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Flatiron West Inc.
 1770 La Costa Meadows Drive
 San Marcos, CA 92073
 760-915-9100 main
 760-915-9101 fax
www.flatironcorp.com

May 16, 2014

By Email and Facsimile and Certified Mail

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

Re: **Contract 11-406704**
Construction on State Highway in San Diego County Near Oceanside from Cockleburr
Overcrossing to the San Diego County Line
Response to Security Paving Company, Inc.'s Response to Flatiron West, Inc.'s Protest

Dear Mr. McMillan,

This responds to the "Response to Flatiron West, Inc.'s Protest of Security Paving Company, Inc.'s Bid" submitted by Security Paving Company, Inc. ("Security") to Caltrans on May 7, 2014. As detailed below, Security's letter confirms its bid for the above-referenced project is nonresponsive and may not be accepted under either California law or Caltrans policy. Flatiron respectfully requests Caltrans award it the project as the lowest responsive bidder.

Undisputed Facts

Security does not dispute the factual basis for Flatiron's protest: (1) on bid day, Security's subcontractor list stated in Column 4 that Security would subcontract Bid Item 99, Alternative Crash Cushion System to Our Valley Fence (OVF); and (2) in its post-bid subcontractor list, Security revised the amount of work to be subcontracted to OVF by omitting Bid Item 99 in Column 2. Security nonetheless wrongly contends it may be awarded the contract for several reasons, each of which is addressed below.

Security's "Insignificant Change" Argument

Security contends it may alter OVF's scope post-bid under the Subletting and Subcontracting Fair Practices Act because the Act "does not prohibit or disqualify a bidder from making insignificant changes to the description of a subcontractor's scope of work." Security's argument is meritless. First, the Act prohibits any alterations to the scope of work listed for a subcontractor unless the bidder follows the process set forth in Public Contract Code section 4107.5. There is no exception to that process for



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"insignificant changes" or instances where the bidder made a mistake filling out the form. By ignoring that procedure and just submitting an inconsistent subcontractor listing post-bid, Security rendered its bid nonresponsive.

Second, just like the Act that does not allow "insignificant post-bid changes" to subcontractor scopes without following the section 4107.5 process, Caltrans' bid documents also do not allow revisions to subcontracted scope in the post-bid subcontractor list. This listing form states that all four columns must be submitted with "complete information... within the time specified" or it will "result[] in a nonresponsive bid." Caltrans' bidding instructions do not allow bidders to revise columns in the listing forms after the applicable deadlines. Accordingly, Security's revisions the next day rendered its bid nonresponsive.

Security's "Chaotic Bidding, etc." Explanations

Most of Security's response details how and why Security deleted Bid Item 99 from OVF's scope post-bid—bidders other than OVF included Bid Item 99, Security's pre-filled-out bid form, Security's chaotic bid room, etc. These are factual explanations of why Security submitted a nonresponsive bid in violation of the Subletting and Subcontracting Fair Practices Act and the bid documents, not reasons that Security's bid may be considered responsive.

Regardless of the why and how: (1) Security committed to subcontract Bid Item 99 to OVF on bid day; and (2) Security rescinded that commitment post-bid without following the mandatory process for doing so set forth in Public Contract Code section 4107.5. As such, Security's bid is nonresponsive and must be rejected.

In Accordance With The Subletting And Subcontracting Fair Practices Act, Caltrans' Policy Is To Reject Bids Like Security's As Nonresponsive

Consistent with California law, Caltrans routinely disqualifies bids as nonresponsive where the bidder revises subcontractor scopes in its post-bid subcontractor listing (i.e., violates section 4107.5). In these disqualifications, Caltrans has stated the following in regard to revisions of a Subcontractor List:

"...Caltrans cannot accept the revised "Subcontractor List" as it would violate the Subletting and Subcontracting Fair Practices Act of the Public Contract Code."

Please find attached as references for Caltrans long standing rule of disqualifications for bids that make Subcontractor List revisions after the bid date, disqualification letters for the following contracts:

Contract #04-153204

Contract #01-0C1304

Contract #06-337414

Flatiron respectfully requests Caltrans continue this policy of following the Subletting and Subcontracting Fair Practices Act and reject Security's bid as nonresponsive.

