

AGENDA
SANTA CRUZ METRO BOARD OF DIRECTORS
SPECIAL MEETING OF DECEMBER 7, 2012
9:00 AM



Mission Statement: "To provide a public transportation service that enhances personal mobility and creates a sustainable transportation option in Santa Cruz County through a cost-effective, reliable, accessible, safe, clean and courteous transit service."

**THE BOARD MEETING AGENDA PACKET CAN BE FOUND ONLINE AT
WWW.SCMTD.COM AND IS AVAILABLE FOR INSPECTION AT SANTA CRUZ METRO'S
ADMINISTRATIVE OFFICES LOCATED AT 110 VERNON STREET, SANTA CRUZ, CALIFORNIA**


- | | | |
|--------------------------|--|------------------------------|
| <input type="checkbox"/> | <i>Director Margarita Alejo</i> | <i>City of Watsonville</i> |
| <input type="checkbox"/> | <i>Director Hilary Bryant</i> | <i>City of Santa Cruz</i> |
| <input type="checkbox"/> | <i>Director Dene Bustichi</i> | <i>City of Scotts Valley</i> |
| <input type="checkbox"/> | <i>Director Daniel Dodge, Vice Chair</i> | <i>City of Watsonville</i> |
| <input type="checkbox"/> | <i>Director Ron Graves</i> | <i>City of Capitola</i> |
| <input type="checkbox"/> | <i>Director Michelle Hinkle</i> | <i>County of Santa Cruz</i> |
| <input type="checkbox"/> | <i>Director Deborah Lane</i> | <i>County of Santa Cruz</i> |
| <input type="checkbox"/> | <i>Director John Leopold</i> | <i>County of Santa Cruz</i> |
| <input type="checkbox"/> | <i>Director Ellen Pirie</i> | <i>County of Santa Cruz</i> |
| <input type="checkbox"/> | <i>Director Lynn Robinson, Chair</i> | <i>City of Santa Cruz</i> |
| <input type="checkbox"/> | <i>vacant</i> | <i>County of Santa Cruz</i> |
| <input type="checkbox"/> | <i>Ex-Officio Director Donna Blitzer</i> | <i>UC Santa Cruz</i> |

Leslie R. White, General Manager / Secretary of the Board
Margaret Gallagher, District Counsel

TITLE 6 - INTERPRETATION SERVICES / TÍTULO 6 - SERVICIOS DE TRADUCCIÓN

Spanish language interpretation and Spanish language copies of the agenda packet are available on an as-needed basis. Please make advance arrangements with Tony Tapiz, Administrative Services Coordinator at 831-426-6080. Interpretación en español y traducciones en español del paquete de la agenda están disponibles sobre una base como-necesaria. Por favor, hacer arreglos por adelantado con Tony Tapiz, Coordinador de Servicios Administrativos al numero 831-426-6080.

AMERICANS WITH DISABILITIES ACT

 *The Board of Directors meets in an accessible facility. Any person who requires an accommodation or an auxiliary aid or service to participate in the meeting, or to access the agenda and the agenda packet (including a Spanish language copy of the agenda packet), should contact Tony Tapiz, Administrative Services Coordinator, at 831-426-6080 as soon as possible in advance of the Board of Directors meeting. Hearing impaired individuals should call 711 for assistance in contacting Santa Cruz METRO regarding special requirements to participate in the Board meeting. For information regarding this agenda or interpretation services, please call Santa Cruz METRO at 831-426-6080.*

AGENDA
SANTA CRUZ METRO BOARD OF DIRECTORS
SPECIAL MEETING OF DECEMBER 7, 2012
PAGE 2 OF 3

MEETING LOCATION: SANTA CRUZ METRO ADMINISTRATIVE OFFICES
110 VERNON STREET, SANTA CRUZ

9:00 A.M.

NOTE: THE BOARD CHAIR MAY TAKE ITEMS OUT OF ORDER

THE SANTA CRUZ METRO BOARD OF DIRECTORS MEETING WILL BE INTERRUPTED BRIEFLY AT 10:00 A.M.
TO HOLD THE ANNUAL MEETING OF THE SANTA CRUZ CIVIC IMPROVEMENT CORPORATION

SECTION I: OPEN SESSION

1. CALL TO ORDER & ROLL CALL
2. ADDITIONAL DOCUMENTATION TO SUPPORT EXISTING AGENDA ITEMS

CORRESPONDENCE REGARDING CONSIDERATION OF BIDS FROM LEWIS C NELSON & SONS, INC. AND C OVERAA AND COMPANY, INC.
Ned Van Valkenburgh, Carpenters Union Local 505 of Santa Cruz County

CONSENT AGENDA

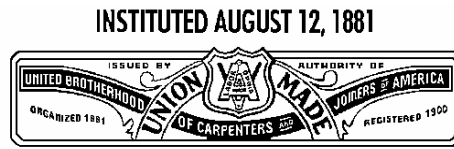
All items appearing on the Consent Agenda are recommended actions which are considered to be routine and will be acted upon as one motion. All items removed will be considered later in the agenda. The Board Chair will allow public input prior to the approval of the Consent Agenda items.

3. CONSIDERATION OF AUTHORIZING THE GENERAL MANAGER TO EXECUTE A CONTRACT AMENDMENT WITH OJO TECHNOLOGY, INC. FOR SECURITY SYSTEM INSTALLATIONS IN AN AMOUNT NOT TO EXCEED \$810,198
Submitted by Erron Alvey, Purchasing Agent

REGULAR AGENDA

4. CONSIDERATION OF APPOINTING LESLYN SYREN TO THE POSITION OF METRO DISTRICT COUNSEL AND AUTHORIZING THE CHAIR OF THE BOARD OF DIRECTORS TO EXECUTE AN EMPLOYMENT AGREEMENT FOR THE PERIOD DECEMBER 17, 2012 THROUGH DECEMBER 31, 2015
Presented by Lynn Robinson, Chair
5. **PUBLIC HEARING WILL TAKE PLACE AT 9:15 A.M.**
6. CONSIDERATION OF DECLARING WEST BAY BUILDERS AS NONRESPONSIVE & NONRESPONSIBLE, AND REJECTING THEIR BID FOR THE JUDY K. SOUZA OPERATIONS BUILDING FACILITY
Presented by Frank Cheng, Project Manager & Information Technology Manager

Local Union 505
County of Santa Cruz
(831) 688-5025



225 Searidge Road
Aptos, CA 95003
F(831) 688-5027

ALWAYS DEMAND THE LABEL

December 3, 2012

Santa Cruz Metropolitan Transit District
110 Vernon Street
SANTA CRUZ, CA 95060

Attn: Members of the Board of Directors

Re: Contract proposal for Judy K Souza Operations & Bus Park Facility
1200 River Street
Santa Cruz, CA 95060

Bid Date: September 12, 2012

Subject: Consideration of Bids from Lewis C Nelson & Sons, Inc. and C Overaa and Company, Inc.

Dear Members of the Board;

I am writing on behalf of the Carpenters Union Local 505 of Santa Cruz County.

We have reviewed the bids on the above-named project and request that the Board reject the bid from Lewis C Nelson & Sons, Inc. ("LCN") because it fails to meet the requirements of the California Public Contract Code "Subletting and Subcontracting Fair Practices Act" Section 4101, et seq. ("PCC4100").

The fundamental intent of the competitive bidding laws (PCC 4100, et. seq.), in requiring the listing of subcontractors, is to prevent bid shopping and bid peddling of subcontracted portions of public projects and it applies to those portions of work valued above the threshold amount (1/2 % of the total base bid amount). Further if a prime contractor fails to list a subcontractor for a portion of work valued over that threshold amount, the law requires that the prime contractor be qualified and actually do that portion of the work. If a prime contractor lists more than two subcontractors to do the same portion of work the prime contractor again must be qualified and actually do that portion of the work, instead of the listed subcontractor.

From this, I believe that the case law supports the assertion that the subcontractor list together with any information contained in the bid submittal, i.e., only those documents presented at the time of the bid opening, 2 pm on September 12, 2012, and Bid Form Documents #6, #7, and #8 (#8 relative only to the subcontractor's workforce), submitted within 2 business days thereafter, must contain sufficient information so that the awarding body can determine, without ambiguity and without additional information from the bidder, the identity of each subcontractor listed on the Subcontractor List, Doc 9. If an examination of the entire bid submittal does not remove an ambiguity as to the

identity of a subcontractor then, in effect, the prime contractor has listed more than one subcontractor for the same portion of work and thus must be capable and must self-perform this portion of work.

The reality of preparing bids is that contractors are getting numbers (bids) from subcontractors, who tend to wait until the last moments to provide their information in an effort to prevent bid peddling and bid shopping before the bids are submitted. The contractors are rushing to finish filling in their subcontractor lists and they often use the "common" names of their familiar subs. For example, the LCN bid identifies "Pacific" from "Stockton" to do "steel," "STS" from "Rancho Cordova" to do "traffic coating," and "Foundation" from "Oakley" to do "piles".

This shorthand listing of subcontractors creates problems. A search for "Pacific" on the Contractor State License Board ("CSLB") website showed more than 1300 licensed contractors with a business name beginning with "Pacific". There are two "Pacific" entities with a Stockton address—"Pacific Steel and Concrete, Inc." dba "Pacific Construction", # 492634, which expired in 1988; and "Pacific Steel Fabricators, Inc.," # 794214, which expired in 2007. The Metro staff prepared a typed summary of the various bidders' subcontractor lists. Using the information provided in the bid submittal and presumably generally available public information the Metro staff was able to establish a license number for every subcontractor listed by every bidder except for LCN and F&H Construction. In the portion of their typed report about LCN's subcontractor list, the staff noted that there were two "Pacific" contractors and they did not establish a contractor license number for "Pacific" or for "STS." (That some of these "Pacific" contractors do not have active licenses does not preclude LCN from having listed them as their subcontractor since nothing in the bid documents or state law prevents a subcontractor with an expired license from making a bid, although they cannot enter into a contract until the license is "active". So a subcontractor with an expired license could submit a bid to a prime contractor and, if successful, activate (or renew) their expired license and proceed).

There is a similar problem with "Foundation" listed by LCN. The CSLB lists three entities with a name starting with "Foundation" in Oakley, CA—"Foundation Waterways Inc.", # 842509, license expired in 2006; "Foundation/Macias Joint Venture", # 672813, license expired in 1999; and "Foundation Constructors Inc.", # 270761, which has an active license.

Since it appears that the awarding body is unable to resolve these ambiguities this results in LCN having listed more than one subcontractor for the same portion of work. This requires that LCN to be capable and to actually do the work of installing the cement piles and structural steel. Accordingly the awarding body would need to make a determination whether LCN was capable and would do this work, if not, their Doc 9 would appear to fail to meet the requirements of PCC 4100 and their bid would be non-responsive. Since the installation of concrete piles and structural steel each require quite specialized skills and equipment and is work LCN has not previously self-

performed, it is doubtful that an awarding body could determine that they were capable of self-performing this work.

The bid from C Overaa and Company, Inc. (“COC”) lists “MGM” from “San Jose” to do “framing & drywall”, and “Southwest” from “Henderson, NV” to do “steel”. There are three “MGM’s” with San Jose addresses: “M G M Construction”, # 764560, revoked in 2007, and “M G M Construction A Partnership”, # 825608, also revoked in 2007, and “M G M Drywall Inc.”, # 769401, which is active. A review of contractors with a name beginning with “Southwest”, showed two companies with a Henderson, NV address: “Southwest Erectors”, # 397260, license expired in 2007; and “Southwest Steel of California Inc.”, dba “Southwest Steel Inc.”, # 935225, which is active.

Under these circumstances, an awarding body must review all documents submitted with the bid in order to determine whether either of these bidders meet the burden of providing an unambiguous subcontractor listed for each of these portions of work. Bid Form Documents #6, #7, and #8, if they were timely submitted, are a starting point. For example, COC submitted Doc #6 and/or Doc #7 for each of its listed subcontractors with its bid submittal. These documents clarify any ambiguity regarding “MGM” and “Southwest” by establishing that “MGM” is “M G M Drywall Inc.” and that “Southwest” is “Southwest Steel.” Every other subcontractor listed in COC’s Doc 9 is also clearly and unambiguously identified by either a Doc #6 or Doc #7 contained in COC’s bid submittal.

As part of its review of the bids, the awarding body must be assured that the staff maintained the integrity and record of what documents are properly considered part of the “bid submittal” from each prime contractor. In the very least, the staff report attachment “IFB 12-23 Bid Analysis Spreadsheet” presented to the Board at the November 9 meeting should serve as a tentative authority on this matter. According to that report, LCN submitted no Documents #6, #7 or #8 relating to any of its listed subcontractors by the deadline for those documents to be considered as included in the bid submittal, ie. two business days after September 12, 2012. Thus, although the Board may determine that late submittal of Documents #6, #7, or #8 does not render a bid non-responsive, the Board cannot rely upon late submitted documents from LCN to clarify any ambiguities presented by LCN’s subcontractor list.

Subsequent to the November 9 meeting, the staff determined that the staff report was incorrect and that every bidder had errors or omissions in Documents #6, #7 or #8. This apparently led the staff to issue a letter, dated Nov. 21, 2012, informing the bidders that the staff was revising its finding such that failure to provide all of the applicable Doc #6 and/or Doc #7 and Doc #8 within the time period required by the specifications was an immaterial irregularity and would not result in a bid being determined to be non-responsive.

Based upon the above discussion and the requirements of Public Contract Code section 4100 et seq., we believe that the Lewis C Nelson bid submittal is deficient and non-responsive because it fails to provide an unambiguous list of subcontractors performing

those portions of the project amounting to more than ½% of the total bid amount as required by Public Contract Code sections 4100, et. seq., and urge the Board should so find. Further, if the Board approves the staff's recommended modification of the requirements for submitting complete Doc #6 and/or Doc #7 and Doc #8 as part of the "bid submittals", we believe that the C. Overaa & Company bid submittal is complete and responsive and urge the Board should so find. We urge the Board of Directors of the Santa Cruz Metropolitan Transit District to award the project to the lowest responsible and responsive bidder: C. Overaa & Company.

Thank you for your consideration of these weighty issues, and we look forward to your response. Should you have any questions regarding these requests, please do not hesitate to contact me at 831-760-2429.

Sincerely,

Ned Van Valkenburgh
Marketing Representative

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: December 7, 2012

TO: Board of Directors

FROM: Erron Alvey, Purchasing Agent

SUBJECT: CONSIDERATION OF AUTHORIZING THE GENERAL MANAGER TO EXECUTE A CONTRACT AMENDMENT WITH OJO TECHNOLOGY, INC. FOR SECURITY SYSTEM INSTALLATIONS IN AN AMOUNT NOT TO EXCEED \$810,198

I. RECOMMENDED ACTION

Authorize the General Manager to execute a contract amendment for security system installations with Ojo Technology, Inc. in an amount not to exceed \$810,198.

II. SUMMARY OF ISSUES

- Santa Cruz METRO has a need to extend the term of the current contract and add additional funds.
- Santa Cruz METRO has a contract with Ojo Technology, Inc. for installation of security systems at several sites.
- This contract was established on January 7, 2011 and will expire on January 6, 2013.
- Due to unforeseen delays and construction of the Judy K. Souza Operations Facility, staff is requesting that the contract term be extended through January 6, 2016.
- Necessary changes regarding conduit for the cable feed and video storage capacity required both additional time and increased costs, therefore, a contract amendment extending the term of the contract and adding additional funding is recommended.

III. DISCUSSION

Santa Cruz METRO has a contract with Ojo Technology, Inc. for installation of security systems at several sites. During the course of the project, it was determined that the existing conduit at Pacific Station would not be able to contain the new cable feed as anticipated. Therefore, new conduit will need to be laid. This conduit can either be laid by opening up a trench in the concrete through the bus lanes, or use equipment to bore through the concrete. Boring through the concrete is the more expensive option, however, was chosen as it minimized the disruption of service, reduced accessibility issues, and increased safety of the public areas. This type of installation will also take more time and planning than the original installation type would have taken.

The second factor is in regard to the required video storage capacity. After an incident occurred at Pacific Station (at the beginning of the project), the Santa Cruz Police Department requested our video footage of the date and time in question. The current recording capacity was such that the section of video needed had already expired and was gone although it had only been a matter of weeks. Per Public Utilities Code § 99164 and Government Code § 53162, a transit agency is required to purchase and install equipment capable of storing recorded images for at least one year, and specifically that video recordings made by security systems operated as part of a public transit system shall be retained for one year. The original storage capacity requested by Santa Cruz METRO was not sufficient, and an upgrade to equipment capable of one year storage was required. The upgraded equipment significantly increased cost, and added additional time in sourcing and obtaining the product.

Additional time is also being requested to accommodate the construction of the Judy K. Souza Operations Facility, which has a security system component in this contract. It is anticipated that the entire project will be completed by January 6, 2016.

Staff recommends that the Board of Directors authorize the General Manager to execute a contract amendment on behalf of Santa Cruz METRO. Robert Cotter, Maintenance Manager, will continue to serve as the Contract Administrator and will ensure contract compliance.

IV. FINANCIAL CONSIDERATIONS

Additional funds in an amount of \$810,198 are requested for approval at this time. The new contract total not to exceed would be \$1,674,198. A sole source justification has been prepared and a cost analysis of equipment and labor rates have been performed. The current contract pricing offered was determined to be fair and reasonable.

