

GENERAL CONTRACTOR
LICENSE NO. 116307 A C12
FAX: 818.362.9300

SECURITY PAVING COMPANY, INC.

13170 TELFAIR AVENUE
SYLMAR, CA 91342
TEL. 818.362.9200

November 10, 2014

State of California, Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
P.O. Box 168041
Sacramento, CA 95816

Attention: John McMillan, Deputy Division Chief

Re: **Further Reply by Security Paving Company, Inc. in Support of Bid Protest to Award of Contract to Flatiron West, Inc.**
Contract No. 07-2881U4
Bids Opened: October 16, 2014
Lowest Responsive Bidder: Security Paving Company, Inc.
Non-Responsive Bidder: Flatiron West, Inc.

Dear Mr. McMillan:

Security Paving Company, Inc. ("Security Paving") has reviewed the further response by Flatiron West, Inc. ("Flatiron") to Security Paving's formal protest of the bid submitted by Flatiron for Caltrans Contract No. 07-2881U4 (the "Contract"). Flatiron has not offered any new or additional information to support its position that the expanded scope of work for subcontractor American Civil Constructors West Coast, Inc. ("ACC") is somehow related to its bid day submittal. Instead, it persists in making the same strained arguments, each of which Security Paving has already refuted. First, Flatiron hopelessly reasserts that its bid is valid because Security Paving also listed ACC to perform bid item 111. Flatiron still fails to acknowledge the fact that Security Paving specifically listed, on bid day, that ACC would perform "high friction surface treatment" separate and apart from its listing of ACC to perform "bridge deck repair." Security Paving recognized that the scopes of work were **not related** and separately listed them. Accordingly, Security Paving's post bid submittal, listing ACC to perform bid item 111, was consistent and uniform with its bid day submittal. Flatiron failed to separately identify that ACC would perform high friction surface treatment on bid day and, therefore, its bid is invalid.

Second, Flatiron continues to argue that bid item 111 is somehow related to "bridge deck repair" simply because the roadway where high friction surface treatment is to be applied **passes under** the bridge deck. Although Flatiron argues that high friction surface treatment is not solely a roadbed treatment, it by making this argument it arguably concedes that it is limited to roadbeds on this project and pursuant to these specifications. Accordingly, it attempts to argue the work is related by calling the roadbed a "tunnel." What we are dealing with is a roadway that **passes under** the bridge deck, not a tunnel. In reality, the plans and specifications for this project **only** call for the application of high friction surface treatment to the eastbound and westbound 210 connectors. High friction surface treatment **is not** applied to the bridge decks. The fact that the connectors pass under the bridge decks, regardless of whether Flatiron wishes to characterize it as a tunnel or not, does not magically transform the work on

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the roadbed into work that is related to the bridge deck. Flatiron improperly expanded ACC's scope of work *after* submitting its bid.

Third, Flatiron believes that its use of the catch-all phrase "and related" saves it from any inconsistencies in its subcontractor listing and invalidates any prior Caltrans decision where "and related" was not included in the work description. This is simply not the case. As Security Paving previously pointed out, Caltrans already considers whether work is "related," regardless whether the work description included these magic words. Adding "and related" to each description cannot save Flatiron from its defective and improper subcontractor listing. Further, contrary to Flatiron's position, the Caltrans decision to reject Flatiron's bid on Contract No. 04-235624 is directly analogous to what Flatiron is attempting to do on this contract. In reviewing Caltrans' March 18, 2014 letter, Flatiron had listed Silverado on bid day to perform work described as "Bridge Demolition." Post bid Flatiron enlarged Silverado's scope of work to include "Remove Reinforced Concrete Box Culvert" and "Remove Junction Box." The box culvert and junction box were not part of the bridge. Accordingly, even though the bid day submittal involved "demolition" and the post bid submittal involved "removal," and the work was being performed by the same subcontractor, Caltrans determined that they were separate operations and were not related. The same applies to this contract. High friction surface treatment is not applied to bridge decks. Accordingly, "bridge deck repair and related" does not encompass the application of high friction surface treatment. Flatiron has improperly enlarged ACC's scope of work and its bid must be rejected.

With respect to Flatiron's description of the work to be performed by Morales Contracting Services ("MCS"), Flatiron contends that it gets a free pass anytime it includes "and related" in the work description. Flatiron presumes that it can omit the removal work on bid day and subsequently include that work post bid. As Security Paving previously pointed out, the fact that the concrete is removed after it is cut does not mean or imply that they are related, or that they will be, or have to be, performed by the same subcontractor. This is evidenced by other bidders that identified the same subcontractor for the sawing and sealing operations. Contrary to Flatiron's position, work is not "related" simply because it may be performed by the same subcontractor, nor is it "related" simply because one operation must follow another. Flatiron improperly enlarged MCS' scope of work and its bid must be rejected.

Finally, Flatiron contends that it was not required to list first tier DBE Subcontractors on bid day if the scope of work to be performed by the DBE Subcontractor does not exceed one-half of one percent of the bid amount, or \$10,000, whichever is greater. As previously pointed out by Security Paving, this violates the specifications and Caltrans' instructions to bidders. The First Tier DBE Subcontractors listed by Flatiron on the DBE Commitment form *is not consistent with* the subcontractors identified on bid day. Accordingly, Flatiron's bid is non-responsive and must be rejected.

Contrary to Flatiron's position, Security Paving's bid protest does, in fact, have merit. Flatiron made impermissible, material changes to the Subcontractor List form that renders its bid non-responsive. Flatiron impermissibly enlarged the scope of work to be performed by listed subcontractors and submitted inconsistent DBE subcontractor lists. These defects cannot be waived.

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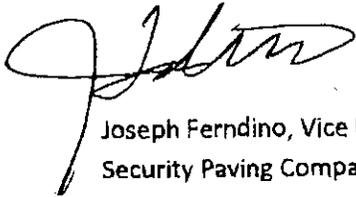
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Consistent with prior determinations, Caltrans' bidding instructions, and the Public Contract Code, Security Paving respectfully asserts that Caltrans should find Flatiron's bid to be non-responsive, disqualify Flatiron's bid on that basis, and award Contract No. 07-2881U4 to Security Paving, the lowest *responsive*, responsible bidder.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Joseph Ferndino, Vice President
Security Paving Company, Inc.

SECURITY PAVING COMPANY, INC.

P. O. BOX 1489 SUN VALLEY, CA. 91353-1489 PH.(818) 767-8418 FAX(818) 767-3169

* Fax Cover Sheet *

Date: 11/10/14

To: John McMillan

Phone: (916) 227-6300

Company: Caltrans Office Engineer

Fax: (916) 227-6282

From: Joe Ferndino

Subject: 07-288144

REGARDING: Bid Protest

This cover page is 1 of 4 pages.

*IF THERE IS ANY OTHER INFORMATION YOU NEED PLEASE LET ME KNOW.

OFFICE# (818)767-8418 OR FAX# (818)767-3169.

THANK YOU