



Gordon N. Ball Inc.

November 8, 2016

*Via Golden State Overnight and
Facsimile (916) 227 6282*

General Engineering Contractors

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Mr. John McMillan
Deputy Division Chief
State of California
Department of Transportation
Division of Engineering Services
1727 30th Street, MSC 43
Sacramento, California 95816

333 Camille Avenue

Alamo, CA 94507

Re: *Construction on State Highway in Santa Clara County Near City of
Saratoga 0.3 Mile South of Sanborn Road in District 04 on Route 9*

Subject: Bid Protest
Bid Opening Date: October 25, 2016
Contract No. 04-2G9604
Project ID 0412000010

Dear Mr. McMillan:

A review of the bid documents submitted by Granite Construction Company (Granite) indicates apparent errors and omissions with the subcontractor listing and Good Faith Effort documents. These errors and omissions constitute grounds for a protest.

Granite listed Highway Specialty Company, Inc., CLSB License 1003147 to perform the following work:

Bid Item	Description	Item Code
Item 20	Treated Wood Waste	141120
Item 21	Remove Guardrail	150661
Item 47	Stain Galvanized Surfaces	032130
Item 56	Midwest Guardrail System	832007
Item 57	Vegetation Control	832070
Item 58	Tubular Bicycle Railing	045517
Item 59	Alternative Flared Terminal	839585
Item 60	Type SMART Crash Cushion	032131

The classification for the Contractor's License for Highway Specialty Company is C-31, C-61/D42. A C-31 license only applies to work involving portable devices, not to permanent guardrails. The D-42 license does not allow installation of anything other than signs (as opposed to guard rails).

It appears that Highway Specialty was listed for work that it is not licensed to perform, and thereby a subcontract cannot be issued by Granite to Highway Specialty as listed, so that Highway Specialty cannot participate in the project.

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The error in subcontractor listing is significant, in that Highway Specialty was listed to perform work with a total value of \$110,765, or 12% of the value of the bid submitted by Granite. In addition, Highway Specialty was listed as 65% of the total DBE participation to be achieved by the bid of Granite.

The listing of Highway Specialty conferred an unfair advantage because if awarded the contract, Granite will be able to shop for prices for the Bid Items for which Highway Specialty was listed. None of the other bidders have the same ability to shop the work after bids were opened. Accordingly, the listing of Highway Specialty is a discrepancy that cannot be waived. *Valley Crest Landscape v. Davis*, 41 Cal. App. 4th 1432, 1442 (1996).

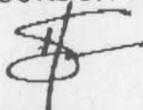
Because Highway Specialty will not be able to participate in the project, Granite's level of DBE participation will be reduced to 6.1%, a participation level lower than the other bidders, and which does not meet the Department's stated DBE goal. Thus, if the Department were to consider awarding the Contract to Granite, despite the discrepancy associated with listing Highway Specialty, the Department would need to evaluate the DBE good faith efforts in which Granite engaged.

A review of the documentation submitted by Granite indicates that the solicitation efforts of Granite were not sufficient, which is also likely the reason that the level of DBE participation achieved by Granite was lower than that of the other bidders. No direct phone call solicitations were made. Instead, Granite relied upon an email system for solicitation of DBEs. The email system solicitation did not develop adequate responses, and it appears that only eleven (11) firms actually responded to the solicitation efforts made using the system. Based on the work made available to DBE firms, and the solicitation results achieved, it should have been apparent to Granite prior to the bid that solicitation efforts that had been made were inadequate; nevertheless, no appropriate additional actions were taken to meet the DBE goal.

Thank you for your careful review of this protest, and we look forward to receiving a copy of any the results of the Department's review of the Good Faith Effort achieved by Granite. If there are any questions, please contact us.

Sincerely,

GORDON N. BALL, INC.



Hal Stober
President