Funds to support this contract are from the Proposition 1B California Transit Security Grant Program, and the MetroBase Project.

V. ATTACHMENTS

Attachment A: Contract Amendment with Ojo Technology, Inc.

Attachment A

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT SECOND AMENDMENT TO CONTRACT NO. 11-01 FOR SECURITY SURVEILLANCE SYSTEMS

THIS SECOND AMENDMENT TO CONTRACT NO. 11-01 for Security Surveillance Systems is made effective January 7, 2013 between the SANTA CRUZ METROPOLITAN TRANSIT DISTRICT, a political subdivision of the State of California (“Santa Cruz METRO”), and OJO TECHNOLOGY (“Contractor”).

I. RECITALS

- 1.1 Santa Cruz METRO and Contractor entered into a Contract for a Closed Circuit Television Surveillance System at the Watsonville Transit Center (“Contract”) on January 7, 2011.
- 1.2 Effective January 7, 2012, the Contract was amended to include a comprehensive security surveillance system for all of Santa Cruz METRO facilities, including but not exclusive to the Watsonville Transit Center, as per the original Request for Proposals dated August 3, 2010 and Contractor’s proposal with Best and Final Offer dated December 22, 2010.
- 1.3 Santa Cruz METRO and Contractor desire to amend the Contract as provided herein.

Therefore, Santa Cruz METRO and Contractor amend the Contract as follows:

II. TERM

- 2.1 Article 4.01 is replaced in its entirety by the following:

The term of this Contract shall be from January 7, 2011 to January 6, 2014.

III. TERMS OF PAYMENT

- 3.1 Article 5.01 is replaced in its entirety by the following:

Santa Cruz METRO shall compensate Contractor in an amount not to exceed the amounts/rates agreed upon by Santa Cruz METRO. Santa Cruz METRO shall reasonably determine whether work has been successfully performed for purposes of payment. Compensation shall be made within thirty (30) days of Santa Cruz METRO’s written approval of Contractor’s written invoice for said work.

Santa Cruz METRO and Contractor agree that the total amount payable pursuant to this Second Amendment shall not exceed \$810,198.

IV. REMAINING TERMS AND CONDITIONS

- 4.1 All other provisions of the Contract that are not affected by this amendment shall remain unchanged and in full force and effect.

IV. AUTHORITY

5.1 Article 7 is amended to include the following language:

Each party has full power to enter into and perform this Second Amendment to the Contract and the person signing this Second Amendment on behalf of each has been properly authorized and empowered to enter into it. Each party further acknowledges that it has read this Second Amendment to the Contract, understands it, and agrees to be bound by it.

Signed on _____

Santa Cruz METRO –
SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

Leslie R. White
General Manager

Contractor –
OJO TECHNOLOGY

By _____
Angie Wong
President and Chief Executive Officer

Approved as to Form:

Margaret R. Gallagher
Santa Cruz METRO Counsel

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: December 7, 2012

TO: Board of Directors

FROM: Lynn Robinson, Chair

SUBJECT: CONSIDERATION OF APPOINTING LESLYN SYREN TO THE POSITION OF METRO DISTRICT COUNSEL AND AUTHORIZING THE CHAIR OF THE BOARD OF DIRECTORS TO EXECUTE AN EMPLOYMENT AGREEMENT FOR THE PERIOD DECEMBER 17, 2012 THROUGH DECEMBER 31, 2015.

I. RECOMMENDED ACTION

That the Board of Directors approve the appointment of Leslyn Syren to the position of METRO District Counsel. That the Board of Directors authorize the Chair to execute an Employment Agreement with Leslyn Syren for the period of December 17, 2012 through December 31, 2015.

II. SUMMARY OF ISSUES

- Earlier this year METRO District Counsel Margaret Gallagher notified the Board of Directors that it was her intention to retire at the end of 2012.
- In response to Ms. Gallagher's notification the Board of Directors formed a Recruitment Task Force comprised of Board Members; Chair Lynn Robinson, Vice-Chair Daniel Dodge, Director Dene Bustichi, Director John Leopold, and Director Ellen Pirie.
- With assistance of Human Resources Manager Robyn Slater the Recruitment Task Force placed solicitations in trade and legal media resulting in the receipt of 23 applications for the District Counsel position.
- The Members of the Recruitment Task Force reviewed the application materials that were submitted and developed a list of 5 candidates that would be interviewed in Santa Cruz.
- On November 16, 2012 the Recruitment Task Force interviewed the 5 selected candidates for District Counsel. Leaders from the UTU Local 23 and the SEIU Local 521 also were provided the opportunity to interview each of the 5 candidates.
- The November 16, 2012 interview process resulted in the selection of 3 candidates to be invited to Santa Cruz to be interviewed by the entire Board of Directors.
- On November 30, 2012 the Board of Directors interviewed the 3 selected candidates.

- At the conclusion of the interview process the Board of Directors selected Leslyn Syren as the preferred candidate for the position of District Counsel and authorized the Chair of the Board to negotiate an Employment Agreement for review by the Board.
- The Chair of the Board has negotiated the attached Employment Agreement, effective 12/17/12-12/31/15, and Leslyn Syren has accepted the agreement pending approval by the Board of Directors.

III. DISCUSSION

METRO has been fortunate to have the services of Margaret Gallagher as the District Counsel for over 20 years. Earlier this year Ms. Gallagher indicated that it was her intention to retire at the end of 2012. Based upon the notification from Ms. Gallagher the Board of Directors began the process of recruiting an individual to be appointed to the position of District Counsel prior to the end of 2012.

The Board of Directors appointed a Recruitment Task Force comprised of Board Members, and supported by the METRO Human Resources Manager to carry out the recruitment process. Solicitations and information was distributed through trade and legal publications. METRO received 23 applications for the position of District Counsel as a result of the solicitations. The Members of the Recruitment Task Force reviewed all of the applications and selected 5 candidates to be invited to Santa Cruz for in-person interviews.

On November 16, 2012 the Members of the Task Force interviewed the selected candidates. The candidates were also interviewed by leaders from UTU 23 and SEIU 521. General Manager Les White was also provided an opportunity to meet with the candidates on November 16, 2012. As a result of these interviews 3 candidates were selected to be invited to Santa Cruz to be interviewed by the entire Board of Directors.

On November 30, 2012 the Board of Directors interviewed the selected 3 candidates for the position of District Counsel. At the conclusion of the interviews the Board selected Leslyn Syren as the preferred candidate and authorized the Board Chair to negotiate an Employment Agreement.

The Chair of the Board of Directors met with Leslyn Syren and negotiated an Employment Agreement for the period December 17, 2012 through December 31, 2015. Leslyn Syren has accepted the Agreement which is attached to this Report and therefore, the Agreement is now ready for Board consideration.

It is recommended that the METRO Board of Directors formally appoint Leslyn Syren as the District Counsel and authorize the Chair to execute the attached 2012/2015 Employment Agreement.

IV. FINANCIAL CONSIDERATIONS

Funds to support the position of METRO District Counsel, and the provisions of the attached Employment Agreement, are contained in the 13/14 METRO Operating Budget.

V. ATTACHMENTS

Attachment A: Employment Agreement—METRO/Leslyn Syren, 2012 through 2015.

Attachment A

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

EMPLOYMENT AGREEMENT

This is an employment agreement made and entered into on December 7, 2012 by and between the Santa Cruz Metropolitan Transit District (hereinafter referred to as "SC METRO") and Leslyn Syren (hereinafter referred to as "Employee").

WHEREAS, the Board of Directors of the SC METRO is authorized pursuant to the Santa Cruz Metropolitan Transit District Act of 1967, Sections 98114 and 98115 of the California Public Utilities Code to enter into contracts on behalf of the SC METRO and to appoint and fix the salary of the District Counsel:

WHEREAS, the Board of Directors of the SC METRO desires to employ the services of Leslyn Syren in the position of District Counsel; and

WHEREAS, Leslyn Syren will serve as an at will employee in the position of District Counsel; and

WHEREAS, Leslyn Syren desires to enter into an agreement to serve in the position of District Counsel for the period December 17, 2012 through December 31, 2015.

THEREFORE, in consideration of the terms and conditions of the Agreement the parties agree as follows:

SECTION 1 – DUTIES AND RESPONSIBILITIES

- A. SC METRO agrees to the employment of Employee as District Counsel and the Employee accepts such employment under the terms and conditions set forth in this Agreement.
- B. Employee shall have and agrees to perform in good faith the duties and responsibilities of District Counsel. As such, Employee shall have the responsibility for the proper administration of the SC METRO in accordance with State law and such ordinance, resolutions and policies as have been or may be established by the Board of Directors. Employee shall have the general supervision and management of the legal affairs of the SC METRO under the direction of the Board of Directors and shall perform such duties as outlined in the position description, a true copy of which is attached heretofore as Attachment A, the terms of which are incorporated by reference herein as though fully set forth, and shall perform such other duties and responsibilities as may be assigned from time to time by the Board of Directors. Employee's duties shall also include but not be limited to those set forth in Public Utilities Code Section 98000 et seq (as amended) and the SC METRO Bylaws (as amended).

SECTION 2 – CONDITIONS OF EMPLOYMENT

- A. Employee shall devote all of her professional energies, interests, and abilities to the performance of the duties and responsibilities of District Counsel and shall not engage in any additional professional activities without the permission of the Board of Directors.

SECTION 3 – TERM OF EMPLOYMENT

- A. Subject to the provisions for termination set forth below in Section 7 of this Agreement, the Employee's term of employment shall be for the period December 17, 2012 through December 31, 2015.

Attachment A

SECTION 4 – COMPENSATION

- A. As compensation for the services rendered to the SC METRO during the term of this Agreement, the Employee shall be compensated at the rates identified in the District Management Compensation Plan identified as Attachment B to this Agreement, the terms of which are incorporated by reference herein as though fully set forth. It is agreed that the Employee shall initially be placed at step three (3) of the salary range for District Counsel as identified in Attachment B and shall advance to the next step in the range every twelve (12) months thereafter. Any cost of living adjustments approved by the Board of Directors applying to the rates of compensation in the Management Compensation Plan shall be applied to rates identified for the position of District Counsel in the Plan. Compensation provided under this section shall be payable in accordance with the SC METRO's regular payroll procedures.

SECTION 5 – VACATION

- A. Commencing upon execution of this Agreement, the Employee shall accrue vacation at a rate equivalent to three (3) weeks per year. Accrual shall be in accordance with the SC METRO's regular payroll procedures and the District's Management Compensation Plan.

SECTION 6 – SICK LEAVE

- A. The Employee shall be provided sick leave benefits in accordance with the District's Management Compensation Plan identified in Attachment B of this Agreement.

SECTION 7 – TERMINATION/SUSPENSION

- A. This Agreement may be terminated:
- i. By mutual agreement and upon such terms and conditions as agreed to in writing by the Employee and the SC METRO.
 - ii. By adoption of a resolution approved by the affirmative vote of a majority of the Board of Directors for the removal, with or without cause, of the Employee as District Counsel. The Employee shall be provided notification of the meeting where the resolution is to be considered at least ten (10) working days prior to the meeting;
 - iii. By not successfully passing the Probationary period. Employee shall be subject to an initial Probationary period of twelve (12) months. Prior to the end of the initial Probationary period, the Board of Directors act to confirm Employee's successful completion of Probation or act to extend the Probationary period for one or more additional periods of time. During the initial Probationary period or any approved extension, if it is determined by the Board of Directors that the Employee is not performing at the standards set by the Board of Directors, the Employee may be removed pursuant to the procedure set forth in subsection 7(A)(ii).
 - iv. By the death or resignation of the Employee.
- B. The SC METRO may suspend the Employee with or without full pay and benefits by the adoption of a resolution setting forth the reasons for the suspension approved by the affirmative vote of a majority of the Board of Directors for the suspension of the Employee as District Counsel. The Employee shall be provided notification of the meeting where the resolution is to be considered at least ten (10) working days prior to the meeting.
- C. This Agreement shall not limit the rights of the parties to pursue remedies under California State Law should a breach of contract occur which is not able to be mutually resolved by the parties.

Attachment A

SECTION 8 – COMPENSATION AFTER TERMINATION

- A. If the Employee does not successfully complete the probationary period (first twelve [12] months of employment and any approved extensions), or elects to voluntarily terminate employment prior to completing the probationary period the SC METRO is under no obligation to compensate the Employee for any time left until the end of the term of the contract.
- B. If this Agreement is terminated under Section 7(A)(ii) by the adoption of a resolution and the grounds for the Employee termination are malfeasance, dishonesty, or moral turpitude on the part of the Employee, which shall result in a conviction, the SC METRO shall have no additional financial obligation to the Employee. If the grounds of the Employee's termination under Section 7(A)(ii) are other than those set forth in the preceding sentence, the SC METRO shall compensate the Employee, at the level of salary and benefits in effect at the time of termination, for the remaining period of this Agreement or for a maximum period of eighteen (18) months, whichever is the lesser, and shall compensate the Employee for all unused leave accruals provided in the District's Management Compensation Plan identified in Attachment B to this Agreement.
- C. If this Agreement is terminated under section 7(A)(iv) by the Employee's death the SC METRO shall compensate the Employee's beneficiary, identified in the life insurance policy provided by the SC METRO, for all unused leave accruals provided in the District's Management Compensation Plan identified in Attachment B to this Agreement.

SECTION 9 – OTHER CONDITIONS OF EMPLOYMENT

- A. Employee shall be entitled to and receive the benefits and conditions of employment which are available generally to other non-bargaining unit employees of the SC METRO except as expressly modified by this Agreement. The District Management Compensation Plan is outlined in Attachment B and incorporated into this Agreement by reference. Any modifications in the District's Management Compensation Plan adopted by the Board of Directors during the term of this Agreement shall be incorporated into this Agreement at the time of adoption.

SECTION 10 – EVALUATIONS

- A. The Board of Directors shall evaluate the performance of the Employee at least annually. More frequent evaluations may be conducted if the Board of Directors deems it necessary.

SECTION 11 – EXPENSES

- A. The SC METRO shall provide the Employee reasonable and necessary business equipment and supplies in order to carry out the performance of her duties and responsibilities as set forth in this Agreement, in accordance with the SC METRO's normal practice. Any unanticipated reasonable and necessary business expenses which the Employee incurs shall be reimbursed by SC METRO upon satisfactory proof of detailed expenses and invoiced for which reimbursement is claimed.

SECTION 12 – INDEMNIFICATION

- A. To the extent permitted under California State Law, the SC METRO shall indemnify and hold harmless the Employee from any claim or legal action arising out of the Employee's actions in carrying out the duties of the District Counsel, as long as the Employee is acting within the course and scope of her employment as defined herein.

Attachment A

SECTION 13 – OTHER TERMS AND CONDITIONS

- A. Any notice to the District under this Agreement shall be furnished in writing by the Employee to the Chair of the Board, Santa Cruz Metropolitan Transit District, 110 Vernon Street, Santa Cruz, CA. 95060. Any notice to the Employee shall be furnished in writing by the SC METRO to her most recent home address as identified in her Employee Personnel file. All such notices must be sent by first class mail or delivered in person by messenger.
- B. This written instrument represents the entire Agreement between the parties and supersedes any prior agreements or understandings whether oral or written with the exception of those referenced in this Agreement.
- C. This Agreement cannot be changed or terminated orally and may be modified only by a written agreement executed by both parties.
- D. This Agreement is personal to the Employee and cannot be assigned to any other person by the Employee.
- E. This agreement shall be binding on the heirs, personal representatives, successors and assigns of the employee.
- F. This Agreement shall be interpreted, construed, and applied according to the laws of the State of California.
- G. The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provisions.
- H. The captions or headings of the paragraphs hereof are for convenience only and shall not control or affect the meaning or construction of any of the terms or provisions of this Agreement.
- I. Time is of the essence.
- J. No provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on December 7, 2012.

Employee:

Santa Cruz Metropolitan Transit District

Leslyn Syren

Lynn Robinson
Chair, Board of Directors

Date

Date

DATE: December 7, 2012

TO: Board of Directors

FROM: Frank Cheng, Project Manager & Information Technology Manager

SUBJECT: CONSIDERATION OF DECLARING WEST BAY BUILDERS AS NONRESPONSIVE & NONRESPONSIBLE, AND REJECTING THEIR BID FOR THE JUDY K. SOUZA OPERATIONS BUILDING FACILITY

I. RECOMMENDED ACTION

That the Board of Directors declare West Bay Builders as nonresponsive & nonresponsible, and reject their bid for the Judy K. Souza Operations Building Facility.

II. SUMMARY OF ISSUES

- On June 29, 2012, a Notice of Invitation for Bids (IFB 12-23) was issued and sent to interested bidders and Builders Exchanges.
- On August 8, 2012, IFB 12-23 Addendum #1 was issued.
- On August 17, 2012, IFB 12-23 Addendum #2 was issued.
- On September 12, 2012, METRO received eight (8) bids.
- On November 8, 2012, the Board of Directors received comments and deferred the Judy K. Souza Operations Building staff reports.
- METRO staff has been researching and reviewing bids for presentation to Board of Directors.
- METRO staff recommends that the Board of Directors declare West Bay Builders as nonresponsive & nonresponsible, and reject their bid for the Judy K. Souza Operations Building Facility.

III. DISCUSSION

On June 29, 2012, a Notice of Invitation for Bids (IFB 12-23) was issued and sent to interested bidders and Builders Exchanges. On August 8, 2012, IFB 12-23 Addendum #1 was issued. On August 17, 2012, IFB 12-23 Addendum #2 was issued.

