

GENERAL CONTRACTOR
LICENSE NO. 116307 A C12
FAX: 818.362.9300

**SECURITY
PAVING
COMPANY, INC.**

3075 Townsgate Rd. Ste 200
Westlake Village, CA 91361
TEL. 818.362.9200

RECEIVED
CALTRANS

2025 JAN 31 A 10:50

CONSTRUCTION
CONTRACT AWARDS

January 29, 2025

Via Electronic Mail and U.S. Mail

State of California, Department of Transportation
Division of Engineering Services
Office Engineer
1727 30th Street, MS-43
Sacramento, CA 95816-8041
Fax (916) 227-6282

Attention: April Perez-Hollins, Office Chief

Re: **Protest of C.A. Rasmussen, Inc. and Toro Enterprises, Inc.'s Bids as non-Responsive**

Contract No. 07-351704 – For Construction On State Highway in Ventura County in Moorpark at Various Locations, In District 07 on Route 23, 118
Bids Opened: 1/22/2025

Dear Ms. Perez-Hollins:

In accordance with the Caltrans contract bid protest procedures, please accept this letter as Security Paving Company, Inc.'s ("Security Paving") formal protest of the bids submitted by C.A. Rasmussen (the apparent low bidder) and Toro Enterprises, Inc. (the second bidder) for Contract No. 07-351704, commonly referred to as Construction On State Highway in Ventura County in Moorpark at Various Locations, In District 07 on Route 23, 118 (the "Project"). As set forth below, Security Paving requests that the bids of both C.A. Rasmussen ("Rasmussen") and Toro Enterprises, Inc. ("Toro") be rejected as non-responsive for failure to comply with the 22% DBE participation goal. Both bids fell well below the DBE participation goal: Rasmussen's total claimed participation was 11.06% and Toro's was 14.2%.

Standard Specifications, Section 2-1.12B, require bidders for this Project to "make work available to DBEs and select work parts consistent with the available DBEs, including subcontractors, suppliers, service providers, and truckers." Bidders must also "meet the DBE goal shown on the Notice to Bidders or demonstrate that you made adequate good faith efforts to meet this goal." The DBE goal is a condition of award, meaning that to be awarded the Project, a bidder must either meet the DBE participation goal or make a good faith effort to do so.¹ A bid that fails to meet the DBE participation goal must be considered non-responsive.² By submitting DBE commitments nearly 50% and 35.5% below the DBE

¹ 49 C.F.R. §26.53(a).

² *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2010) 23 Cal.4th 305,

participation goal, neither Rasmussen nor Toro's bids strictly and fully comply with the material terms of the bid package, and therefore, are non-responsive.³

Moreover, the documentation submitted by Rasmussen and Toro does not demonstrate that either company actively sought to meet the DBE participation goal. The purpose of the good faith efforts requirement is to evaluate whether the bidder made adequate efforts to meet the DBE participation goal but, despite those good faith efforts, was unable to meet the goal. As the United States Department of Transportation explains in its guidance materials,

“This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of Part 25 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not successful... The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE Contract goal.”

Their perfunctory efforts could not reasonably be expected to secure DBE participation sufficient to meet the Project's participation goal. From their DBE documentation it does not appear that any concern or action, let alone actions with a quality, scope, intensity, and appropriateness to meet the stated participation goal, was taken to increase DBE participation prior to bid submission.

For example, Rasmussen failed to list a DBE electrician or guard rail service despite several firms being available, such as JFL Electric, and Ace Fence. Additionally, Rasmussen's total price for bid item No. 7, "Traffic Control System," was \$630,000.00, yet only \$146,250.00 of that total is being performed by DBE firms. If Rasmussen was truly dedicated to meeting the DBE participation goals, it could have the remaining \$483,750.00 performed by a DBE firm. Likewise, Toro failed to list a DBE electrician, landscaper, or traffic control service despite DBE firms JFL Electric, Greencoast Landscape, and Full Traffic Maintenance being available.

Standard Specifications, Section 2-1.12B(3), allow Caltrans to consider the DBE commitments of other bidders in determining whether the low bidder made good faith efforts to meet the DBE goal. For example, when the apparent low bidder fails to meet the contract goal, but others meet it, Caltrans should ask whether, with additional reasonable efforts, the apparent low bidder could have met the goal. Security Paving's DBE commitment was 23.4%. The fact that Security Paving was able to exceed the DBE goal while both

308-09.

³ *MCM Construction, Inc. v. San Francisco* (1998) 66 Cal.App.4th 359, 369 (1998). *Menefee v. Fresno* (1985) 163 Cal.App.3d 1175.

