



December 24, 2024

April Perez-Hollins, Office Chief
Department of Transportation
Construction Contracts Award
Program/Project Management, Office Engineer
Division of Engineering Services
1727 30th Street, MS-43, Sacramento, California 95816
Email: des.oe.fmiii.awards@dot.ca.gov

Re: Bid Protest
Caltrans Contract No. 12-0R3114
Construction on State Highway in Los Angeles and Orange Counties from 0.1 Mile West of the Los Angeles County Line in Cerritos to 0.1 Mile East of Acacia Street Undercrossing in Anaheim

Dear Ms. Hollins,

In accordance with the Caltrans contract bid protest procedure, please accept this letter as a formal protest from Flatiron West, Inc. ("Flatiron") against the non-responsive bid submitted on December 18, 2024, by Beador Construction Company, Inc. ("Beador") for the above referenced Project. As detailed below, Beador's bid contains nonwaivable errors in its Subcontractor List form. Flatiron requests Caltrans comply with California public bidding law and enforce its bidding requirements by rejecting the Beador bid, and Caltrans award the contract to the lowest responsive bidder: Flatiron.

Beador's Subcontractor List Form

In its Subcontractor List submitted at time of bid Beador listed subcontractor, RV Concrete, Inc. ("RV"), for Bid Items 7, 29, 34, 64, 67-70, 81-84, 86, 90, 95 and 221. As shown below, for Bid Items 29 and 34, Beador listed the descriptions as "for their scope of work" and, therefore, failed to provide the descriptions of work to be performed, as required by the Caltrans bid requirements and Public Contract Code 4100.

1) List this subcontractor? YES NO
Business Name RV Concrete, Inc. Location City Anaheim State CA
California Contractor License Number 924742 Public Works Contractor Registration
Number 1000047094
Portion of Work Subcontracted
Item % Description
7 33.86 for their scope of work
29 0.25 for their scope of work
34 11.88 for their scope of work
64 100
67 100 bid items 67-70
2) List this subcontractor? YES NO
Business Name RV Concrete, Inc. Location City Anaheim State CA
California Contractor License Number 924742 Public Works Contractor Registration
Number 1000047094
Portion of Work Subcontracted
Item % Description
81 100 bid items 81-84
86 100
90 100
95 100
221 9.36 mobilization for their scope

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An Equal Opportunity Employer



Section 2-1.10 of the 2023 Standard Specifications states the following bid requirements for the Subcontractor List:

“On the Subcontractor List form, list each subcontractor that will perform work in an amount in excess of ½ of 1 percent of the total bid or \$10,000, whichever is greater (Pub Contract Code § 4100 et seq.). For each subcontractor listed, the Subcontractor form must show:

4. Portion of work it will perform. Show the portion of the work by:
 - 4.1 Bid Item numbers for the subcontracted work
 - 4.2 Percentage of the subcontracted work for each bid item listed
 - 4.3 Description of the subcontractor work if the percentage of the bid item listed is less than 100 percent”

Beador’s improper listing of the description for the two items as “for their scope of work” is equivalent to omitting the required description of subcontractor work.

Notably, for another recent bid, Contract 06-487404, Caltrans deemed the low bidder as non-responsive for failing to provide the descriptions of work to be performed in compliance with Section 2-1.10 of the 2023 Standard Specifications and the Subcontracting Fair Practices Act. A copy of Caltrans’ bid-rejection letter is enclosed at Tab 1.

Caltrans’ practice of rejecting bids such as Beador’s is consistent with California law, which precludes waiver of bid defects that could have either: (1) affected the bidder’s price; or (2) given the bidder an advantage or benefit not afforded its competitors. (See *Valley Crest Landscape, Inc. v. City Council (1996) 41 Cal.App.4th 1432, 1441-1442.*) Beador’s defect violates both prohibitions (although only one of the two need be violated to prevent waiver). For example, Beador enjoyed increased flexibility in subcontracting post-bid, such as the ability to refine subcontracting plan and/or further negotiate after award. That flexibility includes increased bargaining power relative to subcontractors who—lacking a clear commitment in Beador’s prime bid—cannot enforce their rights under the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4100 et seq. (“Listing Law”).

Beador’s defective listing creates the exact bid-shopping / bid-chiseling / bid-peddling opportunity that the Listing Law prohibits. (See Pub. Contract Code, § 4101 [“The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.”].)