On September 12, 2012, METRO received eight (8) bids, all bids below engineer’s estimate.

West Bay Builders, Inc.	\$ 13,494,000
Zovich Construction	\$ 13,500,000
Lewis C. Nelson & Sons, Inc.	\$ 13,572,000

C. Overaa & Co.	\$ 13,659,000
F & H Construction	\$ 13,787,000
Otto Construction	\$ 13,936,000
SJ Amoroso	\$ 13,997,000
Roebbelen Contracting, Inc.	\$ 14,178,000

On November 8, 2012, the Board of Directors received comments and deferred the Judy K. Souza Operations Building staff reports.

The above eight bids are ordered from lowest to highest bid. West Bay Builders, Inc. submitted the lowest bid. An analysis of all the bids was performed by METRO staff to evaluate all deficiencies of the bids and if the deficiency is “correctable” or “not correctable”. The deficiency evaluation will show if the bidder(s) are responsive and responsible. For details, see **Attachment A** (IFB 12-23 Bid Analysis Spreadsheet). Award procedures are included in IFB 12-23, Part I-20, 1.34. METRO will select the lowest responsive, responsible bidder based on a determination of (1) which bidder is the lowest monetary bidder on the Base Bid; (2) whether or not the lowest monetary bidder submitted a responsive bid; and (3) whether or not the lowest monetary bidder is responsible. Responsive factors and responsibility factors were taken into account. METRO staff determined criteria for deficiencies found to be evaluated as “correctable” or “not correctable.” Subsequent to the submission of the staff report on November 9, 2012, additional research lead to staff determining that deficiencies in submission in subcontractor certifications should be considered correctable and bidders were notified that subcontractor certifications would now be due two days after award and only from the awardee.

Correctable	Not Correctable
If majority of documents were provided and only a few had discrepancies	Omission of major items
For each item listed by the bidder, part of information is missing	Misrepresentation of facts

The following is West Bay Builders, Inc (WBB) and METRO’s review of any discrepancies:

- Document 2, item 4 asks the bidder if they have ever been determined by a public agency to not be a responsible bidder, WBB answered “n/a,” and METRO has documentation stating otherwise (**See Attachment B06**). Based on this information, staff recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.
- Document 2, item 5 asks to lists all lawsuits or mediation between bidder and owner of construction project in past seven years, WBB listed 5 items, and METRO found an additional lawsuit/mediation. WBB stated the project was completed in 2004 which was over 7 years ago. With mediation occurring in 2009, the mediation is still applicable to list (**See Attachment B01, B02, B03, B04, B05 & B07**). Based on this information, staff

recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.

- Document 2, item 6 asks within the past seven years, has bidder paid liquidated damages, WBB answered “No,” and METRO found a recent judgment for liquidated damages (**See Attachment B08**). Based on this information, staff recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.
- Document 2, item 7 asks if bidder has any surety of bidder ever paid any claim against bidder, WBB answered “No,” and METRO found a few judgments stating that the surety of bidder paid claims (**See Attachment B09 & B10**). Based on this information, staff recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.
- Part I-20, 1.30.L states that METRO may reject the bid of any party who has been delinquent or unfaithful in any former contract with METRO, and who cannot satisfactorily prove that it is responsible as required in the IFB or whose Bid is not responsive. In previous project (MetroBase Fleet Maintenance Building), METRO requested subcontractor contract documents and WBB did not provide any documentation during the project or after negotiations. (**See Attachment B11**). Per Code of Federal Regulations 49 CFR 18.36(i) that was referenced in the contract, the contractor agrees to provide METRO with access to documents which are pertinent to the contract for the purpose of audits, examinations, excerpts and transcription. WBB ignored requests and once WBB received the final project payment, WBB did not follow up on any documentation. Based on this information, staff recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.
- Per previous item, METRO requested the subcontractors to provide the subcontractor contracts, and WBB obstructed METRO’s attempt to ascertain the documentation (**See Attachment B11**). Based on this information, staff recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.
- Checked references revealed deficiencies with WBB’s performance (**See Attachment B12**). Based on this information, staff recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.
- Overall with the determined "non-correctable" items as seen in Attachment A, METRO finds WBB’s bid as nonresponsive and nonresponsible.

A bid may be responsive even if there is a discrepancy in the bid, as long as the discrepancy is inconsequential, that is, the discrepancy must not:

1. Affect the amount of the bid
2. Give a bidder an advantage or benefit over others
3. Be a potential vehicle for favoritism
4. Influence potential bidders to refrain from bidding
5. Affect the ability to make bid comparisons

METRO is waiving the irregularity in the bid for Document 6 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary

Exclusion – for subcontracts totaling OVER \$100,000), Document 7 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling \$100,000 or LESS.) and Document 8 (Disclosure of Governmental Positions) because the waiver does not give the bidders an unfair advantage by allowing the bidders to withdraw their bids without forfeiting their bid bonds. From the Document 6, 7 & 8 that were submitted, the bidders varied in the amount of documents submitted. A notice letter will be sent to the lowest responsive and responsible bid who has been approved for award to clarify any correctable deficiencies.

METRO staff has researched, reviewed, and recommends that the Board of Directors adopt the findings based on information contained in this report, declare West Bay Builders as nonresponsive & nonresponsible, and reject their bid for the Judy K. Souza Operations Building Facility.

IV. FINANCIAL CONSIDERATIONS

Funds for the construction of the Judy K. Souza Operations Building Facility Component of the MetroBase Project are available within the funds the METRO has secured for the Project.

V. ATTACHMENTS

Attachment A: IFB 12-23 Bid Analysis Spreadsheet (4 pages)

Attachment B01: 12-23 West Bay – Legal Listed Sheet (1 page)

Attachment B02: 12-23 West Bay – Legal Not Listed Sheet (1 page)

Attachment B03: 12-23 West Bay – Listed Back Up 1 (43 pages)

Attachment B04: 12-23 West Bay – Listed Back Up 2 (35 pages)

Attachment B05: 12-23 West Bay – Not Listed Back Up (77 pages)

Attachment B06: 12-23 West Bay – Doc 2 Item 4 Supporting Document (3 pages)

Attachment B07: 12-23 West Bay – Doc 2 Item 5 Supporting Document (21 pages)

- Attachment B08:** 12-23 West Bay – Doc 2 Item 6 Supporting Document (1 page)
- Attachment B09:** 12-23 West Bay – Doc 2 Item 7 Additional Document (14 pages)
- Attachment B10:** 12-23 West Bay – Doc 2 Item 7 Supporting Document (4 pages)
- Attachment B11:** 12-23 West Bay – Unfaithful to METRO Supporting Document (5 pages)
- Attachment B12:** Contractor Performance Check – West Bay Builders (6 pages)
- Attachment B13:** WBB Rebuttal Letter (63 pages)
- Attachment B14:** METRO Analysis on WBB Rebuttal Letter (3 pages)
- Attachment B15:** WBB Project Statement Email dated November 26, 2012 (1 page)
- Attachment B16:** WBB Voicemail Transcription from September 19, 2012 (1 page)
- Attachment B17:** WBB References Email dated November 30, 2012 (4 pages)

Attachment A

CORRECTABLE

NOT CORRECTABLE

DEFICIENT ITEMS	WEST BAY BUILDERS, INC.	ZOVICH CONSTRUCTION
BID AMOUNT	\$ 13,494,000	\$ 13,500,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing one subcontractor form	
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)		
Document 8 - Disclosure of Governmental Positions	Missing one subcontractor form	
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person.	Bidder answer was "N/A" METRO has documentation stating otherwise.	
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any.	Bidder listed 5 items. METRO has documentation on an additional lawsuit/mediation between Bidder and owners of constructions projects that were not listed by Bidder. WBB stated the project was completed in 2004 which was over 7 years ago. With mediation occurring in 2009, the mediation is still applicable to list.	
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agency's contact person, and further, describe in detail the nature of the work of improvement.	Bidder answer was "No" METRO has found a judgment for liquidated damages in a case with a sub which was filed in Alameda County Superior Court on August 29, 2012.	
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants.	Bidder answered "No" METRO has found a judgment in a case with a sub against First National for enforcement of a stop notice release bond, filed in San Francisco County Superior Court on September 12, 2012 (same day bid was due) METRO found a judgment against Safeco Insurance Company (and WBB) for attorney's fees in a case with a sub, and against Safeco and First National Insurance Company of America (and WBB) for prejudgment interest, filed in Santa Clara County Superior Court on September 4, 2009. In same case, WBB, Safeco and First National tendered a check to the sub as a result of a settlement, filed in Santa Clara County Superior Court on April 8, 2009.	
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		
Document 2 - Item 13.A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years.		Did not list three qualifying projects.
Document 2 - Item 13.B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project.		Did not provide enough information to determine qualification.
Document 2 - Item 13.C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project.	Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.	No individual resume for Project Manager.

Attachment A

CORRECTABLE

NOT CORRECTABLE

DEFICIENT ITEMS	LEWIS C. NELSON & SONS, INC.	C. OVERAA & CO.
BID AMOUNT	\$ 13,572,000	\$ 13,659,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing for all subcontractors forms at time of bid, subsequently submitted	
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)	Missing for all subcontractors forms at time of bid, subsequently submitted	
Document 8 - Disclosure of Governmental Positions	Missing for all subcontractors forms at time of bid, subsequently submitted	Missing some subcontractor forms at time of bid
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person.		
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any.		Provided a litigation(missing tribunal or case number) METRO found an additional lawsuit/mediation. Otto stated the project completed in 2003 (\$5.3M contract) and the case is in discovery phase.
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agency's contact person, and further, describe in detail the nature of the work of improvement.		
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants.		
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		Did not provide interim financial statement.
Document 2 - Item 13.A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years.		
Document 2 - Item 13.B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project.		
Document 2 - Item 13.C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project.	No individual resume for Project Manager.	Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.

Attachment A

CORRECTABLE

NOT CORRECTABLE

DEFICIENT ITEMS	F&H CONSTRUCTION	OTTO CONSTRUCTION
BID AMOUNT	\$ 13,787,000	\$ 13,936,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing for all subcontractors forms	Missing some subcontractor forms
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)	Missing for all subcontractors forms	Missing some subcontractor forms
Document 8 - Disclosure of Governmental Positions	Missing for all subcontractors forms	Missing some subcontractor forms
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person.		
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any.		METRO found a lawsuit/mediation initiated by bidder. The bidder explained that the issue was with the lender.
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agency's contact person, and further, describe in detail the nature of the work of improvement.		
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants.		
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		
Document 2 - Item 13.A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years.	Did not provide contract amounts on projects.	
Document 2 - Item 13.B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project.	Not possible to determine which projects would qualify.	
Document 2 - Item 13.C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project.	Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.	

Attachment A

CORRECTABLE

NOT CORRECTABLE

DEFICIENT ITEMS	SJ AMOROSO	ROEBBELEN CONTRACTING, INC.
BID AMOUNT	\$ 13,997,000	\$ 14,178,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing for all subcontractors forms	Missing for all subcontractors forms
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)	Missing for all subcontractors forms	Missing for all subcontractors forms
Document 8 - Disclosure of Governmental Positions	Missing for all subcontractors forms	Missing for all subcontractors forms
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person.		
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any.		
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agency's contact person, and further, describe in detail the nature of the work of improvement.		
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants.		
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		
Document 2 - Item 13.A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years.		
Document 2 - Item 13.B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project.		
Document 2 - Item 13.C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project.		Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.

Item 5. Lawsuit or mediation between bidder and the owner of construction project, initiated or completed within the past seven (7) years.

Case Name	Plaintiff	Defendants	Category	Date Filed	Court	Case Number	Relevant Info
None - Settled in mediation	Pleasanton School District	West Bay Builders; S&S Cummins Corporation; 7 others	Settlement	Settlement reached around July 2011	N/A	None	Pleasanton School District sued 9 contractors in connection with mold remediation at Hearst Elementary School opened in 2000; mold first discovered in 2009. District spent nearly \$1.3 million over nearly two years to eliminate the mold. Settlement reached. Of the 9 contractors, two will pay substantially more than the rest: West Bay Builders will pay \$214,000, and S&S Cummins Corporation will pay \$200,000.
unknown	BART and possibly Union City (Union City BART Station Improvements Project)	West Bay Builders	Civil, Unlimited	unknown	unknown	unknown	During a reference check, Frank Cheng was told by Bill O'Hair, Project Manager, that the project was currently in litigation for approximately \$1 million. Bill O'Hair would not provide any additional details

Item 5a

Item 5b

Item 6. Has bidder paid liquidated damages or ever failed to complete a construction project within the time allowed by the contract, including any agreed upon contract extensions, within the past seven (7) years?

Case Name	Plaintiff	Defendants	Category	Date Filed	Court	Case Number	Relevant Info
Division of Labor Standards Enforcement vs. West Bay Builders, Inc., a California Corporation and Tital Electrical Construction, et al	Division of Labor Standards Enforcement	West Bay Builders, Inc., a California Corporation and Tital Electrical Construction, Inc. a California Corporation	Civil, Unlimited Judgment	8/29/2012	Alameda County Superior Court	RG12645959 State Case No : 40-27539/259	On 5/9/12, the Division of LSE issued a Civil Wage and Penalty Assessment against West Bay and Tital Electrical, finding that Tital Electrical violated the labor code for failure to pay prevailing wage According to the assessment, if a Request for Review is not filed by the contractor or subcontractor within 60 days after service of the assessment, then a final order will result, which shall be binding on the contractor and subcontractor, and also, with respect to the amount due, on the bonding company issuing a bond that secures the payment of wages and a surety on a bond. On 8/29/12, a judgment was filed, which included Wages, Penalties, and Liquidated damages of \$32,069.75.

Item 6a

Item 7. Has any surety of bidder ever paid or satisfied any claim against the bidder within the last seven (7) years?

Case Name	Plaintiff	Defendants	Category	Date Filed	Court	Case Number	Relevant Info
Cleveland Wrecking Company, a Delaware Corporation vs. West Bay Builders, a California Corporation et al	Cleveland Wrecking Company	West Bay Builders, Inc.; City and County of San Francisco; First National Insurance Company of America	Text Judgment	9/12/2012	Superior Court of California, County of San Francisco	CGC-07-466727	Judgment in favor of Cleveland Wrecking and against First National for enforcement of stop notice release bond in principal amount of \$87,000, tog. w/ interest of 2% per month under Prompt Payment Statute, plus penalties.
Engineered Glass Walls, Inc. v. West Bay Builders, Inc	Engineered Glass Walls, Inc	West Bay Builders, Inc.	Breach of Contract/Warranty - Unlimited	11/30/2005	Superior Court of California, County of Santa Clara	1-05-CV-053450	West Bay eventually settled with supplier Viracon, who had brought suit against West Bay and Engineered Glass Walls in a separate case (1-06-CV-071242) which was consolidated into this one. Judgment was later entered for Viracon against West Bay and Safeco Insurance for \$200,000 for attorneys' fees, and against West Bay, Safeco and First National Insurance Company of America for \$33,273.33 for prejudgment interest.

Item 7a

Item 7b

Attachment B3

Document 2 – Item 5

7 YEAR CLAIMS

During the last seven years, West Bay Builders, Inc. has successfully completed over 150 public works projects. Only a few have required the initiation of legal action to resolve disputes with the owner. All matters involving an owner, except two, have been settled by direct negotiation or through mediation without trial or arbitration.

Cesar Chavez High School – 5660 Holman Road, Stockton, CA (Claim Against Owner)

This action was filed in San Joaquin County around December 2006. This claim is by WBB against the SUSD for unpaid contract balance and additional work at the request of the District. This claim is pending.

Parker Elementary School – 7929 Ney Avenue, Oakland, CA (Claim by WBB)

This claim was filed in Alameda County Superior Court on 8/5/08 – Case number RG08402378. The claim is by West Bay Builders against the Oakland Unified School District due to extra work and inefficiencies due to lack of construction access. The claim has been fully resolved at mediation.

Foothill College Campus Center – 12345 El Monte Road, Los Altos, CA (Claim by WBB/Cross-Complaint)

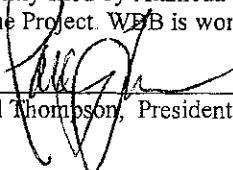
This claim was filed on 10/30/08 – Case number 74-459-1050-08. The claim is by West Bay Builders against the Foothill De Anza Community College District (“District”). Claim is breach of contract, failure to pay contract balance, delay and inefficiencies damages and subcontractor claim among others. The District cross-complained for LDs, additional architectural fees, punch list issues and false claims. The award was in WBB’s favor in the amount of \$3.240 million. All of the District’s claims were denied.

Minnie & Lovie Ward Recreation Center – 1514 Montana Street, San Francisco, CA (Claim by WBB)

This claim was filed in the San Francisco Superior Court 9/9/10 – Case number CGC 10 503396. This claim was filed by WBB against the City and County of San Francisco to recover its contract balance for this project. The City withheld contract funds for alleged liquidated damages. West Bay Builders recovered \$1.4 million.

New Woodstock Elementary School- 351 Jack London Ave., Alameda, CA 94501 (Claim by AUSD)

This claim was filed in Alameda Superior Court 7/26/2011- Case number RG-11587409. This claim was recently filed by Alameda Unified School District against WBB because of leaking at some of the windows at the Project. WBB is working with AUSD to remedy the issues with the windows.



