



October 3, 2024

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

Via facsimile (916-227-6282)

Re: **Contract Number 05-1J7804** (the "Contract")

Subject: **Protest of CalPortland Construction**
Bid Opening Date: September 19, 2024

This serves as a formal protest of the bid submitted by CalPortland Construction ("CalPortland"), as its bid has multiple defects, which as explained herein provide sufficient grounds for finding such bid nonresponsive, if not non-responsible.

Granite Construction Company ("Granite") timely submitted a bid to the California Department of Transportation ("the Department") for the above-referenced Contract on September 19, 2024. CalPortland was the apparent low bidder (\$12,198,939.36) and Granite was the apparent second low bidder (\$12,938,751.00). As CalPortland's bid has defects or errors that make it non-responsive (if not non-responsible), Granite has standing to submit this protest.

California Public Contract Code § 4106 Requires CalPortland to Perform Bid Items 131 and 132—Work That CalPortland is Not Licensed to Perform

CalPortland's Subcontractor List failed to list any electrical contractor to perform Bid Items 131 and 132. Presumably, CalPortland intends to self-perform this work, as California Public Contract Code § 4106, in relevant part, provides:

If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself.

However, without a valid and current Class C-10 electrical license, CalPortland cannot perform Contract 05-1J7804 as promised. In this regard, and because of the qualifications required to perform Bid Items 131 and 132, CalPortland is not a responsible bidder, and the Department should reject CalPortland's bid on that basis.

CalPortland's Bid was Non-Responsive, as it Contained An Apparent Error That Allowed CalPortland to Withdrawal its Bid

The bid submitted by CalPortland was non-responsive, as it contains an error which provided CalPortland an unfair advantage over the other bidders. CalPortland's bid indicates that CalPortland intends to perform electrical work, which it is not licensed to perform. Under California Public Contract

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Code § 5103, CalPortland could have sought relief by giving the Department notice of this apparent mistake within five days of the bid opening, but it did not.

The Department cannot waive this bid defect or irregularity. The test of whether this defect can be waived pursuant to Section 2-1.46 of the Contract is set forth in *Konica Business Machines v. Regents of University of California* (1988) 206 Cal. App. 3d 449, 454, 253 Cal Rptr. 591. *Konica* instructs that a defect cannot be waived if, as applicable here, it gave the bidder an advantage or benefit not available to the other bidders. Here, CalPortland's bid failed such test. Because of CalPortland's apparent error requires it to perform Bid Items 131 and 132, electrical work that CalPortland's is not licensed to perform, CalPortland could have withdrawn its bid.¹ This gave CalPortland an unfair advantage over the other bidders, as CalPortland could have sought relief under Public Contract Code section 5103—i.e., CalPortland could have given the State notice of the mistake within five days of the opening of the bid and withdrawn its bid without forfeiting its bond. Whether or not CalPortland did or did not seek such relief does not matter; what matters is such relief was available to CalPortland. (See, e.g., *Valley Crest Landscape, Inc. v City Council* (1996) 41 Cl. App. 4th 1432.) Accordingly, because of this error, which is akin to a typographical error, the Department cannot waive this irregularity and must find CalPortland's bid to be non-responsive.

For the above reasons, Granite requests that Caltrans find the bid of CalPortland, to be, nonresponsive, reject such bid, and award Contract 05-1J7804 to Granite as the lowest responsive and responsible bid.

Should you have any questions or require additional information, please do not hesitate to contact me at 805-879-0027 or matthew.grimm@gcinc.com.

Sincerely,
Granite Construction Company



Matthew Grimm
Chief Estimator

cc: CalPortland Construction (via facsimile: 805-345-3538)

¹ CalPortland will likely contend Lee Wilson Electric Company was to perform 100 percent of Bid Items 131 and 132, and it may contend Lee Wilson Electric Company was to perform 0 percent of Bid Item 100, but such cannot be determined from the face of the bid without investigation and further information.