604, Gordon Ball argued that it's description that the subcontractor was only "partially" performing the "erosion control" work was proper because the subcontractor was not performing "temporary hydraulic mulch." Caltrans rejected this argument. Caltrans specifically stated that "temporary hydraulic mulch" was part of Water Pollution Control, not Erosion Control, and Gordon Ball's subcontractor lists were inconsistent:

Bid Item #14, Temporary Hydraulic Mulch (Water pollution control) – 100% is not part of Erosion Control as described in the initial "Description of Work" but is in fact part of Water Pollution Control. Since Selby's was only to do work described as Erosion Control (Partial) as stated on the form submitted at the time of Bid Opening, the addition of Bid Item #14 relating to Water Pollution Control on the 24 Hour Subcontractor List expanded the work to be performed by Selby's. The addition of Bid Item #14 is inconsistent with the original Subcontractor List, and is a material error and therefore renders the bid nonresponsive.

Gordon Ball made the same argument with respect to its bid on Contract No. 04-1SS024. Gordon Ball argued that its description of "Erosion Control (Partial)" was accurate because the subcontractor was not performing water pollution control work. Caltrans rejected Gordon Ball's argument and determined that Water Pollution Control and Erosion Control are separate items of work and are not related.

Despite what type of spin Skanska would like to put on the Gordon Ball bid rejections, Caltrans language is clear: water pollution control and erosion control are separate items of work and are not related. In fact, each of the Gordon Ball rejections referred to "temporary hydraulic mulch", which is Section 13-

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5.03D of the Standard Specifications. Section 13-5.03D states as follows: "Apply temporary hydraulic mulch under section 21-1.03E." Accordingly, contrary to Skanska's argument, the fact that the water pollution control specifications make reference to erosion control specifications, does not create a "nexus" between the separate items of work such that subcontractor listing laws can be violated. Caltrans has already rejected this very same argument.

Skanska has committed the same material error as Gordon Ball. On bid day Skanska only committed Quality to perform "Erosion Control" work, not "Water Pollution Control." Bid Item 17, Temporary Soil Binder, is not part of Erosion Control, but is in fact part of Water Pollution Control. Since Quality was only to do work described as Erosion Control as stated in the form submitted at the time of Bid Opening, the addition of Bid Item 17 relating to Water Pollution Control on the 24 Hour Subcontractor List expanded the scope of work to be performed by Quality. The addition of Bid Item 17 is inconsistent with Skanska's original Subcontractor List, and is a material error. Skanska's bid is, therefore, non-responsive and must be rejected.

Skanska argues that its bidding error is immaterial because it did not obtain an unfair advantage. As support for its position, Skanska refers to Security Paving's bid and the fact that Security Paving also identified Quality as performing the same scope of work at the same price. However, the significant difference between Security Paving's subcontractor listing and Skanska's subcontractor listing is that Security Paving recognized that "water pollution control" and "erosion control" were separate and distinct items of work. On bid day Security Paving identified that Quality would perform work described as "Temporary Soil Binder, Hydroseed and Related." Accordingly, Security Paving's 24 Hour Submittal, which listed Bid Item 17 for Quality, was entirely consistent with its bid day submittal.

Skanska's unfair advantage over other bidders, including Security Paving, is due in part to the fact that Security Paving was "locked-in" to giving the water pollution control scope of work to Quality. Skanska did not have the same obligation. Based on its bid day description, Skanska was not required to award the Temporary Soil Binder work to Quality. If Skanska is permitted to change the scope of work assigned to subcontractors after its Bid Day Submittal, then the purpose of the subcontractor listing law has been disregarded. Allowing Skanska the opportunity to refine a subcontractor listing post-bid is an advantage that was not afforded to other bidders. This is precisely why California law precludes waiver of the defect in Skanska's bid.

Caltrans has consistently rejected bids where, like Skanska, the bidder has altered a subcontractor scope of work in its post-bid submission. Caltrans has strictly enforced its subcontractor listing requirements in the past. Contrary to Skanska's argument, Caltrans' rejection of Gordon Ball's bids on Contract No. 04-2G8604 and Contract No. 04-1SS024 are directly analogous to the material error committed by Skanska on this Contract. Erosion Control and Water Pollution Control are separate, distinct scopes of work. By listing a subcontractor to perform "Erosion Control" on bid day, and subsequently adding "Water Pollution Control" bid items to the scope of work, constitutes an inconsistent, material error rendering the bid non-responsive. Skanska's bid is non-responsive for this very same reason and must be rejected.

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Security Paving urges that Caltrans remain consistent with prior, similar determinations on other contracts and strictly enforce Caltrans' bidding instructions as well as the Public Contract Code. Security Paving respectfully asserts that Caltrans should find Skanska's bid to be non-responsive, disqualify Skanska's bid on that basis, and award Contract No. 08-043514 to Security Paving, the lowest *responsive*, responsible bidder.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Joseph Ferndino, Vice President
Security Paving Company, Inc.

SECURITY PAVING COMPANY, INC.

P. O. BOX 1489 SUN VALLEY, CA. 91363-1489 PH.(818) 767-8418 FAX(818) 767-3169

* Fax Cover Sheet *

Date: 12/23/14

To: John McMillan

Phone: _____

Company: Caltrans

Fax: (916) 227-6282

From: Joe Ferndino

Subject: BID PROTEST

REGARDING: 08-043514

This cover page is 1 of 5 pages.

*IF THERE IS ANY OTHER INFORMATION YOU NEED PLEASE LET ME KNOW.

OFFICE# (818)767-8418 OR FAX# (818)767-3169.

THANK YOU