Paul Thompson, President



Listed by West Bay

David M. Orbach (SBN 109782)
Catherine G. Boskoff (SBN 182698)
Kimble R. Cook (SBN 163148)
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Facsimile: (925) 974-3506

FILED
ALAMEDA COUNTY

JUL 26 2011

CLERK OF THE SUPERIOR COURT

By Jason Huff

Attorneys for Plaintiff, Alameda Unified School District

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ALAMEDA UNIFIED SCHOOL DISTRICT,
a public entity,

Plaintiff,

vs.

WEST BAY BUILDERS, INC. a corporation,
SAFECO INSURANCE COMPANY OF
AMERICA, and DOES 1 through 25,
Inclusive,

Defendants.

Case No.: RG11587409

ALAMEDA UNIFIED SCHOOL
DISTRICT'S COMPLAINT FOR:

- 1. BREACH OF CONTRACT
- 2. NEGLIGENCE;
- 3. ACTION ON PERFORMANCE BOND.

[No fee - Exempt per Govt. Code §5103]

BY FAX

Plaintiff, ALAMEDA UNIFIED SCHOOL DISTRICT, ("District") a public entity, alleges and complains against the Defendants, WEST BAY BUILDERS, INC. ("West Bay") and Safeco Insurance Company of America ("Safeco") and DOES 1 through 25, inclusive, and each of them (collectively referred to as "Defendants"), as follows:

COMPLAINT OF ALAMEDA UNIFIED SCHOOL DISTRICT

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Attachment B3

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GENERAL ALLEGATIONS

1. District is, and at all times mentioned herein, was a California school district, duly organized and existing under and by virtue of the laws of the State of California, and is located in the County of Alameda.

2. District is informed and believes, and based thereon alleges, that at all times mentioned herein, defendant West Bay is and was a corporation, doing business in the State of California.

3. District is informed and believes, and based thereon alleges, that at all times mentioned herein, Safeco, is and was a surety, doing business in the State of California.

4. District is ignorant of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 25, inclusive. District is informed and believes that each of these defendants herein designated as a DOE is legally responsible in some manner for the wrongful conduct and events herein alleged and that District's damages alleged below were proximately caused by such fictitiously named defendants. Plaintiff will amend this Complaint to allege said defendants' true names and capacities when ascertained.

5. At all times herein mentioned, District is informed and believes, and based thereon alleges, that Defendants and each of them, were acting as, among other capacities, the agent, partner, co-developer, joint venturer, contractor, subcontractor, engineer, architect, and/or employee of each of the remaining defendants named herein and are and were acting within the course, scope and under the authority of such agency, employment and/or business relationship.

6. District is, and at all times mentioned herein, was, the owner of the New Woodstock Elementary School (nka Ruby Bridges Elementary School) Increment 2 located at 351 Jack London Avenue, Alameda, California 94501 (the "Project").

7. On or about September 7, 2005, District entered into a written agreement with West Bay to construct:

COMPLAINT OF ALAMEDA UNIFIED SCHOOL DISTRICT

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Bid - Division 42 - GENERAL CONSTRUCTION for the New Woodstock Elementary School Increment 2 project inclusive of the Base Bid and Alternates listed below (if applicable)

Alt #2 Per Plan Alternates 2 and 3 (AD2.2) provide all work associated with Skylights and pending lights at buildings D, E, F and G. ("Project")

in a good and workmanlike manner and to perform and complete all the work pertaining thereto, including furnishing tools, equipment, labor and materials therefore and to perform as required pursuant to the contract documents and specifications ("West Bay Agreement") for a sum of Thirteen Million Four Hundred Fifty One Thousand and 00/11 Dollars (\$13,451,000.00). (Exhibit "1")

8. On or about September 15, 2005, West Bay as the Contractor and Principal and Safeco as the Surety, entered into a Project Performance Bond in the penal sum of \$13,451,000.00 (Bond No. 6346960) wherein West Bay and Safeco bound themselves jointly and severally to ensure faithful performance of construction of the Project. (Exhibit "2")

9. Following West Bay's completion of the Project, District discovered deficiencies in the Project, including but not limited to, systematic cracking with water seepage and leakage around the Windows installed by West Bay, with water damage to some of the walls, all of which resulting in a significant loss of life expectancy and usage of the Windows and the Project. These defects were neither known nor apparent by reasonable inspection at the time that West Bay installed the Windows

10. District is informed and believes, and based thereon alleges, that the Windows may also be defective in ways and to extents now precisely unknown, but which will be inserted herein by way of amendment or will be established at the time of trial according to proof.

11. The District discovered the defects and deficiencies within the applicable statute of limitations, pursuant to *Cal Code Civ Proc*. Sections 337.1 and 337.15.

12. District relied upon the skill, knowledge and expertise of Defendants and each of them, in their participation of the process of the design, planning, development, construction

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management, construction and installation of the Windows and in producing, engineering, designing and constructing a structure that would be merchantable and reasonably fit for its intended purpose.

13. District relied upon the implied representation that the Windows were to be erected and constructed in a workmanlike manner and would perform without leaks

14. District is informed and believes, and based thereon alleges, that Defendants and each of them knew or had reason to know that District would rely upon the skill, judgment and expertise of each Defendant in producing, engineering, designing and constructing a structure and component parts which would be reasonably fit for their intended purpose.

15. During construction, District was ignorant of the defective nature of the Windows, but since then, District has become aware of facts which have informed District that the Windows are defective as herein alleged, are not fit for their intended purpose and were not erected in a reasonably workmanlike manner and do not effectively function as Windows without leaks as required by West Bay's contract with the District.

16. District is informed and believes, and based thereon alleges, that as a direct and proximate result of the defective condition of the Windows, District will be required to perform works of repair, including but not limited to, restoration of water tightness of the walls, internal water-proofing of the Windows, application of an elastomeric liner to the structure walls and interior surfaces, concealment of cracks in the walls, installation of a maintenance program to address future cracks, additional inspections to address the full extent of the cracks and water intrusion, to prevent further damage and to restore and/or reinstall the Windows or portions thereof to render them operable.

17. District is informed and believes, and based thereon alleges, that as a direct and proximate result of the defective condition of the Windows, the lifetime of the Windows and the Project has been compromised and significantly shortened due to said defects, and immediate safety concerns, which District will establish at trial, according to proof.

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18. District is informed and believes, and based thereon alleges, that as a direct and proximate result of the defective condition of the Windows, District's interests in the school building and the Windows and the value thereof, have been reduced and diminished in an amount precisely unknown but will be established at the time of trial, according to proof.

19. District is informed and believes, and based thereon alleges, that as a direct and proximate result of the defective condition of the Windows, District has sustained a loss of use of enjoyment of the Windows in an amount presently unknown but will be established at the time of trial, according to proof.

FIRST CAUSE OF ACTION

(Breach of Contract against West Bay and Does 1 through 25)

20. District hereby incorporates by reference herein the allegations contained in Paragraphs 1 through 19, inclusive, as though fully set forth herein

21. District is informed and believes, and based thereon alleges, that District and West Bay, and Does 1 through 25, and each of them, entered into the written West Bay Agreement referenced in Paragraph 7 above for the construction of the Project.

22. District is informed and believes, and based thereon alleges, that West Bay owed a contractual duty to District to perform its functions, duties and responsibilities as described in the West Bay Agreement and to provide District with a Project, including the Windows in the manner and upon the conditions set forth therein.

23. District fulfilled and performed all conditions, covenants and terms of the West Bay Agreement except those obligations, which were prevented or excused as a result of West Bay's breaches.

24. District is informed and believes, and based thereon alleges, that West Bay breached the West Bay Agreement with District, by failing to perform its functions, duties and responsibilities in accordance with the plans and specifications, including a failure to properly install the Windows,

COMPLAINT OF ALAMEDA UNIFIED SCHOOL DISTRICT

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2 which were incorporated into the West Bay Agreement, and has caused the Project to suffer from
3 substantial defects as alleged in the incorporated paragraphs herein.

4 25. West Bay further breached the West Bay Agreement with District by failing to
5 perform and complete its work in a "good and workmanlike manner," and instead provided the
6 District with deficient and defective windows as set forth in Paragraphs 15 and 16 above.

7 26 As a direct and proximate result of West Bay's breaches of the West Bay Agreement,
8 and each of them, District has suffered damage in an amount not precisely known. The precise
9 amount of damages shall be established at the time of trial, according to proof.

10 SECOND CAUSE OF ACTION

11 (Negligence against West Bay and DOES 1 through 25)

12 27 District hereby incorporates by reference herein the allegations contained in
13 Paragraphs 1 through 26, inclusive, as though fully set forth herein.

14 28. District is informed and believes, and based thereon alleges, that West Bay and Does
15 1 through 25, and each of them, negligently developed, erected, designed, produced, manufactured
16 and constructed the Project in that the Windows contain multiple and substantial defects as alleged
17 hereinabove.

18 29. District is informed and believes, and based thereon alleges, that West Bay and Does
19 1 through 25, and each of them, owed to District the duty to use due care, and to perform in a
20 competent and workmanlike manner and to use the skill, training and expertise of a reasonable
21 contractor in similar circumstances to perform all of the work and activities which they agreed to,
22 were required to, and undertook to perform with regard to the Project.

23 30. District is informed and believes, and based thereon alleges, that West Bay and Does
24 1 through 25, inclusive, and each of them, breached their duties of due care to District by failing to
25 act in a reasonably prudent manner, by failing to adhere to the standards of a reasonable contractor
26 by performing their work in a faulty and negligent manner; by performing such work in a manner
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which fell below accepted standards in their area of practice; by performing work which was inadequate and inappropriate for the purposes for which it was intended.

31. District is informed and believes, and based thereon alleges, that West Bay and Does 1 through 25, inclusive, and each of them, that such breaches caused, contributed to and/or was a significant factor in causing the defects and damages described herein.

32. The damages described herein which were caused by the negligently and carelessly performed work of West Bay and Does 1 through 25, and each of them, were not apparent by reasonable inspection of the Windows at the time of completion of the work on the Windows. In addition, through District's ongoing inspection of the Windows, District continues to identify and anticipates the further identification of additional defects in the Windows.

33. As a direct and proximate result of the acts and conduct of West Bay and Does 1 through 25, and each of them, as hereinabove described, and the injury and damage to each improvement thereon as herein alleged, District has been damaged in an amount not precisely known. District will seek to amend its Complaint at such time as the exact sums become certain.

THIRD CAUSE OF ACTION

(Action on Performance Bond against West Bay and Safeco and DOES 1 through 25)

34. District hereby incorporates by reference herein the allegations contained in Paragraphs 1 through 33, inclusive, as though fully set forth herein.

35. As required by the terms of the West Bay Agreement and relevant statutes, West Bay, as principal and Safeco, as surety, and Does 1 through 25 made, executed and delivered to District, as obligee, a Performance Bond in the penal sum of \$13,451,000.00 (Bond No 6346960) guaranteeing West Bay's performance of its contractual obligations to the District.

36. The Performance Bond provided, in part, that West Bay would perform all obligations for or in furtherance of the West Bay Agreement. In the event Defendant West Bay failed to perform any obligations for or in furtherance of the West Bay Agreement, Safeco would

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ensure performance.

37. Pursuant to the terms of the West Bay Agreement and the Performance Bond, West Bay and Safeco and Does 1 through 25 are obligated to remedy any default or breach of the West Bay Agreement and defend, indemnify and hold District harmless from any and all claims, demands, damages, costs and fees in the event that West Bay fails to comply with or complete its obligation under the West Bay Agreement.

38. Pursuant to the terms of the West Bay Agreement and the Performance Bond, District is entitled to be reimbursed for all such losses and damages that District suffers by reason of or resulting from the deficiencies in West Bay's performance on the Project.

39. As alleged in Paragraph 6 16 -- 17 above, among other provisions, West Bay failed to perform material obligations under the West Bay Agreement. District made demand upon West Bay and Safeco Does 1 through 25 to perform its obligations under the Performance Bond.

40. West Bay and Safeco and Does 1 through 25 failed to accept District's claim upon the Performance Bond or otherwise perform its obligations pursuant to the terms of the Performance Bond.

41. As a direct and proximate result of such failure, District has been compelled to and has employed the services of consultants to determine the deficiencies of the Windows and recommend a course of repair, all to its damage in such sums as it may incur or sustain by reason of fees for services.

42. As a direct and proximate result of such failure, District expects to and anticipates it will employ the services of contractor(s) and others to perform the repair work to the Windows, all to its damage in such sums as it may incur or sustain by reason of fees for services.

43. As a direct and proximate result of such failure, District has been compelled to and has employed the services of attorneys to represent it in the recovery of damages caused by the underlying deficiencies in the Windows, all to its damage in such sums as it may incur or sustain by

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reason of fees for services

44. District does not know the amounts, if any, to which it will suffer but will ask leave of Court to amend this Complaint at time of trial to insert herein the amount thereof.

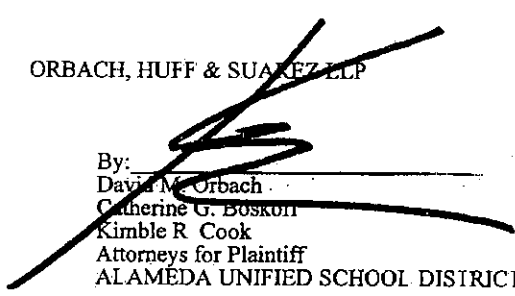
PRAYER FOR RELIEF

WHEREFORE, the District prays for the following relief:

- 1 For special damages to be determined at the time of trial and/or according to proof including but not limited to, costs of repair and loss of use of property in an amount to be determined at trial and/or according to proof;
- 2 For general damages in an amount to be determined at the time of trial and/or according to proof;
- 3 For attorneys fees in an amount to be determined at the time of trial and/or according to proof; and
- 4 For costs of suit, interest and for such other and further relief as the court may deem proper.

DATED: July 25, 2011

ORBACH, HUFF & SUAREZ LLP

By: 
David M. Orbach
Catherine G. Boskon
Kimble R. Cook
Attorneys for Plaintiff
ALAMEDA UNIFIED SCHOOL DISTRICT

COMPLAINT OF ALAMEDA UNIFIED SCHOOL DISTRICT

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CONTRACT

THIS CONTRACT, dated the 7th day of September, 2005, is made by and between the Alameda Unified School District, 2200 Central Ave, Alameda, CA 94501 hereinafter called District, and West Bay Builders, 250 Bel Marin Keys Blvd. Bldg A, Novato, California 94949, hereinafter called Trade Contractor

District and Trade Contractor hereby agree as follows:

1. Description of Work

Trade Contractor agrees to furnish all labor, materials, equipment, plant, tools, supervision, appurtenances, and services, including transportation and utilities, required to perform and complete Bid Division 42 - GENERAL CONSTRUCTION for the New Woodstock Elementary School Increment 2 project inclusive of the Base Bid and Alternates listed below (if applicable).

Alt #2 Per Plan Alternates 2 and 3 (AD2.2) provide all work associated with Skylights and pending lights at buildings D, E, F and G.

The Contract Documents consist of the Contract and its attachments, any Amendment to Contract Contract Drawings, Technical Specifications and its attachments, Supplementary Conditions, General Conditions, Instructions to Bidders, Notice to Bidders, Disabled Veteran Business Enterprises Requirements, Bid Proposal Form, all addenda (#1-3) and completed bond and insurance forms.

All Contract Documents are intended to coordinate so that any work called for in one document and not mentioned in another document is to be executed as if mentioned in all documents.

2. Compensation

As full compensation for Trade Contractor's complete performance of the work in this Contract, Trade Contractor shall be paid by Construction Manager, out of funds received from the District, and Trade Contractor agrees to accept the sum of Thirteen Million Four Hundred Fifty One Thousand and 00/100 Dollars (\$13,451,000.00) which shall be paid to him according to the General Conditions Article on "Payments". Subject to Trade Contractor's rights under Public Contract Code section 22300, retention shall be withheld in an amount equal to ten percent (10%) of each progress payment, pending satisfactory completion of the Work, and delivery of all required close-out documentation.

3. Prevailing Wages

As required by Labor Code Section 1773.2, District has on file in its office copies of the general prevailing rate of per diem wages for workers employed on public works as determined by the Director of Industrial Relations. This document shall be available to any interested party on request and shall be posted at the job site by Trade Contractor.

4. Time for Completion

The starting date of the Contract shall be the day listed by District in the Notice to Proceed and Trade Contractor shall fully complete all the work before the expiration of 304 calendar days calendar days from said starting date.

Time is of the essence in the performance of this Contract.

5. Contractors' State License Board

Contractors are required by law to be licensed and regulated by the Contractors' State

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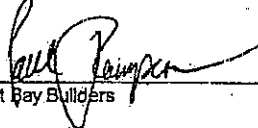
License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P. O. Box 26000, Sacramento, California 95826.

6. Limited Assignment to Construction Manager:

Upon award and execution of this Contract, the District will make a limited assignment to the Construction Manager for the sole purposes of managing the work of and making payments to the Trade Contractor. Thereafter, Construction Manager shall have the right to enforce all obligations of Trade Contractor existing by virtue of this Contract or by operation of law. By Executing this Contract, Trade Contractor acknowledges Construction Manager's role on the Project and consents to this assignment.

IN WITNESS WHEREOF, the parties to these present have set their hands hereto on the day and year written below.


