

GRANITE™**VIA FAX (916) 227-6282**

July 16, 2015

Department of Transportation
Division of Engineering Services, Office Engineer, MS 43
1727 30th Street
Sacramento, CA 95816-8041

Attn: John C. McMillan

Re: 11-2M7804 Bid Date: 6/24/15

Subj: Protest of Granite Construction Bid by Pave Tech, Inc.

Dear Mr. McMillan:

This correspondence is in response to a letter forwarded to the California Department of Transportation (Department) by Pave Tech, Inc. (Pave Tech) in regards to Contract 11-2M7804 (Project) that bid on 6/24/15. Granite Construction Company (Granite) timely submitted its bid for this Project and is the apparent low bidder. In its letter, Pave Tech claims that Granite overstated the percentage, dollar value and description of work that our listed subcontractor, Cindy Trump, Inc. dba Lindy's Cold Planing (CTI), will be performing. Pave Tech mischaracterizes and misapplies the governing requirements, combining and confusing two distinct submittals (i.e. the Subcontractor List form and the DBE Commitment and Confirmation forms) governed by two different sets of laws. The Subcontractor List is governed by the Subcontractor Listing Laws and the DBE Commitment and Confirmation Forms are governed by the DBE Regulations (49 C.F.R. §26), each of which has a different set of requirements for compliance. Pave Tech's protest is without merit and should be rejected.

Granite Complied with the Subcontractor Listing Law

The Subletting and Subcontracting Fair Practices Act, California Public Contract Code 4100 et seq. (Subcontractor Listing Law) requires bidders for public contracts to list the name, the location of place of business, and the California contractor license number of each subcontractor who will perform work in an amount in excess of one-half of one percent of the prime contractor's total bid or \$10,000, whichever is greater. Cal. Pub. Contract Code, § 4104(a). The bidder must also set forth the portion of the work that will be done by each subcontractor. Cal. Pub. Contract Code, § 4104(b).

The Department's Subcontractor List form instructs bidders to submit the following information with the bid: (a) the name, (b) the location of the place of business, (c) the California contractor license number, and (d) the portion of work of each subcontractor who is required to be listed under the Subcontractor Listing Law. Additionally, the Department's Subcontractor List form requires the bidders to submit with the bid the bid item numbers with percentages of the portion of work subcontracted.

The Subcontractor Listing Laws are intended to prevent prime contractors from bid shopping and bid peddling. See Cal. Pub. Contract Code §4104.



Page 2 of 3
California Department of Transportation
July 16, 2015

In full compliance with the Subcontractor Listing Law and the Department's associated specifications, Granite has listed and will enter into a Subcontract with CTI to cold plane, haul, and sweep as was submitted in our Bid dated 6/24/15. As indicated in Granite's Subcontractor List Form, CTI will perform 83% of Bid Item 9, Cold Plane AC, Haul, and Sweep.

Granite Complied with the DBE Requirements

The DBE Contract goal for this Project is 8 percent. Per Revised Standard Specification Section 2-1.33, bidders were required to submit the DBE Commitment and DBE Confirmation forms no later than 4 p.m. on the 4th business day after bid opening. As indicated thereon, the amounts identified on those forms are limited to the amount of DBE credit being claimed on the Contract.

DBE credit is determined based on the governing DBE regulations, namely to 49 C.F.R. §26.55, "How is DBE Participation counted toward goals?", and associated DBE specifications. Under the governing DBE laws and specifications, only the value of the work actually performed by the DBE can be counted toward the DBE goals. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goals. 49 C.F.R. §26.55(a).

With respect to trucking, the DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates, using drivers it employs. 49 C.F.R. §26.55(d); *see also* Revised Standard Specification Section 2-1.12B. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services. *See* Revised Standard Specification Section 2-1.12B.

After a conversation with CTI, it became clear that they could not commit to using DBE trucks on the haul or DBE sweepers, and, most likely, would need to utilize non-DBE trucks and sweepers. CTI does, however, own the grinders and operates them with CTI's own employees. Accordingly, Granite determined even though we will be contracting with CTI to provide hauling and sweeping services (as outlined in our Subcontractor List form), we could not, in this case, claim DBE credit for the hauling and sweeping (as CTI could not commit to use DBE forces for such services). Since CTI owns the grinders and employs the operators, the cold milling can be claimed and was claimed for DBE credit per Title 49, Section 26.55 of the Code of Federal Regulations.



Page 3 of 3
California Department of Transportation
July 16, 2015

Pave Tech contends that because Granite only claimed DBE credit for the cold plane portion of CTI's work on our DBE Commitment and Confirmation forms, we have overstated the work on our Subcontractor List form. This is not the case. As outlined above, consistent with its Subcontractor List form, Granite will enter into a Subcontract with CTI to cold plane, haul, and sweep. Pave Tech confuses the purposes and nature of the Subcontractor List and DBE Commitment and Confirmation forms.

The DBE Commitment and Confirmation Forms are just that. They reflect a commitment for DBE credit and confirm that the DBE will itself (or with DBE forces) perform the work outlined on the form for DBE credit. There is nothing that precludes Granite from hiring a DBE firm for other work, for which DBE credit is not being claimed. On the DBE Commitment and Confirmation forms, bidders are only obligated to list those amounts that are truly eligible for DBE credit. Identifying amounts for non-DBE participation on the DBE Commitment and Confirmation forms would violate governing DBE laws. In strict compliance with DBE regulations and specifications, Granite only identified the amount of DBE credit it can and will claim on this Contract. Granite hired CTI for the cold plane, haul, and sweep, but determined that only the cold planing portion can be claimed for DBE credit. Accordingly, the full scope of CTI's subcontract is listed on the Subcontractor List form and only the portion of such work that can be claimed for DBE credit is listed on the DBE Commitment and Confirmation forms.

In sum, Granite's Subcontractor List and DBE Commitment and Confirmation forms satisfy the requirements of the Subcontractor Listing Law, DBE regulations, and the Contract specifications, and Granite's bid is fully responsive. Granite respectfully requests that the Department reject Pave Tech's protest as without merit. Granite is fully prepared to perform this project using the properly specified services of its listed subcontractors and DBE firms.

If you have any questions, please don't hesitate to contact me at (760) 391-6247.

Sincerely,

GRANITE CONSTRUCTION COMPANY

A handwritten signature in black ink, appearing to read "JR" or "Joe Richardson".

Joe Richardson
Regional Chief Estimator



Indio Area Office
38000 Monroe Street
Indio, CA 92203
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TO: Caltrans

DATE: July 16, 2015

COMPANY: Caltrans

FAX: (916) 227-6282

FROM: Joe Richardson

NUMBER OF PAGES (INCL. COVER SHEET): 4

COMMENTS:

CORRESPONDENCE — 11-2M7804

Please find correspondence regarding the following project. If there are any issues please contact me on my cell phone at (760) 578-3138. Thank you.

Contract: 11-2M7804
Contractor: Granite Construction Company
Bid Date: 6/24/15
Bid Time: 2:00 p.m.

From Facsimile Number (760) 775-8229. If you have any problems with this transmission, please contact sender at (760) 391-6247.