Security's Request For Waiver Is Without Merit



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Security wrongly contends its bid defect may be waived under California law, based on the notion that the defect could not have affected the amount of Security's bid or given the bidder an advantage not allowed to the other bidders. The request is without merit for several reasons. First, the waiver standard cited by Security is for minor deviations from bidding instructions. Here, Security did not simply deviate from Caltrans' bidding instructions (although it did do that). Rather, Security violated Public Contract Code section 4107.5. Caltrans may not waive a violation of the Public Contract Code under any circumstances.

Second, even if the waiver standard cited by Security applied, Security's bid defect could not be waived. The defect clearly could affect the amount of Security's bid. Bid Item 99 is valued between \$30,000 and \$50,000 according to the subcontractor bids attached to Security's letter. Whether Security self-performs that work versus subcontracting it could obviously affect Security's bid price. To conclude otherwise would require Caltrans to find that Security's cost to self-perform would be exactly the same as the cost to subcontract the work. Caltrans cannot reasonably make this finding, especially in light of the wide-ranging prices for Bid Item 99 that Security's prospective subcontractors proposed to Security on bid day. Additionally, Caltrans could not waive the defect because the defect would result in an advantage for Security that other bidders were not allowed: the opportunity to refine its subcontracted scope post-bid.

Conclusion

Security's post-bid revision to its subcontracted scope violated Caltrans' bid documents and the Subletting and Subcontracting Fair Practices Act. Security did not follow the mandatory procedure for revising subcontracted scopes set forth in Public Contract Code section 4107.5. The defects may not be waived under California law or Caltrans' well-documented policy of rejecting such bids. As such, we respectfully request Caltrans reject Security's bid as nonresponsive and award Flatiron the project as the lowest responsive bidder. If you have any questions please feel free to contact the undersigned at 760-594-1593 or jturner@flatironcorp.com.

Thank you.

Jeffrey A. Turner
Vice President
Flatiron West, Inc.

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
 OFFICE ENGINEER, MS 43
 1727 30th STREET
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 PHONE (916) 227-6280
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 TTY 711



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November 2, 2012

Facsimile: (408) 365-9548

Rodney Jenny, Vice President
 Pavex Construction Division
 120 Granite Rock Way
 San Jose, CA 95136

04-153204
 04-Ala,SCI-680-0.0/0.1,
 0.1/9.9
 B.O. 10/2/12

Dear Mr. Jenny:

Pavex Construction Division (Pavex Construction) submitted a bid for contract 04-153204 on October 2, 2012. By this letter, the Department of Transportation (Caltrans) notifies Pavex Construction that its bid is nonresponsive because it failed to properly submit the Subcontractor List.

The Subcontractor List form states in part,..."Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid." No other revisions to the form are permitted.

Since Statewide Traffic Safety Signs was originally subcontracted to perform Construction Area Signs, but roadway signs were added to the revised bid list received on October 3, 2012, Caltrans finds your bid is nonresponsive. Caltrans will proceed to award the contract to the lowest responsible bidder provided all requirements are met.

Your attention is directed to Section 3-1.02 of the Amendments to the 2006 Standard Specifications. Caltrans is not obligated to offer an extension of the award period for a nonresponsive bid. Should you wish to offer to extend your bid while resolving a nonresponsive finding you must send your request to the Office Engineer no later than 4:00 pm two business days prior to the expiration of your bid.

If you have any questions, please contact David Neumann, Contract Awards Senior, at (916) 227-6285.