Rasmussen and Toro's bids fell significantly short of it clearly demonstrates that neither did everything they reasonably could meet the goal. Nor can Rasmussen and Toro be said to have use good faith efforts when (1) both were significantly under the 22% DBE participation goal and (2) several additional DBE firms could have been proposed for other scope work.⁴

Allowing Rasmussen and Toro to significantly deviate from the DBE participation goal would defeat the purpose of the program, which is in part to help small, minority-owned businesses develop, grow, and overcome the effects of past discrimination in the construction industry.⁵ Moreover, by not complying with the participation goal, Rasmussen and Toro enjoyed a significant bidding advantage through the ability to utilize a larger pool of non-DBE subcontractors thereby increasing the competitiveness of its bid. Security Paving used higher value DBE subcontractors to ensure it met the DBE participation goal. Should Security Paving have instead submitted that lowest competitive bid and ignored the DBE participation goal, as Toro and Rasmussen did? **Security Paving always strives to submit the lowest responsible bid while at the same time meeting or exceeding the DBE goal.**

Bidders must exhaust all reasonable means necessary to comply with the DBE goals of the project.⁶ Neither Rasmussen nor Toro satisfied this requirement and clearly, neither Rasmussen nor Toro had the DBE goals in mind when selecting subcontractors for this Contract. As you know, Caltrans is under a ministerial duty to strictly comply with its own bidding rules.⁷ In this instance, Rasmussen and Toro failed to follow those rules and their bids must be rejected as non-responsive. Indeed, there is precedent for this action as Caltrans recently rejected the bid submitted by ACCU Construction for failing to meet the DBE participation goal and awarded the contract to the next lowest, responsible bidder.⁸

⁴ Security Paving received proposals from several other DBE firms for these scopes of work, all of which were available to Rasmussen and Toro. Those DBE firms include: JFL Electric, Inc., Forttee Construction, Inc. and Traffic Loops Crackfilling, Inc. (Electrical Systems); Cujo Construction, Jefferson State Highways, Inc. and Prime Supply 1 (Erosion Control); Ace Fence Company (Guardrail); Frontline Traffic Control and Segu, Inc. (Signs & Traffic Control Systems).

⁵ 49 C.F.R. §26.1; *United States v. Maxwell* (11 Cir. 2009) 579 F.3d 1282, 1306.

⁶ 49 CFR Part 26, Appendix A.

⁷ *Pozar v. Department of Transportation* (1983) 145 Cal. App. 3d 269, 271.

⁸ See Project No. 07-320104.

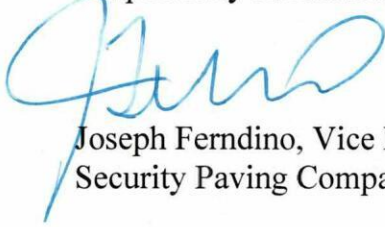
GENERAL CONTRACTOR
LICENSE NO. 116307 A C12
FAX: 818.362.9300

**SECURITY
PAVING
COMPANY, INC.**

3075 Townsgate Rd. Ste 200
Westlake Village, CA 91361
TEL. 818.362.9200

Security Paving Company, Inc. therefore requests that Caltrans reject the bids submitted by Rasmussen and Toro as non-responsive and award Contract No. 07-351704 to Security Paving as the lowest responsive and responsible bidder.

Respectfully submitted,



Joseph Ferndino, Vice President
Security Paving Company, Inc.

ORIGIN ID:JSNA (818) 362-9200
JOSEPH FERRINDO
SECURITY PAVING COMPANY, INC.
3075 TOWNSGATE RD, STE 200
WESTLAKE VILLAGE, CA 91361

SHIP DATE: 30JAN25
ACTWGHT: 0.50 LB
CAD: 256610416/IN/ET4535

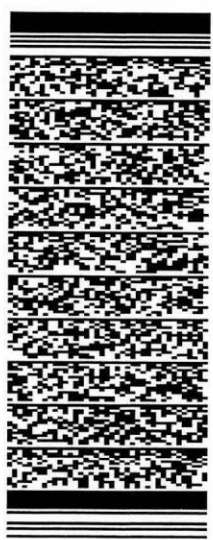
BILL SENDER

UNITED STATES US

TO APRIL PEREZ-HOLLINS, OFFICE CHIEF
STATE OF CA, DEPT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
1727 30TH STREET
SACRAMENTO CA 95816

REF: (818) 362-9200
INV: (818) 362-9200

DEPT: PO:



J251024121701uv

TRK# 77117 7743 1160
0201
FRI - 31 JAN 10:30A
PRIORITY OVERNIGHT

WD BLUA
CA-US SMF 95816



After printing this label:
CONSIGNEE COPY - PLEASE PLACE IN FRONT OF POUCH
1. Fold the printed page along the horizontal line.
2. Place label in shipping pouch and affix it to your shipment.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.