

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. 10-0V6604
Bid Protest of Bay Cities Paving**

Dear Mr. McMillan:

In accordance with the California Department of Transportation ("Caltrans") contract bid protest procedures and the California Public Contract Code, please accept this letter as Security Paving Company, Inc.'s ("Security Paving") formal protest against the bid submitted by Bay Cities Paving ("Bay Cities") for Caltrans Contract No. 10-0V6604.

The bid from Bay Cities must be rejected as non-responsive for violation of the Subletting and Subcontracting Fair Practices Act (*California Public Contract Code* section 4100 *et. seq.*) (the "Act"). As demonstrated in more detail below, Bay Cities' bid fails to comply with Caltrans' mandatory requirements for subcontractor listing.

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. Here, in particular, Bay Cities simply provided bid item numbers in the description of work section for each subcontractor. Bay Cities provided no further description of work. Subsequently Bay Cities delineated a portion of the bid item work to subcontractor listing information provided with respect to a number of its subcontractors, thereby reducing the scope of its subcontractors' scope of work after it submitted its Bid Day Subcontractor List. By limiting the description of work to bid item numbers, Bay Cities reserves the right to limit the work subsequently as they did in this submittal. The only reasonable and compliant interpretation when a contractor limits the description of the work to the bid item number is that all of that work for that bid item will be done by that subcontractor listed. With Bay Cities following submittal the bid is not responsive. To find otherwise would be to permit Bay Cities an unfair competitive advantage.

Accordingly, Bay Cities' bid must be rejected as non-responsive and Security Paving respectfully requests Caltrans award Security Paving the project as the lowest responsive bidder.

Subcontractor Listing Requirements:

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Caltrans' Subcontractor List form states in part, "Under Public Contract code section 4100 et seq., the Bidder must set forth in the bid the name, the location of the place of business, the California contractor license number, and the portion of work of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement" The instructions on Caltrans' subcontractor listing form are an essential part of the bid documents and a failure to comply with these instructions renders a bid non-responsive. Furthermore, 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.

Bay Cities failed to properly submit the Subcontractor List as follows:

1. Impermissible changes to subcontractor listing information.

Bay Cities' Bid Day Subcontractor List and 24 Hour Submittal with respect to a number of its subcontractors are materially inconsistent. On bid day, Bay Cities simply identified the bid item number associated with the work to be performed by various subcontractors. However, in Bay Cities' 24 Hour Submittal, Bay Cities impermissibly changed the scope of work Bay Cities intended to subcontract to its various subcontractors by assigning various subcontractors a significantly lower percentage of the bid item number than 100%.

For instance, in Bay Cities' Bid Day Subcontractor List, it identifies AC Dike Co. as performing bid item numbers 28, 36, 37, and 38. Bay Cities did not provide a description of the actual work that AC Dike Co. was to perform other than the various bid item numbers. Because Bay Cities does not describe AC Dike Co.'s portion of work as "partial," it is understood that Bay Cities intended on AC Dike Co. performing 100% of the bid item numbers assigned to them in the Bid Day Subcontractor List. Without more, there is no way to determine which portion of the bid item number Bay Cities intended on giving to AC Dike Co. However, in Bay Cities' 24 Hour Submittal, it identifies AC Dike Co. as only performing 17% of bid item number 28, and 88% of bid item numbers 36, 37, and 38.

The same is true for subcontractor ABSL Construction for which Bay Cities ended up only assigning them 38% of bid item number 20 and 37% of bid item 25, despite the fact that Bay Cities did not described ABSL Construction as performing only a portion of bid item numbers 20 and 25 in its Bid Day Subcontractor List.

In addition, Bay Cities' Bid Day Subcontractor List identifies CHRISP Co. as performing bid item numbers 1 and 5. Because Bay Cities does not describe CHRISP Co.'s portion of work as "partial," it is understood that Bay Cities intended on CHRISP Co. performing 100% of the bid item numbers assigned to them in the Bid Day Subcontractor List. However, in Bay Cities' 24 Hour Submittal, it identifies CHRISP Co. as only performing 53% of bid item number 1, and 6% of bid item number 6.

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These examples demonstrate that Bay Cities impermissibly reduced the scope of AC Dike Co., ABSL Construction, and CHRISP CO.' subcontractor scope of work between Bay Cities' Bid Day Subcontractor List and its 24 Hour Submittal.

Caltrans Enforcement of Subcontractor List Requirements:

As demonstrated above, Bay Cities made impermissible material changes to Bay Cities' subcontractor listing information provided in its Bid Day Subcontractor List and 24 Hour Submittal. Caltrans has strictly interpreted and firmly enforced Caltrans' subcontractor listing requirements in the past.

In fact, Caltrans recently determined that a bid submitted by Security Paving on Contract No. 11-406704 was non-responsive because Security Paving had included bid items in Column 2 of its 24 Hour Submittal which did not match the description given in Column 4 of Security Paving's Bid Day Subcontractor List. Security Paving was not provided the opportunity to self-perform the work in question.

Caltrans also recently determined that a bid submitted by Bay Cities Paving and Grading Inc. on Contract No. 10-0A8404 was non-responsive because Bay Cities included bid items in Column 2 which did not match up with the description given in Column 4. Similarly, Caltrans rejected bids by Synergy Project Management, Inc. on Contract No. 04-264134 and George Reed, Inc. on Contract No. 10-0A8724 because the bid item numbers in Column 2 of their Subcontractor Lists did not correspond with the description of the subcontracted work in Column 4. In all of these situations, Caltrans did not provide the contractor the opportunity to self-perform the additional work in question.

Conclusion:

The purpose of the Act is to ensure that the integrity of a subcontractor's bid stands throughout the bidding process. In other words, the purpose is to provide fair competitive bidding and to prevent 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 reduce the work assigned to a subcontractor between the Bid Day Subcontractor List and the 24 Hour Submittal.

If Caltrans were to permit a contractor to simply list a bid item number, giving the impression that the entire bid item number is to be performed by a certain subcontractor, but then allow said contractor to limit the percentage of the work to be performed by said subcontractor after the contractor's Bid Day Subcontractor List has been submitted, the integrity of the subcontractor's bid cannot be guaranteed. To permit this would be to permit the contractor to pressure the subcontractor to lower its price for the bid item or face receiving a lower percentage of the work and for which the contractor could simply self-perform, thereby giving the contractor a

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**SECURITY
PAVING**

COMPANY, INC.

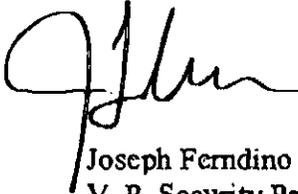
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significant unfair advantage. This is exactly what the Act is meant to protect against and to permit otherwise would violate the very purpose of the Act. Allowing such violations of the Act leaves open the opportunity for a prime contractor to take advantage of a lack of enforcement and is the reason the Act should be strictly enforced.

In light of the above, Security Paving respectfully asserts that Caltrans should find Bay Cities' bid to be non-responsive and disqualify Bay Cities' 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.

Respectfully,



Joseph Ferndino
V. P. Security Paving Co. Inc

SECURITY PAVING COMPANY, INC.

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* Fax Cover Sheet *

Date: 9/16/14

To: John McMillan
Company: Caltrans Office Engineer

Phone: _____
Fax: (916) 227-6282

From: Joe Ferrandino

Subject: _____
REGARDING: 10-0V660Y

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