Sincerely,

John C. McMillan
 JOHN C. McMILLAN
 Deputy Division Chief
 Office Engineer
 Division of Engineering Services

Attachment

Received
10/03/2012 13:34 FAX 4083869546

PAVEX SANJOSE

Oct 3 2012 01:34pm

002

Granite Rock Company dba Pavex Construction Division

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION			
SUBCONTRACTOR LIST		Bidder Name: Granite Rock Company DBA Pavex Construction Division	
DES-CR-0102.2 (REV 2/2010)			
<p>The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code 4100 et seq.) Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-0282 within 24 hours after the bid opening. Failure to complete information in columns 1 through 4 within the time specified will result in a non-responsive bid.</p>			
Column 1: Business Name and Location	Column 2: Bid Item No. (s)	Column 3: Percent of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Statewide Traffic Safety & Signs 120 Grobrie Court Fairfield, CA 94533 707.864-9952	17, 79, 75 & 76 92	100% 100%	Construction Area Signs
DBCI Concrete Contractors 4949 Fulton Drive, Suite C Fairfield, CA 94534 707.419-3031	96 102 - 104	100% 100%	Concrete Barrier
De Kay Demolition and Clearing, Inc. 7700 Edgewater Drive, Suite 625 Oakland, CA 94621 510.460-2688	40	100%	Clear and Grub
DBCI Concrete Contractors 4949 Fulton Drive, Suite C Fairfield, CA 94534 707.419-5091	88 89 90 95	100% 100% 100% 100%	Minor Concrete
AC Infra Company 2788 Venture Dr. Lincoln, CA 95648 916.652-0189	59 - 67 53	100% 100%	AC Drive
Columbia Electric, Inc. 1980 Davis St San Leandro, CA 94577 510.830-9505	111 - 144	100%	Electrical
Closure Solutions, Inc. 2300 Clayton Road, Suite 1425 Concord, CA 94520 800.598-7880	4 & 13	100%	Prepare REAP/SWPPP

A-4

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
 DES-OE-0102.2 (REV 3/2011)

Granite Rock Company dba
 Bidder Name: Pavex Construction Division

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Statewide Safety St Signs San Jose, CA			construction area signs
Vanguard Const. LLC Livermore, CA RJ DBCI concrete Fairfield, CA			concrete barrier
DeKay Demolition & Clearing Oakland, CA			clear & grub
Ernest B. Dee RJ Elk Grove, CA RJ BBCI Concrete Fairfield, CA			minor concrete
AC Dike Company Lincoln, CA			AC Dike
TRONG SON Elec RJ Livermore, CA RJ Columbia Elec. San Leandro, CA			electrical
Closure Solutions Concord, CA			prepare reop - SWPPP RJ prepare reop - SWPPP

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LEN

**** Transmit Conf. Report ****P.1
CALTRANS CONTR AWARDS Fax 916-227-6282

Nov 2 2012 03:43pm

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
914083659548	Normal	02:03:42pm	0'40"	3	# OK	

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY

JIMMIE G. BROWN, Jr., Governor

DEPARTMENT OF TRANSPORTATION
 DIVISION OF ENGINEERING SERVICES
 OFFICE ENGINEER, MS 13
 1721 30th STREET
 P. O. BOX 168041
 SACRAMENTO, CA 95816-8041
 PHONE (916) 227-6280
 FAX (916) 227-6282
 TTY T11



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November 2, 2012

Facsimile: (408) 365-9548

Rodney Jenny, Vice President
 Pavex Construction Division
 120 Granite Rock Way
 San Jose, CA 95136

04-153204
 04-Ala, SCI-680-0.0/0.1,
 0.1/9.9
 B.O. 10/2/12

Dear Mr. Jenny:

Pavex Construction Division (Pavex Construction) submitted a bid for contract 04-153204 on October 2, 2012. By this letter, the Department of Transportation (Caltrans) notifies Pavex Construction that its bid is nonresponsive because it failed to properly submit the Subcontractor List.

The Subcontractor List form states in part, "...Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid." No other revisions to the form are permitted.

Since Statewide Traffic Safety Signs was originally subcontracted to perform Construction Area Signs, but roadway signs were added to the revised bid list received on October 3, 2012, Caltrans finds your bid is nonresponsive. Caltrans will proceed to award the contract to the lowest responsible bidder provided all requirements are met.