Beador’s defect is also ineligible for waiver by Caltrans because errors in subcontractor scope descriptions are in the nature of typographical errors which afford relief under Public Contract Code section 5103 (“Section 5103”). Since such errors afford bidders the opportunity to seek withdrawal of their bids, post-bid after seeing their competition’s prices (i.e., having a “second look”), waiver is not an option. (*Valley Crest, supra, at pp. 1441-1442.*) California courts have repeatedly held that errors in subcontractor listings which cause inaccuracy or ambiguity in the bidder’s subcontractor commitments trigger the Section 5103 prohibition of waiving such errors. (See *Valley Crest, supra; MCM Construction, Inc. v. City and County of San Francisco (1998) 66 Cal. App. 4th 359, at p. 377* [bidder failed to accurately disclose work performed by subcontractor; bid was not acceptable].)

Based on the reasons documented above, Flatiron respectfully asserts that Caltrans should find Beador’s bid to be non-responsive, disqualify their bid, and award the subject contract to the lowest responsive and responsible bidder, Flatiron.

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FLATIRON

Sincerely,



Alex Medyn

Vice President

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Tab 1

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

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a California Way of Life.*

December 4, 2024

Email: joe@securitypaving.com

Joseph Fernadino, Vice President
Security Paving Company Inc.
3075 Townsgate Road, Suite 200
Westlake Village, CA 91361

06-487404
06-Tul-99-35.8/37.1
B.O. 11/14/2024

Dear Mr. Fernadino,

The Department of Transportation (Caltrans) received a letter dated November 15, 2024, Security Paving Company Inc. (Security Paving) for the above-referenced, federal-aid contract, claiming two inadvertent errors in its bid. Security Paving first alleges it listed Kie-Con as performing bid items 81-87 on its Subcontractor List form to furnish and erect precast concrete girders. When listing Kie-Con's registration numbers, Security Paving incorrectly listed 1000006274, which should have been 2000006274. Second, there were missing descriptions for bid items 163-166 on its Subcontractor List form, where Security Paving alleges it intended to list Dees Burke Engineering Contractors, LLC (Dees Burke), as indicated in its proposal to furnish and pour concrete barrier for bid items 162-171. By this letter, Caltrans notifies Security Paving that its bid is nonresponsive.

Caltrans refers Security Paving to Public Contract Code (PCC) section 4107.5 which states in part:

"The prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of that notice to both the subcontractor he or she claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening."

Caltrans reviewed Security Paving's inadvertent error letter and finds that although Security Paving submitted its letter on November 15, 2024, within two (2) days after bid opening and attempted to correct their bid claiming an error, the attempted correction would improperly modify the bid after the deadline of the bid opening date, which is not allowed.

With regards to the claimed "inadvertent error" of not listing the correct DIR number

for Kie-Con, Caltrans finds this deviation to be immaterial, as it would not grant Security Paving a competitive advantage over other bidders. Given the specific circumstances surrounding Security Paving's bid, Caltrans would waive this immaterial deviation from the bidding requirements.

However, the alleged inadvertent error regarding Security Paving's listing of Dees Burke for bid items 163-166 would constitute an improper modification of its bid after bid opening. Caltrans directs Security Paving to Section 2-1.10 of the 2023 Standard Specifications, Subcontractor List which states in part:

"On the Subcontractor List form, list each subcontractor that will perform 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.). For each subcontractor listed, the Subcontractor List form must show:

4. Portion of work it will perform. Show the portion of the work by:
 - 4.1. Bid item numbers for the subcontracted work
 - 4.2. Percentage of the subcontracted work for each bid item listed
 - 4.3. Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent "

Caltrans reviewed Security Paving's bid submittal and found that it listed Dees Burke to perform bid items 163-166 for less than 100 percent but failed to provide the descriptions of the work to be performed. As Security Paving did not comply with the above-stated specification or the corresponding Subletting and Subcontracting Fair Practices Act (Pub Cont Code § 4100 et seq.), its bid is nonresponsive.

Further, Security Paving, via its November 15 letter, is not attempting to correct the listing of a subcontractor but is instead attempting to modify the bid item of work that a listed subcontractor was set to perform (i.e., adding scope/the missing descriptions to bid items 162-166 that were listed under 100 percent). Given the specific circumstances of Security Paving's bid, Caltrans finds that allowing Security Paving to alter its bid after bid opening in such a way would go beyond the scope of an "inadvertent error" as set forth in PCC section 4107.5 and is not permitted by law. Therefore, Security Paving will not be granted the requested change to its bid and will be held to its initial bid submittal.

Mr. Joseph Fernadino
December 4, 2024
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Based on the above, Caltrans will proceed to award the contract to the lowest responsive and responsible bidder, provided that all requirements are met.

If you have any questions, please contact Juan Loera, Contract Awards Branch Chief at (916) 227-5964.

Sincerely,

April Perez-Hollins

April Perez-Hollins
Office Chief
Construction Contract Awards
Program/Project Management & Office Engineer
Division of Engineering Services