Alameda Unified School District


West Bay Builders

Resolution No. CS-3986

CA 626859 Exp. 8/31/07
(Contractor License No. and Expiration Date)

Date: 9/20/05

By: Paul Thompson

Its: President

9/14/05
Date

For: West Bay Builders, Inc.
Corporation or Partnership

If Corporation, Seal below

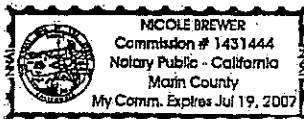
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Marin } ss.

On 9/14/05 before me Nicole Brewer, Notary Public
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)
personally appeared Paul Thompson
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they, executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal:

Nicole Brewer
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Contract - New Woodstock Elementary School

Document Date: _____ Number of Pages: _____

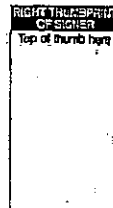
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



Attachment B3

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NEW WOODSTOCK ELEMENTARY SCHOOL - INCREMENT 2
ALAMEDA UNIFIED SCHOOL DISTRICT

IN DUPLICATE

SECTION 00610

PERFORMANCE BOND

Bond No: 6346960

Premium: \$107,163.00

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Alameda Unified School District (hereinafter referred to as "District") and West Bay Builders, Inc. (hereinafter referred to as "Trade Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of New Woodstock Elementary School Increment 2 Bid Division(s) 42 on the General Construction project located in Alameda, California (hereinafter referred to as the "Contract");

WHEREAS, District has assigned the Contract to its Construction Manager, Roebbelen Construction Management Services, Inc. ("Construction Manager");

WHEREAS, Trade Contractor is required by the terms of the Contract to furnish a bond for the faithful performance of all terms and conditions of the Contract, and

NOW, THEREFORE, Trade Contractor, as principal, and Safeco Insurance Company of America (hereinafter referred to as "Surety"), as surety, jointly and severally, are held and firmly bound unto District and Construction Manager in the penal sum of thirteen million, four hundred fifty-one thousand and no/100 Dollars (\$ 13,451,000.00), lawful money of the United States, for the payment of which sum well and truly to be made as provided in this Performance Bond.

1. Trade Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to District and Construction Manager for the performance of the Contract, which is incorporated herein by reference.
2. If Trade Contractor timely performs each and every obligation under the Contract, Surety and Trade Contractor shall have no obligation under this Bond, except to participate in conferences as provided in subparagraph 3.1.
3. Surety's obligation under this Performance Bond shall arise after:

3.1 District or Construction Manager has declared a Trade Contractor Default and has notified Trade Contractor and Surety at the addresses described below that District or Construction Manager has declared a Trade Contractor Default and has requested and attempted to arrange a conference with Trade Contractor

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00610 -- Performance Bond

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NEW WOODSTOCK ELEMENTARY SCHOOL - INCREMENT 2
ALAMEDA UNIFIED SCHOOL DISTRICT

Bond Number: 6346960

and Surety to be held not later than seven days after receipt of such notice to discuss methods of performing the Contract; and

3.2 Construction Manager has agreed to pay the Balance of the Contract Price, as calculated under the terms of the Contract, to Surety in accordance with the terms of the Contract or to a Trade Contractor selected to perform the Contract in accordance with the terms of the Contract

4. When District and Construction Manager have satisfied the conditions of paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:

4.1 Arrange for Trade Contractor, with consent of District and Construction Manager, to perform and complete the Contract; or

4.2 Undertake to perform and complete the Contract itself, through its agents or through independent Trade Contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to District and Construction Manager for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Construction Manager and the contractor selected with District's and Construction Manager's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to District or Construction Manager the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price, as calculated under the terms of the Contract, incurred by District or Construction Manager resulting from Trade Contractor's Default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- 1 After investigation, determine the amount for which it may be liable to District or Construction Manager and, as soon as practicable after the amount is determined, tender payment thereof to District and Construction Manager; or
- 2 Deny liability in whole or in part and notify District and Construction Manager citing specific reasons therefor.

5. If Surety does not proceed as provided in paragraph 4 within twenty days from receipt of the notice described in paragraph 3.1 (whether or not a conference has been held pursuant to paragraph 3.1), or such longer period upon which District, Construction Manager and Surety may agree in writing, Surety shall be deemed to be in default on this Bond. If the Surety proceeds as provided in subparagraph 4.4, and District or Construction Manager refuses the payment tendered or the Surety has denied liability,

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00610-- Performance Bond

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NEW WOODSTOCK ELEMENTARY SCHOOL - INCREMENT 2
ALAMEDA UNIFIED SCHOOL DISTRICT

in whole or in part, without further notice District and Construction Manager shall be entitled to enforce any remedy available to either of them

6. After District or Construction Manager has declared a Trade Contractor Default, and if Surety elects to act under subparagraph 4.1, 4.2, or 4.3, above, then the responsibilities of Surety to District and Construction Manager shall not be greater than those of Trade Contractor under the Contract, and the responsibilities of District and Construction Manager to Surety shall not be greater than those under the Contract. To the limit of the amount of this Performance Bond, but subject to commitment by District and Construction Manager of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

6.1 The responsibilities of Trade Contractor for correction of defective work, materials and equipment and completion of the Contract;

6.2 Additional legal, design professional, construction management and delay costs resulting from Trade Contractor's Default, or resulting from the actions or failure to act of the Surety under paragraph 4; and

6.3 Liquidated damages and/or actual damages caused by delayed performance or non-performance of Trade Contractor. (See Section 00700, article 23 for further information).

7. Surety shall not be liable to District, Construction Manager or others for obligations of Trade Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than District, Construction Manager or their heirs, executors, administrators, successors or assigns.

8. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover its attorneys' fees, to be taxed as an item of costs.

10. Notice to Surety, District, Construction Manager or Trade Contractor shall be mailed or delivered to the address, or sent via facsimile to the number shown on the signature page.

11. DEFINITIONS

11.1 Balance of the Contract Price: The total amount payable by Construction Manager to Trade Contractor under the Contract after all proper adjustments have been made, including allowance to Trade Contractor of any amounts received or to be received by Construction Manager in settlement of insurance or

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00610 - Performance Bond

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Bond Number: 6346960

NEW WOODSTOCK ELEMENTARY SCHOOL -- INCREMENT 2
ALAMEDA UNIFIED SCHOOL DISTRICT

other claims for damages to which Trade Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Trade Contractor under the Contract

11.2 Contract: The agreement between District and Trade Contractor identified on the first page of this bond, including all Contract Documents and changes thereto

11.3 Trade Contractor Default: Failure of Trade Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12. Principal and Surety shall not be liable to the Obligees or any of them unless the Obligees or any of them have performed the obligations to the Principal in accordance with the terms of said Contract.

Principal and Surety shall not be liable to all Obligees in the aggregate excess of the penal sum above stated.

The rate of premium on this bond is \$14.375 sliding scale per thousand

Total amount of premium charged \$ 107,163.00

Signed and sealed this 15th day of September, 2005

TRADE CONTRACTOR, as principal:
West Bay Builders, Inc.

By: [Signature]

Its: Paul Thompson, President

Address:

250 Bel Marin Keys Blvd.

Novato, Ca. 94949

FAX: 415-459-0665

SURETY:

Safeco Insurance Company of America

By: [Signature]

Its: Rosemarie Guanill, Attorney-in-Fact

Address:

400 Taylor Blvd.

Pleasant Hill, Ca. 94523

FAX: 925-969-2176

Phone: 925-969-2000

RCMS-610
Rev. 4

00610 -- Performance Bond

1/11/05
Page 4 of 5

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Attachment B3

Bond Number: 6346900

NEW WOODSTOCK ELEMENTARY SCHOOL - INCREMENT 2
ALAMEDA UNIFIED SCHOOL DISTRICT

DISTRICT:
Alameda Unified School District

CONSTRUCTION MANAGER:
Roebbelen Construction Management
Services, Inc.

Address:
2200 Central Avenue
Alameda, California 94501

Address:
1241 Hawks Flight Court
El Dorado Hills, California 95762

FAX: 510-337-7083

FAX: 916-939-4028

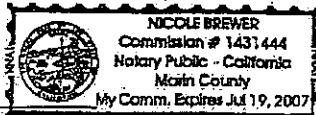
NOTARY FOR TRADE CONTRACTOR SIGNATURE:

State of California)
County of Marin)ss.

On this 15th day of September, 2005, before me,
Nicole Brewer the undersigned Notary Public, personally appeared
Paul Thompson personally known to me (or provided
satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

Witness my hand and official seal.

Nicole Brewer



NOTARY FOR SURETY SIGNATURE:

REFER TO ATTACHED NOTARY ACKNOWLEDGMENT

State of _____)
County of _____)ss

On this _____ day of _____, 200____, before me,
_____ the undersigned Notary Public, personally appeared
_____ personally known to me (or provided
satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

Witness my hand and official seal

RCMS-610
Rev 4

00610 - Performance Bond

1/11/05
Page 5 of 5

6b3.18

Date	Action	Image (Java)	Image (TIFF)
07/26/11	Complaint Breach of Contract/Warranty Filed		
07/26/11	Civil Case Cover Sheet Filed for Alameda Unified School District		
07/26/11	Summons on Complaint Issued and Filed		
07/28/11	Initial Case Management Conference 12/08/2011 09:00 AM D- 520		
07/28/11	Notice of Assignment of Judge for All Purposes Issued		
08/01/11	Court File Transfer to Hayward Hall of Justice		
10/07/11	Proof of Service on Complaint As to West Bay Builders, INC . a corporation Filed		
10/31/11	Proof of Service on Complaint As to Safeco Insurance Company of America Filed		
11/16/11	Answer to Complaint Filed for West Bay Builders INC. a corporation		
11/22/11	Case Management Statement of Alameda Unified School District, a public entity Filed		
11/28/11	Answer to Complaint Filed for Safeco Insurance Company of America		
11/29/11	Case Management Statement of West Bay Builders, INC , a corporation Filed		
11/30/11	Hearing Reset to Initial Case Management Conference 01/30/2012 09:00 AM D- 520		
12/02/11	Case Management Statement of West Bay Builders, INC , a corporation, Safeco Insurance Company of Ame		
01/06/12	Substitution of Attorney Filed for Alameda Unified School District, a public entity		
01/11/12	Case Management Statement of Alameda Unified School District, a public entity Filed		
01/12/12	Case Management Statement of Safeco Insurance Company of America Filed		
01/13/12	Case Management Statement of West Bay Builders, INC , a corporation Filed		
01/30/12	Case Management Conference Commenced and Completed		
01/30/12	Case Management Conference Order Issued		
01/30/12	Case Management Conf Continuance 05/17/2012 09:00 AM D- 520		
05/02/12	Case Management Statement of West Bay Builders INC , a corporation Filed		
05/03/12	Case Management Statement of Safeco Insurance Company of America Filed		
05/08/12	Case Management Statement of Alameda Unified School District, a public entity Filed		
05/17/12	Case Management Conference Commenced and Completed		
05/17/12	Case Management Conference Order Issued		
05/17/12	Case Management Conf Continuance 08/16/2012 09:00 AM D- 520		
08/02/12	Case Management Statement of West Bay Builders, INC . a corporation Filed		
08/06/12	Case Management Statement of Alameda Unified School District, a public entity Filed		
08/10/12	Notice of Judicial Reassignment for All Purposes Issued		
08/16/12	Case Management Conference Commenced and Completed		
08/16/12	Case Management Conference Order Issued		
08/16/12	Compliance Hearing 10/02/2012 09:30 AM D- 520		
09/17/12	Case Management Statement of West Bay Builders, INC , a corporation Filed		
09/20/12	Case Management Statement of Alameda Unified School District, a public entity Filed		

Case No. RG-11587409
 New Woodstock Elementary School

[Faint handwritten notes]

6b3.19

Attachment B3



9902692

SEP 20 2012

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kimble R. Cook, SBN 163148 Orbach, Huff & Suarez, LLP One Kaiser Plaza, Suite 1485 Oakland, CA 94612 TELEPHONE NO: 510-999-7908 FAX NO (Optional): 510-999-7918 E-MAIL ADDRESS (Optional): kcook@ohslegal.com ATTORNEY FOR (Name): Alameda Unified School District		FOR COURT USE ONLY FILED ALAMEDA COUNTY SEP 20 2012 CLERK OF THE SUPERIOR COURT By <u><i>A. Mendez</i></u> Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 24405 Amador Street MAILING ADDRESS: CITY AND ZIP CODE: Hayward, CA 94544 BRANCH NAME:			
PLAINTIFF/PETITIONER: Alameda Unified School District DEFENDANT/RESPONDENT: West Bay Builders, et al.			
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000)		<input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	
		CASE NUMBER: RG 11587409	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: October 2, 2012 Time: 9:00 a.m. Dept: 520 Div: Room: Address of court (if different from the address above): <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name):			

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
 - a. This statement is submitted by party (name): Alameda Unified School District
 - b. This statement is submitted jointly by parties (names):

2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - a. The complaint was filed on (date): July 26, 2011
 - b. The cross-complaint, if any, was filed on (date):

3. Service (to be answered by plaintiffs and cross-complainants only)
 - a. All parties named in the complaint and cross-complaint have been served, have appeared or have been dismissed
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served (specify names and explain why not):
 - (2) have been served but have not appeared and have not been dismissed (specify names):
 - (3) have had a default entered against them (specify names):
 - c. The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served)

4. Description of case
 - a. Type of case in complaint cross-complaint (Describe including causes of action):
 Breach of contract, negligence, and action on performance bond.

Attachment B3

CM-110

PLAINTIFF/PETITIONER: Alameda Unified School District	CASE NUMBER:
DEFENDANT/RESPONDENT: West Bay Builders, et al.	RG 11587409

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

This case arises out of work performed by West Bay Builders on the District's Ruby Bridges Elementary School. The District is seeking damages to correct and repair windows improperly and negligently installed at the school. The parties have informally discussed repair solutions and the District hopes to continue discussions with West Bay. The parties continue to negotiate the repair protocol as of this date.

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request a jury trial a nonjury trial (If more than one party, provide the name of each party requesting a jury trial).

6. Trial date

a. The trial has been set for (date).

b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability)

7. Estimated length of trial

The party or parties estimate that the trial will take (check one)

a. days (specify number) 5

b. hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

Additional representation is described in Attachment 8.

9. Preference

This case is entitled to preference (specify code section)

10. Alternative dispute resolution (ADR)

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3 221 for information about the processes available through the court and community programs in this case

(1) For parties represented by counsel: Counsel has has not provided the ADR information package identified in rule 3 221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party has has not reviewed the ADR information package identified in rule 3 221.

b. **Referral to judicial arbitration or civil action mediation (if available)**

(1) This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141 11 or to civil action mediation under Code of Civil Procedure section 1775 3 because the amount in controversy does not exceed the statutory limit.

(2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141 11

(3) This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

Attachment B3

CM-110

PLAINTIFF/PETITIONER: Alameda Unified School District DEFENDANT/RESPONDENT: West Bay Builders, et al.	CASE NUMBER: RG 11587409
--	-----------------------------

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="" type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete mediation by (<i>date</i>): <input type="checkbox"/> Mediation completed on (<i>date</i>):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete settlement conference by (<i>date</i>): <input type="checkbox"/> Settlement conference completed on (<i>date</i>):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete neutral evaluation by (<i>date</i>): <input type="checkbox"/> Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete judicial arbitration by (<i>date</i>): <input type="checkbox"/> Judicial arbitration completed on (<i>date</i>):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete private arbitration by (<i>date</i>): <input type="checkbox"/> Private arbitration completed on (<i>date</i>):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete ADR session by (<i>date</i>): <input type="checkbox"/> ADR completed on (<i>date</i>):

Attachment B3

CM-110

PLAINTIFF/PETITIONER: Alameda Unified School District	CASE NUMBER:
DEFENDANT/RESPONDENT: West Bay Builders, et al	RG 11587409

11. Insurance

- a. Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status:
- Additional cases are described in Attachment 13a
- b. A motion to consolidate coordinate will be filed by (*name party*):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. The party or parties have completed all discovery
- b. The following discovery will be completed by the date specified (*describe all anticipated discovery*).

Party	Description	Date
District	Document Request/Interrogatories	October 2012
	Depositions	December 2012

- c. The following discovery issues including issues regarding the discovery of electronically stored information are anticipated (*specify*):

Attachment B3

CM-110

PLAINTIFF/PETITIONER: Alameda Unified School District	CASE NUMBER:
DEFENDANT/RESPONDENT: West Bay Builders, et al.	RG 11587409

17. Economic litigation

- a This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case
- b This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case).

18 Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a The party or parties have met and conferred with all parties on all subjects required by rule 3 724 of the California Rules of Court (if not, explain):

- b After meeting and conferring as required by rule 3 724 of the California Rules of Court, the parties agree on the following (specify):

20 Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required

Date: September 19, 2012

Kimble R. Cook _____
(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

Attachment B3

PROOF OF SERVICE (C.C.P. §§ 1013a and 2015.5)

I, Tessa Hicks, declare as follows:

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is **Orbach, Huff & Suarez LLP, One Kaiser Plaza, Suite 1485, Oakland, California 94612.**

On September 19, 2012, I served the foregoing document(s) described as **CASE MANAGEMENT STATEMENT** on the interested parties in this action.

Lisa M. Cappelluti
Lorber Greenfield & Polito, LLP
150 Post Street, Suite 700
San Francisco, CA 94108
Tele: 877-229-9800
Fax: 415-986-1172
Attorneys for West Bay Builders, Inc.