Your attention is directed to Section 3-1.02 of the Amendments to the 2006 Standard Specifications. Caltrans is not obligated to offer an extension of the award period for a nonresponsive bid. Should you wish to offer to extend your bid while resolving a nonresponsive finding you must send your request to the Office Engineer no later than 4:00 pm two business days prior to the expiration of your bid.

If you have any questions, please contact David Neumann, Contract Awards Senior, at (916) 227-6285.

Sincerely,

John C. McMILLAN
 JOHN C. McMILLAN
 Deputy Division Chief
 Office Engineer
 Division of Engineering Services

Attachment

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
 DIVISION OF ENGINEERING SERVICES
 OFFICE ENGINEER, MS 43
 1727 30th STREET
 P. O. BOX 168041
 SACRAMENTO, CA 95816-8041
 PHONE (916) 227-6280
 FAX (916) 227-6282
 TTY 711



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April 25, 2013

Facsimile: (530) 926-2118

Harold Knight, President
 Shasta Services, Inc. dba Timberworks
 P.O. Box 1240
 Mt. Shasta, CA 96067

01-0C1304
 01-Hum, Men-271-0.0/T0.2, 6.1/22.7
 B.O. 03/27/2013

Dear Mr. Knight:

The Department of Transportation (Caltrans) received a bid submitted by Shasta Services, Inc., dba Timberworks (Timberworks) for Contract No. 01-0C1304 on March 27, 2013. By this letter, Caltrans notifies Timberworks that its bid is nonresponsive because it revised column 2 of the Subcontractor List form by adding a new scope of work on the 24-hour submission of the form.

The Subcontractor List form states in part, "...Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid."

On the original submitted Subcontractor List, Timberworks identified Central Striping as only performing Bid Items 7, 8 and 13-17. However, on the 24-hour submission of the Subcontractor List submitted on March 28, 2013, column 2 was revised to add Bid Items 1 and 3 to the Bid Item numbers. The change in the bid item numbers in column 2 on the 24-hour submission of the Subcontractor List by adding Bid Items 1 and 3 constitutes an improper change to the Subcontractor List form.

Based on the above, Caltrans will proceed to award the contract to the lowest responsible bidder.

Your attention is directed to Section 3-1.04 of the Amendments to the 2010 Standard Specifications. Caltrans is not obligated to offer an extension of the award period for a nonresponsive bid. Should you wish to extend your bid while resolving a nonresponsive finding, you must send your request to the Office Engineer no later than 4:00 p.m., two business days prior to the expiration of your bid.

If you have any questions, please contact Melissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,

JOHN C. McMILLAN
 Deputy Division Chief
 Office Engineer
 Division of Engineering Services

Enclosures

03/28/2013 THU 12:58 PM Received FAX 530 926 2118 TIMBERWORKS

Mar 28 2013 12:56pm

001/001

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
 DBS-05-0102.2 (REV 3/2011)

Bidder Name: Timberworks

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Global Environmental Network 8398 Capwell Drive Oakland, CA	1 6	38 92	Lead Compliance Plan WPCP
Wells Sweeping 5425 Marmita Ave Sacramento, CA	3	4	Sweeping
Sambreno Traffic Control 10057 Collings Rd Wilton, CA	3, 4	17 92	Traffic Control Portable/Changeable Message Sign
KRC Safety Co. POB 6366 Visalia, CA	2	92	Construction Area Signs
Central Striping Service 3489 Luyung Drive Rancho Cordova, CA	1, 15, 3, 7-8, 13-17	53 6, 92 92	striping, Reflectors

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03/27/2013 WED 13:00 FAX 530 926 2118 TIMBERWORKS

002/002

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
 DES-OE-0102.2 (REV 3/2011)

Bidder Name: Timberworks

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cost Code 5 4 100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-8282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
GENI Oakland, CA	1, 6		Lead Completion Plan WPCP
Wells Sweeping Sacramento, CA	3		sweeping
Sacramento Traffic Control Wilton, CA	3, 4		TC, PCMS
KRC Safety Visalia, CA	2		CAS
Central Striping Rancho Cordova, CA	7, 8, 13-17		striping, Reflectors

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Contract No. 01-0C1904

TH