



May 11, 2022

Sent via electronic mail and FEDEX

Santa Clara Valley Water District
5905 Winfield Boulevard
San Jose, CA 95123-2428

Attn: Bhavani Yerrapotu, P.E.
Deputy Operating Officer
Watersheds Design and Construction Division

RE: Calabasas Creek Rehabilitation Project
Project No. 62084001
Task No. 5184
Contract No. C0683
Bid Date: May 4, 2022

Subject: Bid Protest of Notice of Intent to Award to Granite Rock Company

This letter responds to the e-mail from Santa Clara Valley Water District (“Valley Water”) from Mr. David L. Montenegro, P.E. sent on May 10, 2022, at 3:43 PM and reaffirms the responsive bid of Granite Construction Company (“Granite”) as the original bid bond was delivered to Valley Water on the day of the bid.

On May 4, 2022, Granite submitted a total bid of \$14,892,700.00 and was named the apparent low bidder by Valley Water for the above referenced Contract. On May 10, 2022, Granite received an e-mail from Valley Water that stated the following:

- Valley Water staff received Granite Construction’s original Bidder’s Bond delivered by FEDEX on May 4, 2022, at 4:46 PM:
- Per Section 17, Bidder’s Security of the Project’s Notice to Bidders, “Original Bidder’s Bond documents with embossed seal from the Surety must be received by the Valley Water before the latest date/time for submitting Bid Proposals. The original Bidder’s Bond documents must be sent to the address indicated below or hand delivered to the address indicated below. Non-compliance will result in a Bid Proposal being determined non-responsive.”
- Granite Construction’s original bidder’s bond was received after the bid submission date and time deadline. Accordingly, Granite Construction’s bid submission is nonresponsive and may not be accepted by Valley Water.
- Staff will therefore recommend to Valley Water’s Board of Directors that they award the contract to Granite Rock Construction, the bidder submitting the lowest responsive bid.

The Notice to Bidders, Section 17 provided two delivery options of original bid bond. The two Options are as follows:

1. **THIRD PARTY CARRIER** such as: FEDEX, UPS, DHL, CA Overnight, Golden State Overnight, etc. **Any bidder’s Bond received after the date (*emphasis on date only*) stated above will not be considered. Late Bidder’s Bond submissions will be returned unopened.**

2. HAND DELIVERY shall only be between the hours of 1:00 p.m. to 2:00 p.m. on Wednesday, May 4th, 2022, at the Administration Building located at 5750 Almaden Expressway, San Jose, CA 95118
 - a. Bidder's Bond shall be delivered at the drop off box, marked...
 - b. Bidder's must take a picture...
 - c. Bidder's must observe all Public Health Officers orders...
 - d. **Any Bidder's Bond received after the date/time (emphasis on date/time) stated above will not be considered. Bidder's Bond will be returned unopened.**

Granite's bid was responsive as the original bid bond was received by Valley Water on the date of the bid, May 4, 2022, as required by Option 1. Only Option 2, "HAND DELIVERY," instructed that the original bid bond must be delivered by the date/time of the bid. Granite chose to deliver the original bid bond via Option 1, using FEDEX. A delivery attempt was made by FEDEX to deliver the package on May 4, 2022, at 12:44 PM, however, according to FEDEX's notes, "Customer not available or business closed." (See Attachment 1 for Record of Attempt to Deliver). The original bid bond was successfully delivered on May 4, 2022, at 4:46 PM. (See Attachment 2 for Record of Successful Delivery.)

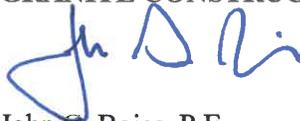
Alternatively, to the extent that Valley Water contends there was a bid discrepancy or irregularity (which Granite believes there was none), pursuant to Section 16 of the Notice to Bidders, **Errors or Discrepancies in the Bids**, "Valley Water's Board of Directors reserves the right...to waive minor defects or irregularities in any submitted Bid Form(s)." Importantly, the May 4, 2022 4:46 PM delivery by FedEx of the bid bond, which the attempted to deliver prior to the bid opening at 12:44 PM, provided Granite no advantage over the other bidders; and for this reason, the County may deem the alleged late delivery immaterial and waive the irregularity. (See, e.g., *Menefee v. County of Fresno* (1985) 163 Cal. App. 3d. 1175.)

For all the reasons stated above, Granite's bid was responsive and conformed to the expressed "date" deadline for THIRD PARTY CARRIER bid bond delivery, and is not otherwise defective. Accordingly, the Department should save the taxpayers \$391,165.00, and continue with its award of the above-referenced contract to Granite, the lowest responsive and responsible bidder.

Please feel free to contact the undersigned at john.boies@gcinc.com or (707) 974-0886, should you require additional information.

Sincerely,

GRANITE CONSTRUCTION COMPANY



John G. Boies, P.E.
Chief Estimator

Attachments:

- Attachment 1 – Bid Bond and FEDEX Record of Attempt to Deliver*
- Attachment 2- FEDEX Record of Successful Delivery*