

**SULLY-MILLER CONTRACTING CO.**

License 747612A

135 S. STATE COLLEGE BLVD., SUITE 400 • BREA, CA 92821 • PHONE 714-578-9600

April 5, 2016

Via Facsimile (916-227-6282) and U.S. Mail

Department of Transportation
Division of Engineering Services
P.O. Box 168041, MS-43
Sacramento, CA 95816-8041
Attention: Office Engineer, Construction Contracts Award

Re: Sully-Miller Contracting Company's Reply to Griffith Company's March 24, 2016 Response To Sully-Miller's Protest of Griffith Company's Bid on Caltrans Contract Number 08-0G9004

Dear Office Engineer:

Sully-Miller Contracting Company ("Sully-Miller") hereby submits its reply to Griffith Company's ("Griffith") March 24, 2016 written response to Sully-Miller's protest of Griffith's bid on the above-referenced California Department of Transportation ("Caltrans") project (the "Project"). Griffith's response letter was not made available to Sully-Miller until April 5, 2016.

Griffith's response letter fails to address the specific bid errors and inconsistencies explained in Sully-Miller's protest and supported by Exhibits attached thereto. Rather, Griffith makes conclusory statements that it will be performing more than 30% of the contract work, without specifically responding to the allegations contained in Sully-Miller's protest letter. Perhaps most importantly, Griffith fails to respond to the fact that it made post-bid revisions to its subcontractor percentages in violation of the Subletting and Subcontracting Fair Practices Act. At the bottom of page 1 of its March 24th letter, Griffith states that "Sully Miller falsely claims Griffith Company did post bid-revisions." However, Griffith does not explain why the statement is false, or why it did not make any post-bid revisions.

As established in Sully-Miller's protest letter, it is beyond dispute that Griffith made post-bid revisions to the amount of work it was subletting to its listed subcontractor, Fine Grade Equipment, Inc. ("Fine Grade"). Griffith's bid listed Fine Grade to perform 90% of item 37. (See **Exhibit A.**) However, after the bid closing, and in order to achieve the contract's 30% self-performed work "by contract value" requirement, Griffith reduced the scope of work subcontracted to Fine Grade by awarding Fine Grade far less than 90% of item 37, which expressly contradicts Griffith's bid. This post-bid change to Fine Grade's scope of work associated with item 37 cannot be allowed by Caltrans, as it would afford Griffith an unfair advantage over other bidders by permitting Griffith to engage in post-bid negotiations with one

of its listed subcontractor's regarding the scope and amount of work to be performed by that subcontractor. Post-bid scope negotiations are also not allowed because it can result in unfair treatment of Subcontractors. Such unfair advantage and treatment of subcontractors is precisely what the Subletting and Subcontracting Fair Practices Act is designed to prevent.

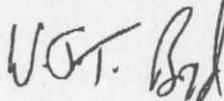
Furthermore, Using Fine Grade's proposal as a reference (See **Exhibit B**), when "item 37" is given to Fine Grade, the value of work being performed by Fine Grade is \$2,014,140. For your convenience, we have provided a recalculation of the percentage of work" by contract value," using Griffith's logic as well as its spreadsheet. When the value of work given to Fine Grade by Griffith at bid time is applied, Griffith's claimed self-performed work is only 27.6% of the contract value. (See **Exhibit C**) Section 5-1.13A clearly requires that a bidder self-perform at least 30 percent of the value of the original total bid "with your employees and with equipment you own or rent, with or without operators." (See **Exhibit D**) Finally, even if Caltrans were to permit Griffith to engage in post-bid negotiations with Fine Grade, it is clear that Griffith is not self-performing the remaining work of item 37 with Griffith's *employees and equipment*. Rather, Griffith is simply a supplier of base that will be placed, compacted, and graded with Fine Grade's employees and equipment.

In conclusion, Sully-Miller believes that Griffith's logic, and its interpretation of Section 5-1.13A, are flawed. If Griffith's logic were accepted by Caltrans, a bidder could become eligible for award of a Caltrans contract simply by including in its bid administration costs and "markup," or supplying material, that is equal to 30% of the value of the work, without actually using any of its *employees and equipment* to perform contract work. This is not the intent of Section 5-1.13A. In fact, Griffith's response letter does not provide any evidence that it will perform any of the work with its own employees and equipment, as required by Section 5-1.13A. This, combined with clear evidence that Griffith made an impermissible post-bid scope change to its listed subcontractor, Fine Grade, render Griffith's bid nonresponsive.

For the foregoing reasons, and those discussed in Sully-Miller's bid protest letter, Sully-Miller requests that the contract for the Project be awarded to Sully-Miller, the actual low responsible and responsive bidder.