Brian M. Junginger
McInerney & Dillon, P.C.
1999 Harrison Street, Suite 1700
Oakland, CA 94612-4700
Tele: 510-465-7100
Fax: 510-456-8556
Attorneys for Safeco Insurance Co. of America

ORBACH, HUFF & SUAREZ LLP

BY MAIL: By placing a true and correct copy thereof enclosed in a sealed envelope addressed as above, with postage thereon fully prepaid, in the U.S. Mail at Oakland, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Oakland, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing as stated in affidavit.

BY ELECTRONIC MAIL [PDF]: I caused such document(s) to be sent by electronic mail as a PDF attachment to the email addresses listed on the attached service list.

BY FAX: I transmitted a true copy of said document(s) by facsimile machine this date from telecopier number (510) 999-7918, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.

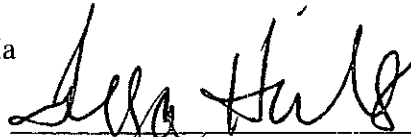
BY OVERNIGHT COURIER: I caused the above-referenced document(s) to be delivered to Federal Express for delivery to the above address(es).

BY PERSONAL SERVICE: I caused such envelope(s) to be delivered by hand to the above addressee(s).

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 19, 2012, at Oakland, California



Tessa Hicks

Superior Court of California, County of San Francisco

Case Number: CGC-10-503396

Title: WEST BAY BUILDERS, INC. VS. CITY AND COUNTY OF SAN FRANCISCO et al

Cause of Action: CONTRACT/WARRANTY

Generated: Sep-28-2012 3:52 pm PST

[Register of Actions](#) [Parties](#) [Attorneys](#) [Calendar](#) [Payments](#) [Documents](#)

Register of Actions

Date Range: First Date Last Date (Dates must be entered as MMM-DD-YYYY)

Date	Proceedings	Document	Fee
FEB-02-2011	CASE MANAGEMENT CONFERENCE OF FEB-10-2011 IS OFF CALENDAR MATTER CONSOLIDATED WITH LEAD CASE # 477790. TRIAL OCT. 3, 2011 @ 9:30AM DEPT. 501.	View	
JAN-27-2011	ORDER OVERRULING DEMURRER	View	
DEC-16-2010	NOTICE OF ENTRY OF ORDER/NOTICE OF RULING FILED RE: MOTION TO CONSOLIDATE FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO		
DEC-08-2010	ORDER TO CONSOLIDATE ACTIONS OF CASE(S) CGC-09-495321, CGC-09-489255, CGC-09-490551, CGC-09-484299, CGC-10-503396 WITH CASE CGC-08-477790, ORDER; ALL FURTHER ENTRIES UNDER CASE CGC-08-477790	View	
DEC-03-2010	MINI-MINUTES FOR DEC-03-2010 9:30 AM		
DEC-03-2010	LAW AND MOTION 302, DEFENDANT CITY AND COUNTY OF SAN FRANCISCO'S DEMURRER TO WEST BAY'S COMPLAINT; OR IN THE ALTERNATIVE, REQUEST FOR STAY. DEMURRER IS OVERRULED, 10 DAYS LEAVE TO ANSWER. THE COURT DENIES JUDICIAL NOTICE OF 4/23/08 LETTER. THE COURT STRUCK THE FOLLOWING PORTION OF THE TENTATIVE RULING: "REQUEST FOR STAY DENIED" AS BEING MOOT. JUDGE: CHARLOTTE WALTER WOOLARD, REPORTER: KENT GUBBINE, CSR #5797		
NOV-16-2010	MINI-MINUTES FOR NOV-16-2010 9:30 AM		
NOV-16-2010	LAW AND MOTION 302, DEFENDANT CITY AND COUNTY OF SAN FRANCISCO'S DEMURRER TO WEST BAY'S COMPLAINT; OR IN THE ALTERNATIVE, REQUEST FOR STAY IS CONTINUED TO DEC-03-2010 AT 9:30 A.M. IN DEPT. 302 ON THE COURT'S OWN MOTION OPPOSING PARTY TO PROVIDE COURTESY COPIES OF ITS PAPERS TO DEPARTMENT 302. LOCAL RULE 2.6 B JUDGE: PAUL H ALVARADO; REPORTER: CANDACE YOUNT, CSR #2737		
NOV-08-2010	REPLY IN SUPPORT OF DEMURRER TO WEST BAY'S COMPLAINT; OR IN THE ALTERNATIVE, REQUEST FOR STAY FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO		
NOV-02-2010	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPP OF OPPOSITION TO DEFT'S DEMURRER TO COMPLI FILED BY PLAINTIFF WEST BAY BUILDERS, INC.		
NOV-02-2010	OBJECTIONS TO DEFT'S REQ FOR JUDICIAL NOTC IN SUPP OF DEMURRER; POS FILED BY PLAINTIFF WEST BAY BUILDERS, INC.		
OCT-15-2010	NOTICE AND DEMURRER TO WEST BAY'S COMPLAINT; OR IN THE ALTERNATIVE, REQUEST FOR STAY; REQUEST FOR JUDICIAL NOTICE, PROOF OF SERVICE, POINTS AND AUTHORITIES FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO HEARING SET FOR NOV-16-2010 AT 09:30 AM IN DEPT 302		EXEMPT
SEP-22-2010	SUMMONS ON COMPLAINT FILED BY PLAINTIFF WEST BAY BUILDERS, INC. SERVED SEP-17-2010, SUBSTITUTE SERVICE ON NATURAL PERSON ON DEFENDANT CITY AND COUNTY OF SAN FRANCISCO	View	
SEP-09-2010	NOTICE TO PLAINTIFF	View	
SEP-09-2010	CONTRACT/WARRANTY, COMPLAINT FILED BY PLAINTIFF WEST BAY BUILDERS, INC. AS TO DEFENDANT CITY AND COUNTY OF SAN FRANCISCO DOES 1 TO 5, INCLUSIVE SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR FEB-10-2011 PROOF OF SERVICE DUE ON NOV-08-2010 CASE MANAGEMENT STATEMENT DUE ON JAN-26-2011	View	370 00

Minnie & Lovie Ward Rec. Center

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Attachment B3



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Document Scanning Lead Sheet

Sep-09-2010 1:25 pm

Case Number: CGC-10-503396

Filing Date: Sep-09-2010 1:21

Juke Box: 001 Image: 02965518

COMPLAINT

WEST BAY BUILDERS, INC. VS. CITY AND COUNTY OF SAN FRANCISCO et al

001C02965518

Instructions:

Please place this sheet on top of the document to be scanned.

6b3.27

Attachment B3

9-9

first legal

41562b .331

SUM-100

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CITY AND COUNTY OF SAN FRANCISCO and DOES 1-5, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

WEST BAY BUILDERS, INC.

ORIGINAL

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

400 McAllister Street, San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Timothy L. McInerney/Brian M. Junginger (Bar # 124807/247470)

Fax No.: (510) 465-8556

McInerney & Dillon, P.C., 1999 Harrison Street, Suite 1700, Oakland, CA 94612-4700

Phone No.: (510) 465-7100

DATE:

(Fecha)

SEP 09 2010

CLERK OF THE COURT

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010))

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010))

CASE NUMBER
(Número del Caso) 10-503396

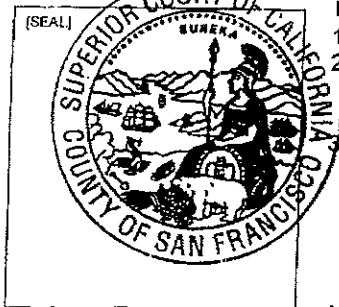
NOTICE TO THE PERSON SERVED: You are served

- 1 as an individual defendant.
- 2 as the person sued under the fictitious name of (specify):

on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

- 4. by personal delivery on (date):



Attachment B3

ORIGINAL

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Title, Bar number, and address):
 Timothy L. McInerney/Brian M. Junginger (Bar # 124807/247470)
 McInerney & Dillon, P.C.
 1999 Harrison Street, Suite 1700
 Oakland, CA 94612-4700
 TELEPHONE NO.: (510) 465-7100 FAX NO.: (510) 465-8556

ATTORNEY FOR (Name): West Bay Builders, Inc., Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
 STREET ADDRESS: 400 McAllister Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: San Francisco 94102
 BRANCH NAME:

CASE NAME:
 West Bay Builders, Inc. v. City and County of San Francisco and DOES 1-5, inclusive.

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **CGC-10-503396**

JUDGE:
 DEPT:

FOR COURT USE ONLY

FILED

Superior Court of California
 County of San Francisco

SEP 09 2010

CLERK OF THE COURT
 Deputy Clerk

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PIPD/W (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/W (23) <p>Non-PIP/W (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/W tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3 740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input checked="" type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a <input type="checkbox"/> Large number of separately represented parties	d <input type="checkbox"/> Large number of witnesses
b <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c <input type="checkbox"/> Substantial amount of documentary evidence	f <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply) a monetary b nonmonetary; declaratory or injunctive relief c punitive

4. Number of causes of action (specify): ONE (1)

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 9, 2010
 Brian M. Junginger
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Attachment B3

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CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party to its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence) Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability (not asbestos or toxic/environmental) (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g. slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD	Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (non-domestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case
Non-PI/PD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Defamation (e.g. slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-PI/PD/WD Tort (35)	Unlawful Detainer Commercial (31) Residential (32) Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential) Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals	Miscellaneous Civil Complaint RICO (27) Other Complaint (not specified above) (42) Declaratory Relief Only Injunctive Relief Only (non-harassment) Mechanics Lien Other Commercial Complaint Case (non-tort/non-complex) Other Civil Complaint (non-tort/non-complex)
Employment Wrongful Termination (36) Other Employment (15)		Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition (not specified above) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition

ORIGINAL

1 Timothy L. McInerney, SBN 124807
 Brian M. Junginger, SBN 247470
 2 McInerney & Dillon, P.C.
 1999 Harrison Street, Suite 1700
 3 Oakland, California 94612-3610
 Telephone: (510) 465-7100
 4 Facsimile: (510) 465-8556

FILED
 Superior Court of California
 County of San Francisco

SEP 09 2010
 CLERK OF THE COURT
 BY: *[Signature]* Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

FEB 10 2011 - 9:40 AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

10 WEST BAY BUILDERS, INC.	)	Case No.	CGC - 10 - 503396
11 Plaintiff,	)	WEST BAY BUILDERS, INC.'S	
12 v.	)	COMPLAINT FOR BREACH OF	
13 CITY AND COUNTY OF SAN	)	CONTRACT AGAINST THE CITY	
FRANCISCO and DOES 1-5, inclusive,	)	AND COUNTY OF SAN FRANCISCO	
14 Defendants)		
15 _____)		

17 Plaintiff WEST BAY BUILDERS, INC. complains against Defendants CITY AND
 18 COUNTY OF SAN FRANCISCO and DOES 1 through 5, inclusive, (all named and DOE
 19 defendants are collectively, the "DEFENDANTS") and alleges as follows:

20 1. WEST BAY BUILDERS, INC ("West Bay Builders") is, and at all times
 21 relevant herein was, a California corporation with its principal place of business in Novato,
 22 California. West Bay Builders is a licensed contractor by the State of California to perform all
 23 acts alleged herein.

24 2. West Bay Builders is informed and believes and thereon alleges that the CITY
 25 AND COUNTY OF SAN FRANCISCO is, and at all relevant times was, a local public entity
 26 under the laws of the State of California.

27 3. West Bay Builders is ignorant of the true names and capacities of the individuals,
 28 corporations and entities sued herein as DOES 1 through 5, inclusive, and therefore sues such

6b3.31

Attachment B3

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1 defendants by fictitious names pursuant to Code of Civil Procedure Section 474. When West
2 Bay Builders learns the true names and capacities of the defendants sued herein as DOES 1
3 through 5, West Bay Builders will seek leave to amend this Complaint accordingly. West Bay
4 Builders is informed and believes and thereon alleges that each of the fictitiously named
5 defendants is responsible in some manner for the occurrences, obligations or damages alleged in
6 this Complaint.

7 4. West Bay Builders is informed and believes and thereon alleges that each of the
8 DEFENDANTS were an employee, agent, servant, principal, or alter ego of each of the other
9 DEFENDANTS, and was acting in that capacity and with the consent, permission and
10 knowledge of each of the other DEFENDANTS.

11 5. On or about September 8, 2005, West Bay Builders entered into a written
12 contract, including relevant plans and specifications, with the DEFENDANTS (the "Prime
13 Contract") under which West Bay Builders, as prime contractor, agreed to provide labor,
14 services and materials necessary to complete the public work of construction known as the
15 Minnie and Lovie Ward Recreation Center and Ocean View Park (the "Project") for the CITY
16 AND COUNTY OF SAN FRANCISCO. Said prime contract contains, among other things,
17 general conditions, special conditions, supplemental conditions, drawings, specifications, and
18 addenda that are too voluminous for convenient attachment to this complaint. West Bay
19 Builders incorporates said contract into this complaint by reference.

FIRST CAUSE OF ACTION

21 **(Breach of Contract- Against DEFENDANTS and Docs 1-5, inclusive)**

22 6. West Bay Builders incorporates by reference paragraphs 1 through 5, inclusive,
23 of this complaint, and fully realleges and incorporates those paragraphs herein by this reference.

24 7. The contract between West Bay Builders and the DEFENDANTS contains
25 certain express and implied terms, covenants and conditions, and provides among other things: a
26 duty of good faith and fair dealing; neither party to the Prime Contract would act in any manner
27 or in any way hinder the performance of the other; a warranty of plans and specifications; that
28 the DEFENDANTS would properly conduct, coordinate and supervise its work under the Prime

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Attachment B3

1 Contract; that the DEFENDANTS would diligently prosecute its obligations under the Prime
2 Contract.

3 8. West Bay Builders has performed all conditions, covenants, obligations and
4 promises required on its part to be performed, or the same have been waived, excused or
5 prevented by the DEFENDANTS

6 9. Within the last four years, the DEFENDANTS have breached the Prime Contract
7 as set forth below;

8 a. The DEFENDANTS breached the implied covenant of good faith and fair
9 dealing contained in the Prime Contract;

10 b. the DEFENDANTS failed, neglected and refused to properly and timely
11 pay for the work performed by West Bay Builders under the Prime Contract;

12 c. the DEFENDANTS provided defective plans and specifications;

13 d. the DEFENDANTS failed and neglected to respond properly and timely
14 to requests, submittals and claims;

15 e. the DEFENDANTS failed to provide time extensions even though the
16 DEFENDANTS prevented work; delayed and interfered with work and made numerous design
17 changes to the Project;

18 f. the DEFENDANTS failed to disclose differing site conditions;

19 g. the DEFENDANTS demanded extra, changed and additional work and
20 refused and failed to pay therefor.

21 10. On or about February 18, 2010, West Bay Builders filed a claim pursuant to
22 Government Code section 900 et seq

23 11. On or about March 15, 2010, the DEFENDANTS denied West Bay Builders
24 claim.

25 12. As a proximate result of the DEFENDANTS' breaches, West Bay Builders has
26 been damaged in an amount in excess of \$2.2 million and is entitled to the penalties prescribed
27 by law for late payments by the DEFENDANTS and nonpayment by the DEFENDANTS. West
28 Bay Builders will establish at trial, according to proof, the precise amount of such damages.

Attachment B3

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1
2 13. West Bay Builders alleges on information and belief that Does 1 through 5,
3 inclusive, were agents, employees, representatives, subcontractors, materials suppliers,
4 affiliated, successor or predecessor entities of the CITY AND COUNTY OF SAN
5 FRANCISCO and were in some manner responsible for and/or contributed to DEFENDANTS
6 acts or omissions giving rise to DEFENDANTS' breach of the Prime Contract.

PRAYER

8 WHEREFORE, defendant West Bay Builders prays for judgment, as follows:

- 9 1. For damages in a total amount currently estimated to be in excess of \$2,200,000
10 against the DEFENDANTS, subject to proof at trial;
- 11 2. For statutory prompt payment and retention payment penalties;
- 12 3. For interest, including pre-judgment interest, at a rate and for a time allowed by
13 law;
- 14 4. For attorneys' fees and costs to the extent allowed by contract or law;
- 15 5. For such other and further relief as the court deems just and proper.

16 Dated: September 9, 2010

McInerney & Dillon, P.C.

17
18
19 By: 

Brian M. Junginger
Attorneys for Plaintiff
West Bay Builders, Inc.

Attachment B3

FILE NO. 110692

ORDINANCE NO. 201-11

1 [Settlement of Lawsuit - *West Bay Builders, Inc.* - \$900,000]

2
3 **Ordinance authorizing settlement of the lawsuit entitled *West Bay Builders, Inc. v. City***
4 ***and County of San Francisco*, San Francisco Superior Court Case No. CGC-10-503366,**
5 **arising from a breach of contract dispute regarding Contract No. 6159A for**
6 **construction of a new Recreation and Park Department (RPD) facility known as the**
7 **Minnie and Lovie Ward Recreation Center and Ocean View Park, for which West Bay**
8 **Builders, Inc. (West Bay) served as the prime contractor, calling for the RPD to retain**
9 **\$900,000 from the contract balance and including other material terms of said**
10 **settlement.**

11 Be it ordained by the People of the City and County of San Francisco:

12 Section 1. The City Attorney is hereby authorized to settle the action entitled *West Bay*
13 *Builders, Inc. v. City and County of San Francisco*, San Francisco Superior Court Case No.
14 CGC-10-503366, on the following terms:

- 15 • RPD will retain \$900,000 in contract balance and retention funds and release
16 remaining contract sums subject to the satisfactory resolution of pending stop
17 notices;
 - 18 • West Bay will replace all defective heat reflectors and/or ballasts in the
19 Gymnasium lights;
 - 20 • The City reserves all rights to pursue claims against West Bay for, and West Bay
21 shall retain responsibility for, latent defects;
 - 22 • All express and implied warranties under the contract which are not yet
23 expended shall remain in full force and effect;
 - 24 • All parties will execute a mutual release;
- 25

Attachment B3

- All parties will execute and file dismissals of all claims with prejudice; and
- All parties will bear their own fees and costs.

