



Department of Public Works

- Flood Control
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Noel Castillo, P.E.
Director

David Doublet, P.E.
Assistant Director

VIA EMAIL

July 10, 2024

File: Baker Blvd. and Park Ave
W.O. No. TX1814

Mr. Joseph P. Richardson, Regional Chief Estimator
Granite Construction Company
38000 Monroe Street
Indio, CA 92203

**RE: BAKER BOULEVARD AND PARK AVENUE, WORK ORDER NO. TX1814
RESPONSE TO BID PROTEST – GRANITE CONSTRUCTION COMPANY**

Dear Mr. Richardson:

The San Bernardino County Department of Public Works (County) has received and reviewed the timely bid protest submitted by Granite Construction Company ("Granite") regarding the determination of non-responsiveness for Granite's bid on the Baker Boulevard and Park Avenue Project. In addition, the Department has received from Onyx Paving, another bidder for the Project, an email opposition to Granite's bid protest asserting why the Granite bid should be found to be non-responsive. After a thorough evaluation of the bid protest, opposition, facts, and relevant legal standards, we have reached the following findings and determinations.

Review, Findings, and Determinations.

1. Bid Submission Compliance:

- Special Provisions, Section 2-1.34, "Proposal Guaranty," of the bid documents required that, "the bidder shall mail or submit in person the original bid security, in a separate sealed envelope [to the Department] before the time set for the opening of bids."
- This section further provided that, "[a]ny bid/proposal that fails to include an original paper submission of the bidder's security in a separately sealed mailed or otherwise submitted envelope shall be considered nonresponsive."

2. Bid Submission Details:

- On June 27, 2024, prior to the date and time set for the opening of bids, Granite hand-delivered its bid with hand-signed documents and an electronically signed Bid Bond, which was authenticated by a notary. The submission included a bid security.
- The Special Provisions did not prohibit electronic signatures or require wet signatures. The provisions also stated that "the bidder acknowledges that its electronic signature is legally binding." (Special Provision, § 2-1.33.)

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3. Legality of Electronic Signatures and Notarizations:

- According to Government Code section 16.5 and Civil Code sections 1633.7 and 1633.9, electronic signatures are legally binding and cannot be denied legal effect.
- Electronic Notary Signatures are permitted under California law if all traditional notarial act requirements are met (Gov. Code § 8202).

4. Findings:

- Granite's bid security was submitted timely, notarized, and the electronic notarization appears to have met all requirements of a traditional paper-based notarial act.
- The electronic signatures on Granite's Bid Bond appear to be authentic and valid under California law.

5. Opposition by Onyx Paving to Granite's Bid Protest:

- Onyx Paving submitted an email opposition to Granite's bid protest, arguing that Granite's protest is with merit and was correctly deemed to be non-responsive. In support of its argument, Onyx Paving cites to the Special Provisions, Section 2-1.34, "Proposal Guaranty," quoted above. Other than citation to Special Provisions, Section 2-1.34, Onyx Paving provided no further argument or factual basis in support of the finding that Granite's bid was non-responsive.

Conclusion:

After a detailed review and evaluation, the County finds that Granite's bid is **responsive**. Granite complied with the bidding instructions by timely providing an original bid security, in a separate sealed envelope, and meeting all legal requirements for electronic signatures and notarizations.

Final Determination:

Granite's bid submission, including the electronically signed and notarized original Bid Bond, satisfies the requirements of the Special Provisions. Therefore, Granite's protest is accepted, and its bid is to be considered responsive. Accordingly, after considering Granite Construction Company's bid as responsive we have determined that you are the lowest bidder at \$3,869,000.

Should you have any questions, please contact me at asilao@dpw.sbcounty.gov or (909) 387-7920.

Sincerely,



ANDY SILAO, P.E., Chief
Contracts Division

WL:mb

cc: Noel Castillo, Director, Public Works
Mervat Mikhail, Deputy Director, Transportation
Onyx Paving Company