Respectfully Submitted,

SULLY-MILLER CONTRACTING CO.



William J.T. Boyd,
Vice President of Operations

08-0G9004
08-SBD-247
02/24/16

BID211
PAGE 4
02/29/16

LIST OF SUBCONTRACTORS

APR. 5. 2016 2:22PM

Exhibit A

NO. 2157 P. 4

BIDDER ID	NAME AND ADDRESS	LICENSE NUMBER	DESCRIPTION OF PORTION OF WORK SUBCONTRACTED
03	FINE GRADE EQUIPMENT, INC LANCASTER CA	584908	ITEM 37 (90%)
	FINE GRADE EQUIPMENT, INC LANCASTER CA	584908	ROADWAY EXCAVATION (46,450 CY EXPORT & 11,250 CY FILL)
	MATICH CORP HIGHLAND CA	149783	HOT MIX ASPHALT
	MATICH CORP HIGHLAND CA	149783	ITEM 39 (95%)
	MATICH CORP HIGHLAND CA	149783	ITEM 40 (90%)
	MATICH CORP HIGHLAND CA	149783	ITEM 41 (90%)
	MATICH CORP HIGHLAND CA	149783	ITEM 47 (90%)
	MATICH CORP HIGHLAND CA	149783	PREPAVING INERTIAL PROFILER
	MATICH CORP HIGHLAND CA	149783	RUBBERIZED HOT MIX ASPHALT
	MATICH CORP HIGHLAND CA	149783	TACK COAT
	PAVEMENT RECYCLING SYSTEMS JURUPA VALLEY CA	569352	CENTERLINE RUMBLE STRIP

CONTINUED ON NEXT PAGE

Exhibit B

PROPOSAL						
FINE GRADE EQUIPMENT, INC						
CITY GRADING CONTRACTOR - CA Contractor's Lic. # 534003 - DIR # 1000013781 - SBE/MDB/WDB/DHS P.O. Box 2799 Lancaster, CA 93539 (661) 949-8788 FAX (661) 722-8900						
Customer: Griffith Company			Job Name: Hwy 217 08-009004			
Address: 4756 Miridon Blvd., Mendocino, CA 91762			Location: Landers, CA			
Contact: Jim Yackley			Date: 2/24/2016			
Email: (509) 270-5040			Time: 1:14:00 PM			
Phone: jyackley@griffithcompany.net						
Proposal Number JOB # 2016-102 R2						
For Questions Concerning This Proposal, Please Contact			Glen Lutz		(661) 817-6352	
Line	Description	Units	Quantity	Unit	Total	
27	Clear and Grubbing	LS	1	\$66,800.00	\$	66,800.00
29	Dust Palliative	LS	1	\$156,500.00	\$	156,500.00
30	Roadway Excavation	CY	60.100	\$16.00	\$	961,600.00
37	Class 2 Aggregate Base	CY	21.600	\$32.15	\$	694,720.00
55	Mobilization	LS	1	\$114,800.00	\$	114,800.00
Alt 37	Class 2 Aggregate Base (varial Contractor supplies base)	Cy	21.600	\$32.30	\$	263,680.00
Scope of Work						
7	Clear and Grub right of way as needed to complete grading. Duration 5 days					
29	Dust Palliative - provide and apply dust palliative for dust control.					
30	Roadway Excavation - Pulverize 1 foot edge and blend with excavation. Excavate for new shoulders leaving excess material in sight of way within project limits as necessary. All signs, mail boxes, and other items to be moved, removed or replaced will be by others. Note: FGEI can remove additional roadway excavation to accommodate AC gradings under section for Item 30 with pricing. ADL export and disposed by others. Duration 54 days in Roadway, 31 days beyond edge of (shoulder)					
37	Class 2 Aggregate Base - Purchase, deliver, place, compact and finish. (Duration 29 days)					
55	Mobilization and Demobilization.					
Alt 37	Contractor supplies and delivers Class 2 Aggregate Base + up to 10% for overrun at 300 tph. FGEI will place, compact and finish.					
Job Specific Conditions and Exclusions						
1	Develop water by others, FGEI will need the source to be within the project limits. FGEI will provide one water tower.					
2	Traffic Control, and any necessary sign setting by Contractor.					
3	Export by contractor.					
4	Dust palliative is for one time application for 130 acres.					
5	FGEI's bond rate of 1.5% is not included in the quote.					
JOB TOTAL:						
The following page contains additional information and is an integral part of this proposal.						
Page 1 of 3						

Exhibit C Recalculation

Caltrans Contract Number 08-0G9004

Bidder Self-Performance Verification Form

This form is intended to assist the Bidder in verifying its compliance with Caltrans Standard Specifications Section 5, Control of the Work, paragraph 5-1.13A, requiring the contractor to perform 30% of the value of the original total bid.