APPROVED AS TO FORM AND
RECOMMENDED:

DENNIS J. HERRERA
City Attorney

See File for Signature
LOUISE S. SIMPSON
Deputy City Attorney

FUNDS AVAILABLE:

Signature Not Required
BEN ROSENFELD
Controller

RECOMMENDED:

SAN FRANCISCO RECREATION AND
PARK DEPARTMENT

See File for Signature
Philip A. Ginsburg, General Manager
San Francisco Recreation and Park
Department

APPROVED:

See File for Signature
Secretary, Recreation and Park Commission

Attachment B3



City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 110692

Date Passed: October 04, 2011

Ordinance authorizing settlement of the lawsuit entitled West Bay Builders, Inc. v. City and County of San Francisco, San Francisco Superior Court Case No. CGC-10-503366, arising from a breach of contract dispute regarding Contract No. 6159A for construction of a new Recreation and Park Department (RPD) facility known as the Minnie and Lovie Ward Recreation Center and Ocean View Park, for which West Bay Builders, Inc., served as the prime contractor, calling for the RPD to retain \$900,000 from the contract balance and including other material terms of said settlement.

September 15, 2011 Rules Committee - RECOMMENDED

September 27, 2011 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

October 04, 2011 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

File No. 110692

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
10/4/2011 by the Board of Supervisors of the
City and County of San Francisco.

Angela Galvillo
Clerk of the Board

Mayor Edwin Lee

10/11/11

Date Approved

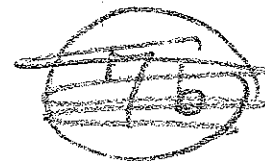
Superior Court of California, County of San Francisco

Case Number: CGC-08-477790

Title: TOM'S METAL SPECIALISTS, INC VS. WEST BAY BUILDERS, INC et al

Cause of Action: CONTRACT/WARRANTY

Generated: Sep-28-2012 2:38 pm PST

[Register of Actions](#) [Parties](#) [Attorneys](#) [Calendar](#) [Payments](#) [Documents](#)

Register of Actions

Date Range: First Date Last Date (Dates must be entered as MMM-DD-YYYY)

Date	Proceedings	Document	Fee
SEP-29-2011	JURY TRIAL SET FOR OCT-03-2011 VACATED. SEE NOTICE OF DISMISSAL ENTRY 7-22-11 FILED BY PLAINTIFF TOM'S METAL SPECIALIST.		
SEP-09-2011	TRIAL MOTION CALENDAR ON SEP-12-2011 IN DEPT. 501, MOTION IN LIMINE/TRIAL JUDGE R. QUIDACHAY, CLERK R. PASCUAL. NOT REPORTED IS OFF CALENDAR. SEE ROA. DISMISSAL FILED BY PLAINTIFF TOM'S METAL SPECIALIST 7-22-11.	View	
AUG-08-2011	NOTICE OF SETTLEMENT FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA	View	
JUL-22-2011	NOTICE OF ENTRY OF DISMISSAL AND POS FILED BY PLAINTIFF TOM'S METAL SPECIALISTS, INC		
JUL-19-2011	DISMISSAL WITH PREJUDICE OF 1ST AMENDED COMPLAINT AS TO PLAINTIFF TOM'S METAL SPECIALISTS, INC	View	
JUL-19-2011	DISMISSAL WITH PREJUDICE OF CROSS COMPLAINT FILED BY WEST BAY BUILDERS, INC		
JUN-14-2011	LAW AND MOTION, 501, NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, TO COMPEL PRODUCTION OF DOCUMENTS AND REQUEST FOR SANCTIONS, OFF CALENDAR PURSUANT TO THE 6/13/11 LETTER FROM THE OFFICE OF THE CITY ATTORNEY RE NOTICE OF SETTLEMENT, SUBJECT TO THE BOS APPROVAL. (QUIDACHAY-D501)		
MAY-26-2011	NOTICE OF STAY OF PROCEEDINGS REGARDING BANKRUPTCY FILED BY DEFENDANT IMR CONTRACTOR CORPORATION (FROM CASE# 495321)		
MAY-13-2011	RE-NOTICE OF MOTION AND MOTION 1) TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, 2) TO COMPEL PRODUCTION OF DOCUMENTS, AND 3) REQUEST FOR SANCTIONS FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO		
MAY-12-2011	MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, TO COMPEL PRODUCTION OF DOCUMENTS AND REQUEST FOR SANCTIONS CONTINUED PER STIPULATION OF COUNSEL FROM MAY-09-2011 TO JUN-16-2011, 3:30 PM IN DEPT. 501. COUNSEL FOR PLAINTIFF TO SEND NOTICE (LAF 501).		
APR-21-2011	COURT TRIAL SET FOR APR-21-2011 CONTINUED TO MAY-09-2011 AT 3:30 PM IN 501.		
APR-21-2011	MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, TO COMPEL PRODUCTION OF DOCUMENTS AND REQUEST FOR SANCTIONS CONTINUED FROM APR-21-2011 TO LAW AND MOTION AT MAY-09-2011, 3:30 PM IN DEPT. 501.		
APR-11-2011	JUDGMENT PURSUANT TO STIPULATION ENTERED UNDER CGC-09-484299		
MAR-18-2011	LAW AND MOTION 501, NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, TO COMPEL PRODUCTION OF DOCUMENTS AND REQUEST FOR SANCTIONS CONTINUED FROM APR-13-2011 TO LAW AND MOTION AT APR-21-2011, 3:00 PM IN DEPT. 501.		
MAR-18-2011	COURT TRIAL SET FOR APR-13-2011 CONTINUED TO APR-21-2011 AT 3:00 PM IN 501.		
MAR-10-2011	LAW AND MOTION 501, MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, TO COMPEL PRODUCTION OF DOCUMENTS AND REQUEST FOR SANCTIONS CONTINUED FROM MAR-22-2011 TO LAW AND MOTION AT APR-13-2011, 3:00 PM IN DEPT. 501.		
MAR-10-2011	COURT TRIAL SET FOR MAR-22-2011 CONTINUED TO APR-13-2011 AT 3:00 PM IN 501. JUDGE R. QUIDACHAY, CLERK R. PASCUAL.		
MAR-03-2011	LAW AND MOTION 501, NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, TO COMPEL PRODUCTION OF DOCUMENTS AND REQUEST FOR SANCTIONS CONTINUED FROM MAR-03-2011 TO LAW AND MOTION AT MAR-22-2011, 3:00 PM IN DEPT. 501		

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MAR-03-2011	COURT TRIAL SET FOR MAR-03-2011 CONTINUED TO MAR-22-2011 AT 3:00 PM IN 501. JUDGE R. QUIDACHAY, CLERK R. PASCUAL, REPORTER R. BALIAN.		
FEB-23-2011	LAW AND MOTION 302, DAVID G. BICKNELL, ESQ. OF BICKNELL LAW OFFICE' MOTION TO BE RELIEVED AS COUNSEL (FOR PLAINTIFF CALHOUN BROTHERS GRADING & PAVING, INC.) IS OFF CALENDAR. CASE SINGLY ASSIGNED TO JUDGE QUIDACHAY. MOVING PARTY TO MAKE MOTION IN THAT DEPARTMENT. JUDGE: LORETTA M. GIORGI, REPORTER: KARLA ELLIS-DAVIS, CSR #12998		
FEB-23-2011	MINI-MINUTES FOR FEB-23-2011 9:30 AM FOR DEPT 302		
FEB-23-2011	SUBSTITUTION OF ATTORNEY: ZINK, TREVOR SUBSTITUTED FOR BICKNELL DAVID G AS ATTORNEY FOR CALHOUN BROTHERS GRADING & PAVING INC A CALIFORNIA CORPORATION		
FEB-18-2011	NOTICE OF ATTORNEY'S LIEN FILED BY PLAINTIFF CALHOUN BROTHERS GRADING & PAVING INC A CALIFORNIA CORPORATION		
FEB-17-2011	PROOF OF SERVICE OF OPPOSITION AND DECLARATIONS IN SUPPORT OF OPPOSITION TO MOTION (1) TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, (2) TO COMPEL PRODUCTION OF DOCUMENTS, AND (3) REQUEST FOR SANCTIONS FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
FEB-17-2011	DECLARATION OF JOE HASS IN SUPPORT OF OPPOSITION TO MOTION (1) TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, (2) TO COMPEL PRODUCTION OF DOCUMENTS, AND (3) REQUEST FOR SANCTIONS FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
FEB-17-2011	DECLARATION OF BRIAN M. JUNGINGER IN SUPPORT OF OPPOSITION TO MOTION (1) TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, (2) TO COMPEL PRODUCTION OF DOCUMENTS, AND (3) REQUEST FOR SANCTIONS FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
FEB-17-2011	OPPOSITION TO MOTION (1) TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, (2) TO COMPEL PRODUCTION OF DOCUMENTS, AND (3) REQUEST FOR SANCTIONS FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
FEB-10-2011	NOTICE OF SUBMISSION ON THE PLEADINGS RE MOTION TO BE RELIEVED AS COUNSEL FILED BY PLAINTIFF CALHOUN BROTHERS GRADING & PAVING INC A CALIFORNIA CORPORATION		
FEB-01-2011	ORDER RE; HEARINGS SCHEDULE. MAR. 3, 2011 MOTION TO COMPEL @ 3:00PM, SEPT. 12, 2011 MIL @ 3:00, SEPT. 12, 2011 PARTIES TO EXCHANGE PROPOSED JURY INSTRUCTIONS AND SPECIAL VERDICTS FORMS, JURY TRIAL OCT. 3, 2011 @ 9:30AM CONSOLIDATED WITH CASES # 484299, 489255, 490551,495321,503396.	View	
JAN-31-2011	NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, TO COMPEL PRODUCTION OF DOCUMENTS AND REQUEST FOR SANCTIONS FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO HEARING SET FOR MAR-03-2011 AT 03:00 PM IN DEPT 501		EXEMPT
JAN-31-2011	NOTICE AND MOTION TO BE RELIEVED AS COUNSEL (TRIAL DATE WILL BE VACATED WHEN DEPT. 206 RECEIVES A CMC DATE FROM SINGLE ASSIGNMENT DEPT.) FILED BY PLAINTIFF CALHOUN BROTHERS GRADING & PAVING INC A CALIFORNIA CORPORATION HEARING SET FOR FEB-23-2011 AT 09:30 AM IN DEPT 302		40.00
JAN-26-2011	ADDED TO CALENDAR FOR JURY TRIAL. SINGLY ASSIGNED TO DEPT. 501. JUDGE R. QUIDACHAY, CLERK R. PASCUAL, REPORTER R. BALIAN JURY TRIAL SET FOR OCT-03-2011 AT 09:30 AM IN DEPT 501		
JAN-26-2011	ADDED TO CALENDAR FOR MOTION IN LIMINE. JUDGE R. QUIDACHAY, CLERK R. PASCUAL, REPORTER R. BALIAN HEARING SET FOR SEP-12-2011 AT 03:00 PM IN DEPT 501		
JAN-26-2011	COURT TRIAL SET FOR JAN-26-2011 CONTINUED TO MAR-03-2011 AT 3:00 PM IN 501 FOR MOTION TO COMPEL (DISCOVERY). JUDGE: R. QUIDACHAY, CLERK: R. PASCUAL, REPORTER: ROBERT BALIAN.		
JAN-25-2011	JOINT CASE MANAGEMENT CONFERENCE STATEMENT FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
JAN-21-2011	CASE MANAGEMENT STATEMENT FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO		
JAN-20-2011	ANSWER TO CROSS COMPLAINT FILED BY CROSS DEFENDANT SAFECO INSURANCE COMPANY OF AMERICA	View	
JAN-20-2011	ANSWER TO CROSS COMPLAINT FILED BY CROSS DEFENDANT WEST BAY BUILDERS, INC	View	
JAN-10-2011	COURT TRIAL SET FOR JAN-10-2011 CONTINUED TO JAN-26-2011 AT 3:00 PM IN 501 PER PARTIES STIPULATION. JUDGE R. QUIDACHAY, CLERK R. PASCUAL		

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Attachment B3

JAN-06-2011	NOTICE OF ENTRY OF L...ISSAL AND PROOF OF SERVICE FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
JAN-04-2011	DISMISSAL WITHOUT PREJUDICE OF COMPLAINT FILE BY MILO MANSORY, INC. ON JUNE 9,2009 AND CROSS COMPLAINT FILED BY WEST BAY BUILDERS, INC. ON JULY 14, 2009 ACTIONS WERE ORIGINALLY FILED IN CONSOLIDATED CASE NUMBER CGC-09-489223	View	
DEC-16-2010	SUMMONS ISSUED TO CROSS COMPLAINANT CITY AND COUNTY OF SAN FRANCISCO	View	
DEC-16-2010	CROSS COMPLAINT FILED BY CROSS COMPLAINANT CITY AND COUNTY OF SAN FRANCISCO AS TO CROSS DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA ROES 1 THROUGH 50	View	
DEC-16-2010	ANSWER TO COMPLAINT OF WEST BAY BUILDERS, INC (#503396) FILED BY DEFENDANT (CONSOLIDATED CASE) CITY AND COUNTY OF SAN FRANCISCO	View	
DEC-10-2010	MATTER ALREADY CONTINUED FOR CMC ON JAN 11, 2011.		
DEC-08-2010	ORDER TO CONSOLIDATE ACTIONS, ORDER	View	
OCT-19-2010	REPLY TO THE CITY AND COUNTY OF SAN FRANCISCO'S OPPOSITION TO WEST BAY BUILDERS' MOTION TO CONSOLIDATE FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
OCT-08-2010	OPPOSITION TO MOTION TO CONSOLIDATE FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO		
OCT-08-2010	DECLARATION OF TEREZA TAN, IN OPPOSITION TO MOTION TO CONSOLIDATE FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO		
SEP-27-2010	REMOVED FROM SETTLEMENT CONFERENCE CALENDAR ON SEP-27-2010 IN DEPT 501. PARTIES TO RETURN ON OCT. 26, 2010 @ 3:30PM FOR HEARING ON THE MOTION TO CONSOLIDATE. JUDGE R. QUIDACHAY, CLERK R. PASCUAL. NOT REPORTED.		
SEP-22-2010	JOINT CASE MANAGEMENT CONFERENCE STATEMENT FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
SEP-09-2010	PARTIES/ATTORNEYS FROM CONSOLIDATED CASE NUMBER 495321 ADDED TO LEAD CASE NUMBER 477790 FOR MAILING OF COURT NOTICES.		
AUG-26-2010	ORDER TO CONSOLIDATE ACTIONS	View	
AUG-25-2010	DISMISSAL WITH PREJUDICE OF COMPLAINT FROM CONSOLIDATED CASE #489223	View	
AUG-24-2010	LAW AND MOTION, 501, MOTION TO CONSOLIDATE ACTIONS OF CASE(S) CGC-09-495321 WITH CASE CGC-08-477790, OFF CALENDAR.		
AUG-23-2010	NOTICE OF ENTRY OF DISMISSAL AND POS (#489223) FILED BY DEFENDANT MILO MASONRY, INC.		
AUG-18-2010	NOTICE OF SETTLEMENT (SETTLEMENT AS CASE CGC-09-490551 ONLY) FILED BY PLAINTIFF TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION	View	
AUG-17-2010	STATUS CONFERENCE SET FOR SEP-01-2010 CONTINUED TO SEP-27-2010 AT 3:00 PM IN 501	View	
AUG-17-2010	CASE MANAGEMENT CONFERENCE & MSC OF AUG-27-2010 CONTINUED TO DEC-10-2010 AT 10:00 AM IN DEPT. 501,	View	
AUG-17-2010	COURT TRIAL SET FOR SEP-13-2010 CONTINUED TO JAN-10-2011 AT 9:30 AM IN 501. JUDGE R. QUIDACHAY, CLERK R. PASCUAL, REPORTER R. BALIAN.		
AUG-17-2010	TRIAL MOTION CALENDAR ON AUG-17-2010 IN DEPT. 501, OST TO NOTICE AND HEAR WEST BAY BUILDERS, INC. MOTION TO CONSOLIDATE AND CONTINUE TRIAL DATE. GRANTED. TRIAL CONT. 1/10/11. MIL 12/3/10 @ 10:00AM MSC 12/10/10 @ 10:00AM, STATUS CONF. 9/27/10 @ 3:00PM JUDGE R. QUIDACHAY, CLERK R. PASCUAL, REPORTER R. BALIAN		
AUG-17-2010	MINI-MINUTES FOR AUG-17-2010 10:00 AM FOR DEPT 501		
AUG-12-2010	REPLY IN SUPPORT OF ITS MOTION TO CONSOLIDATE AND CONTINUE THE TRIAL DATE FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
AUG-10-2010	OPPOSITION TO MOTION TO CONSOLIDATE OR TO RELATE ACTIONS FILED BY PLAINTIFF TOM'S METAL SPECIALISTS, INC		
AUG-10-2010	MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOS. TO MTNS TO CONSOLIDATE AND CONTINUE TRIAL DATE FILED BY PLAINTIFF TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION		
AUG-10-2010	DECLARATION OF PETER J. BASSING IN OPPOS. TO MTNS TO CONSOLIDATE AND CONTINUE TRIAL DATE FILED BY PLAINTIFF TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION		
AUG-09-2010	ADDED TO CALENDAR FOR OST TO NOTICE AND HEAR WEST BAY BUILDERS, INC. MOTION TO CONSOLIDATE AND CONTINUE TRIAL DATE. OPPOSITION NO LATER THAN 8/10/10. REPLY NO LATER THAN 8/12/10. HEARING SET FOR AUG-17-2010 AT		