(1) Total \$ amount of the work to be performed by subcontractors:

	Subcontractor	Value (quotes attached)
a.	Cal Stripe	\$ 80,272.00
b.	DC Hubbs	\$ 39,680.00
<i>corrected</i> c.	Fine Grade ((37-37A) †	\$ 1,585,380.00) = 2,014,140 -
d.	Matich	\$ 4,371,000.00
e.	Pavement Recycling	\$ 217,073.10
	Total	\$6,293,405.10 + 428,759 <u>Revised Total = 6,722,164.10</u>

(2) Specialty Items (to be performed by subcontractors):

\$0.00

(3) Net subcontracted amount
(Line 1- Line 2):

6,722,164.10
\$6,293,405.10

(4) Value of of Original Total Bid (Section 5-1.13A):

\$9,285,582.00

(5) Contract Price less Specialty Items to be performed by subcontractors:
(Line 4-Line 2):

\$9,285,582.00

(6) Percentage to be self performed:
((Line 5 - Line 3)/Line 5 x 100)

27.60% ~~32.22%~~

If line 6 is less than 30%, the amount of work to be self-performed is not in conformance with Subsection 5-1.13A 3 of the Caltrans Standard Specifications

Exhibit D

SECTION 5

CONTROL OF WORK

If you assign the right to receive Contract payments, the Department accepts the assignment upon the Engineer's receipt of a notice. Assigned payments remain subject to deductions and withholds described in the Contract. The Department may use withheld payments for work completion whether payments are assigned or not.

5-1.13 SUBCONTRACTING

5-1.13A General

No subcontract releases you from the Contract or relieves you of your responsibility for a subcontractor's work.

Before subcontracted work starts, submit a *Subcontracting Request* form.

Do not use a debarred contractor. For a list of debarred contractors, go to the Department of Industrial Relations' Web site.

If you violate Pub Cont Code § 4100 et seq., the Department may exercise the remedies provided under Pub Cont Code § 4110. The Department may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

* Except for a building-construction non-federal-aid contract, perform work equaling at least 30 percent of the value of the original total bid with your employees and with equipment you own or rent, with or without operators.

Each subcontract must comply with the Contract.

The Department encourages you to include a dispute resolution process in each subcontract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code § 7000 et seq.).

Submit copies of subcontracts upon request.

Upon request, immediately remove and do not again use a subcontractor who fails to prosecute the work satisfactorily.

5-1.13B Disadvantaged Business Enterprises

5-1.13B(1) General

Section 5-1.13B applies to a federal-aid contract.

Use each DBE subcontractor as listed on the *Subcontractor List* form and the *Caltrans Bidder - DBE Information* form unless you receive authorization for a substitution.

Notify the Engineer of any changes to your anticipated DBE participation. Submit this notification before starting the affected work.

Maintain records including:

1. Name and business address of each 1st-tier subcontractor
2. Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
3. Date of payment and total amount paid to each business

If you are a DBE contractor, include the date of work performed by your own forces and the corresponding value of the work.

Before the 15th day of each month, submit a *Monthly DBE Trucking Verification* form.

If a DBE subcontractor is decertified before completing subcontracted work, the subcontractor must notify you in writing of the decertification date. If a subcontractor becomes a certified DBE before completing subcontracted work, the subcontractor must notify you in writing of the certification date. Submit the notifications. On work completion, complete a *Disadvantaged Business Enterprises (DBE) Certification Status Change* form. Submit the form within 90 days of Contract acceptance.

135 S. State College Blvd., Suite 400
Brea, CA 92821
Direct (714) 578-9655
Main (714) 578-9600
Fax (714) 578-9672
e-mail: Jessica.Daniels@sully-miller.com



Fax

To: Caltrans **From:** Jessica Delgado-Daniels 

Co.: Office Engineer **Estimating Assistant**

Fax: 916-227-6282 **Pages:** 7 (Including Cover Sheet)

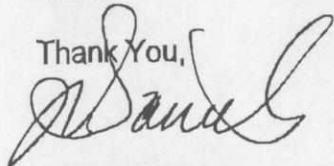
Phone: **Date:** 4/5/2016

Re: Contract No. 08-0G9004

- Urgent For Review Please Comment Please Reply Please Recycle
-

Dear Office Engineer:

Please see the attached letter from Sully-Miller Contracting Company in response to Griffith Company's letter dated March 24, 2016 for the above referenced project. If you have any questions, please call Dennis Gansen, Vice President at 714-578-9600.

Thank You, 

Jessica Daniels,
Estimating Assistant
Sully-Miller Contracting Company