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	10:00 AM IN DEPT 501		
AUG-09-2010	EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO NOTICE AND HEAR WEST BAY BUILDERS, INC.'S MOTION TO CONSOLIDATE AND TO CONTINUE TRIAL DATE FILED BY DEFENDANT WEST BAY BUILDERS, INC		40.00
JUL-28-2010	MOTION TO CONSOLIDATE ACTIONS, PROOF OF SERVICE, POINTS AND AUTHORITIES, DECLARATION (TRIAL DATE WILL BE VACATED WHEN DEPT. 206 RECEIVES A CMC DATE FROM SINGLE ASSIGNMENT DEPT.) FILED BY DEFENDANT WEST BAY BUILDERS, INC HEARING SET FOR AUG-24-2010 AT 03:30 PM IN DEPT 501		40.00
JUN-04-2010	ADDED TO CALENDAR FOR STATUS CONFERENCE RE; COURT TRIAL HEARING SET FOR SEP-01-2010 AT 03:00 PM IN DEPT 501		
JUN-04-2010	ADDED TO CALENDAR FOR COURT TRIAL. COURT TRIAL SET FOR SEP-13-2010 AT 09:30 AM IN DEPT 501		
JUN-04-2010	MOTION IN LIMINE SET FOR AUG-27-2010 AT 9:30 AM IN DEPT. 501, JUDGE R. QUIDACHAY, CLERK R. PASCUAL, REPORTER JOE VICSTEIN.	View	
JUN-04-2010	MINUTES FOR JUN-04-2010 9:30 AM FOR DEPT 501	View	
JUN-01-2010	CASE MANGEMENT CONFERENCE STATEMENT FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
MAY-06-2010	NOTICE OF FURTHER CASE MANAGEMENT CONFERENCE FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
MAY-04-2010	CASE MANAGEMENT CONFERENCE OF MAY-04-2010 HELD AND CONTINUED TO JUN-04-2010 AT 9:30 AM IN DEPT. 501. JUDGE RONALD E. QUIDACHAY, CLERK L. FONG, NOT REPORTED. (501)		
MAY-04-2010	MINUTES FOR MAY-04-2010 3:30 PM FOR DEPT 501	View	
MAY-03-2010	CASE MANAGEMENT STATEMENT FILED BY PLAINTIFF TOM'S METAL SPECIALISTS, INC JURY DEMANDED, ESTIMATED TIME FOR TRIAL: 5.0 DAYS		
APR-19-2010	CASE MANAGEMENT STATEMENT FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO		
MAR-19-2010	SINGLE RE-ASSIGNMENT TO JUDGE RONALD E. QUIDACHAY FOR ALL PURPOSES. CASE MANAGEMENT CONFERENCE SET FOR MAY-04-2010 AT 3:30PM IN DEPT. 501 NOTICES SENT BY COURT. (206)	View	
MAR-19-2010	ADDED TO CALENDAR FOR RE-ASSIGNMENT OF SINGLE ASSIGNMENT CASE HEARING SET FOR MAY-04-2010 AT 03:30 PM IN DEPT 501		
MAR-10-2010	CASE MANAGEMENT CONFERENCE OF MAR-12-2010 IS OFF CALENDAR. PEREMPTORY CHALLENGE TO JUDGE MASON WAS FILED. NOT REPORTED - D606.		
MAR-08-2010	CASE MANAGEMENT STATEMENT FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA ESTIMATED TIME FOR TRIAL: 20.0 DAYS		
FEB-25-2010	CASE MANAGEMENT STATEMENT FILED BY PLAINTIFF CALHOUN BROTHERS GRADING & PAVING INC A CALIFORNIA CORPORATION JURY DEMANDED, ESTIMATED TIME FOR TRIAL: 10.0 DAYS		
FEB-25-2010	CASE MANAGEMENT STATEMENT FILED BY PLAINTIFF TOM'S METAL SPECIALISTS, INC JURY DEMANDED, ESTIMATED TIME FOR TRIAL: 5.0 DAYS		
FEB-24-2010	SUBSTITUTION OF ATTORNEY: BICKNELL DAVID G SUBSTITUTED FOR SWEENEY JOSEPH M AS ATTORNEY FOR CALHOUN BROTHERS GRADING & PAVING INC A CALIFORNIA CORPORATION		
FEB-24-2010	CASE MANAGEMENT STATEMENT FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO JURY DEMANDED, ESTIMATED TIME FOR TRIAL: 30.0 DAYS		
FEB-22-2010	EX PARTE APPLICATION FOR ORDER NTC OF MOTION TO EXERCSE A PEREMPTORY CHALLENGE FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO		EXEMPT
FEB-08-2010	SINGLE ASSIGNMENT TO JUDGE TOMAR MASON FOR ALL PURPOSES. CASE MANAGEMENT CONFERENCE SET FOR MAR-12-2010 AT 10:00 AM IN DEPT. 606. JAN-11-2010 MASTER CALENDAR JURY IS OFF CALENDAR. NOTICE SENT BY COURT. (206)	View	
JAN-05-2010	PARTIES/ATTORNEYS FROM CONSOLIDATED CASE NUMBER 484299, 489223 AND 490551 ADDED TO LEAD CASE NUMBER 477790 FOR MAILING OF COURT NOTICES.		
DEC-30-2009	ORDER GRANTING SINGLE ASSIGNMENT	View	
DEC-30-2009	EX PARTE APPLICATION FOR ORDER DESIGNING THE CONSOLIDATED ACTIONS FOR SINGLE ASSIGNMENT FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		40.00
DEC-23-2009	SETTLEMENT CONFERENCE HELD, CASE NOT SETTLED. PARTIES SEEKING SINGLE ASSIGNMENT IN VIEW OF CONSOLIDATION WITH #484299, #489223 AND #490551. JUDGE: GAIL DEKREON, CLERK: M. SISON, NOT REPORTED, DEPT 306		
DEC-23-2009	EX PARTE APPLICATION FOR ORDER CONT TRIAL FILED BY DEFENDANT WEST BAY BUILDERS, INC		40.00

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DEC-22-2009	NOTICE OF ENTRY OF COURT ORDER/NOTICE OF RULING FILED CONSOLIDATING CASES FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
DEC-18-2009	ORDER CONSOLIDATING CASES (FOR TRIAL ONLY; #477790, #484299, #489223 & #490551)	View	
DEC-18-2009	EX PARTE APPLICATION FOR ORDER CONTINUIN THE TRIAL DATE BASED ON THE STIPULATION OF PARTIES FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		40 00
NOV-30-2009	MINI-MINUTES FOR NOV-30-2009 9:30 AM FOR DEPT 302		
NOV-30-2009	LAW AND MOTION 302, DEFENDANT AND CROSS COMPLAINANT WEST BAY BUILDERS, INC, AND DEFENDANT SAFECO INSURANCE COMPANY OF AMERICA MOTION TO CONSOLIDATE ACTIONS OF CASE(S) CGC-09-484299, CGC-09-489223, CGC-09-490551 WITH CASE CGC-08-477790. THE COURT ADOPTED ITS TENTATIVE RULING AS FOLLOWS: MOTION TO CONSOLIDATE GRANTED. COURT ORDERS CONSOLIDATION FOR TRIAL ONLY. PARTIES TO COORDINATE DISCOVERY AND SEEK SINGLE ASSIGNMENT FROM DEPARTMENT 206. (PREVAILING PARTY TO PREPARE A FORM OF ORDER.) JUDGE: CHARLOTTE WALTER WOOLARD, REPORTER: KENT GUBBINE, CSR #5797		
NOV-19-2009	OPPOSITION TO MOTION TO CONSOLIDATE OR TO RELATE ACTIONS FILED BY PLAINTIFF TOM'S METAL SPECIALISTS, INC		
NOV-16-2009	NOTICE OF REMOVAL FROM THE EARLY SETTLEMENT PROGRAM	View	
NOV-10-2009	STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION FILED BY TOM'S METAL SPECIALISTS, INC WEST BAY BUILDERS, INC CITY AND COUNTY OF SAN FRANCISCO		
OCT-28-2009	MOTION TO CONSOLIDATE ACTIONS, PROOF OF SERVICE, POINTS AND AUTHORITIES, DECLARATION FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA HEARING SET FOR NOV-30-2009 AT 09:30 AM IN DEPT 302		40 00
OCT-22-2009	NOTICE OF RELATED CASE FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
SEP-21-2009	SETTLEMENT CONFERENCE SET FOR DEC-23-2009 CONTINUED TO DEC-23-2009 AT 2:30 PM IN 306; JUDGE: GAIL DEKREON; CLERK: M. SISON; NOT REPORTED (306)	View	
AUG-28-2009	NOTICE OF RESCHEDULED EARLY SETTLEMENT CONFERENCE - EARLY SETTLEMENT PROGRAM	View	
AUG-06-2009	SETTLEMENT CONFERENCE SET FOR AUG-21-2009 IN DEPT 220 CONTINUED TO DEC-23-2009 AT 3:30 PM IN DEPT. 306. (206)	View	
AUG-06-2009	ORDER CONTINUING THE TRIAL DATE PURSUANT TO STIPULATION OF PARTIES	View	
AUG-06-2009	MASTER JURY CALENDAR SET FOR SEP-08-2009 CONTINUED TO MASTER CALENDAR JURY ON JAN-11-2010 AT 9:30 AM IN DEPT. 206 PURSUANT TO EX PARTE ORDER FILED ON 8/6/09. (206)		
AUG-06-2009	EX PARTE APPLICATION FOR ORDER CONTINUING THE TRIAL DATE BASED ON STIPULATION OF THE PARTIES FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		40 00
JUN-29-2009	SETTLEMENT CONFERENCE SET FOR AUG-19-2009 CONTINUED TO AUG-21-2009 AT 2:30 PM IN 220	View	
JUN-11-2009	ORDER TO SHOW CAUSE TO DEFENDANT'S TIMOTHY L. MCINERNEY FOR FAILURE TO COMPLY WITH SAN FRANCISCO SUPERIOR COURT EARLY SETTLEMENT PROGRAM POLICIES AND PROCEDURES NO. 4. (ADMINISTRATIVE FEE) IS ORDERED OFF CALENDAR AND DISSOLVED/FEE PAID. PROCEEDINGS REPORTED BY: KAREN FARNSWORTH, CSR# 5162. (212)		
JUN-11-2009	MINI-MINUTES FOR JUN-11-2009 10:30 AM FOR DEPT 212		
JUN-09-2009	SETTLEMENT CONFERENCE SET FOR JUL-24-2009 IN DEPARTMENT 613 CONTINUED TO AUG-19-2009 AT 1:30 PM IN DEPARTMENT 318. (206)	View	
JUN-09-2009	MASTER JURY CALENDAR SET FOR AUG-10-2009 CONTINUED TO MASTER CALENDAR JURY ON SEP-08-2009 AT 9:30 AM IN DEPT. 206 PURSUANT TO EX PARTE ORDER FILED ON 6/9/09. (206)		
JUN-09-2009	ORDER CONTINUING THE TRIAL DATE PURSUANT TO STIPULATION	View	
JUN-09-2009	EX PARTE APPLICATION FOR ORDER TO CONTINUE TRIAL DATE BASED ON STIPULATION FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		40 00
MAY-05-2009	RESPONSE TO ORDER TO SHOW CAUSE DATED APRIL 30, 2009 FILED BY DEFENDANT WEST BAY BUILDERS, INC SAFECO INSURANCE COMPANY OF AMERICA		
APR-30-2009	ORDER TO SHOW CAUSE TO TIMOTHY L. MCINERNEY SET FOR JUN-11-2009 AT 10:30 AM IN DEPT. 212 FOR FAILURE TO COMPLY WITH SAN FRANCISCO SUPERIOR COURT EARLY SETTLEMENT PROGRAM POLICIES AND PROCEDURES NO. 4 (ADMINISTRATIVE	View	

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	FEE). NOTICE SENT BY COURT.		
FEB-10-2009	NOTICE OF EARLY SETTLEMENT CONFERENCE - EARLY SETTLEMENT PROGRAM	View	
JAN-13-2009	NOTICE OF MANDATORY SETTLEMENT CONFERENCE ON JUL-24-2009 AT 3:30 PM IN DEPARTMENT 613. NOTICE OF TIME AND PLACE OF TRIAL, JURY TRIAL SET FOR AUG-10-2009 AT 9:30 AM IN DEPT. 206. CASE MANAGEMENT CONFERENCE ON JAN-30-2009 IS OFF CALENDAR. NOTICE SENT BY COURT.	View	
DEC-03-2008	CASE MANAGEMENT CONFERENCE OF DEC-19-2008 CONTINUED TO JAN-30-2009 AT 9:00 AM IN DEPT. 212, FOR ANSWER OR DEFAULT OF DEFENDANT(S) SUERTY COMPANY OF THE PACIFIC, A CALIFORNIA CORPORATION. NOTICE SENT BY COURT.	View	
DEC-02-2008	CASE MANAGEMENT STATEMENT FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO JURY DEMANDED, ESTIMATED TIME FOR TRIAL: 15.0 DAYS		
DEC-02-2008	ANSWER TO CROSS COMPLAINT FILED BY CROSS DEFENDANT SUERTY COMPANY OF THE PACIFIC, A CALIFORNIA CORPORATION	View	335.00
OCT-31-2008	SUMMONS ON COMPLAINT FILED BY CROSS COMPLAINANT WEST BAY BUILDERS, INC SERVED OCT-20-2008, PERSONAL SERVICE ON CROSS DEFENDANT SUERTY COMPANY OF THE PACIFIC, A CALIFORNIA CORPORATION		
OCT-16-2008	SUMMONS ISSUED TO CROSS COMPLAINANT WEST BAY BUILDERS, INC	View	
OCT-14-2008	ANSWER TO CROSS COMPLAINT FILED BY CROSS DEFENDANT TOM'S METAL SPECIALISTS, INC	View	
SEP-08-2008	CROSS COMPLAINT FILED BY CROSS COMPLAINANT WEST BAY BUILDERS, INC AS TO CROSS DEFENDANT TOM'S METAL SPECIALISTS, INC SUERTY COMPANY OF THE PACIFIC, A CALIFORNIA CORPORATION ROES 1-10, INCLUSIVE	View	
SEP-08-2008	ANSWER TO 1ST AMENDED COMPLAINT (CLERICAL ERROR FILING FEE \$335.00 WAS COLLECTED ON SEP.4,2008 UNDER TXNO. W2208904F024) FILED BY DEFENDANT WEST BAY BUILDERS, INC	View	
SEP-04-2008	ANSWER TO 1ST AMENDED COMPLAINT FILED BY DEFENDANT SAFECO INSURANCE COMPANY OF AMERICA	View	670.00
SEP-03-2008	ANSWER TO 1ST AMENDED COMPLAINT FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO	View	EXEMPT
AUG-25-2008	SUMMONS ON COMPLAINT, PROOF OF SERVICE ONLY, FILED BY PLAINTIFF TOM'S METAL SPECIALISTS, INC SERVED AUG-05-2008, PERSONAL SERVICE ON DEFENDANT SAFECO INSURANCE COMPANY OF AMERICA	View	
AUG-20-2008	SUMMONS ON COMPLAINT, PROOF OF SERVICE ONLY, FILED BY PLAINTIFF TOM'S METAL SPECIALISTS, INC SERVED AUG-08-2008, SUBSTITUTE SERVICE ON CORPORATION ON DEFENDANT WEST BAY BUILDERS, INC	View	
AUG-20-2008	SUMMONS ON COMPLAINT, PROOF OF SERVICE ONLY, FILED BY PLAINTIFF TOM'S METAL SPECIALISTS, INC SERVED AUG-06-2008, SUBSTITTUTE SERVICE ON CORPORATION ON DEFENDANT CITY AND COUNTY OF SAN FRANCISCO	View	
AUG-01-2008	SUMMONS ISSUED TO PLAINTIFF TOM'S METAL SPECIALISTS, INC	View	
AUG-01-2008	1ST AMENDED COMPLAINT FILED BY PLAINTIFF TOM'S METAL SPECIALISTS, INC AS TO DEFENDANT WEST BAY BUILDERS, INC CITY AND COUNTY OF SAN FRANCISCO SAFECO INSURANCE COMPANY OF AMERICA DOES 1-25	View	
JUL-22-2008	NOTICE TO PLAINTIFF	View	
JUL-22-2008	CONTRACT/WARRANTY, COMPLAINT FILED BY PLAINTIFF TOM'S METAL SPECIALISTS, INC AS TO DEFENDANT WEST BAY BUILDERS, INC CITY AND COUNTY OF SAN FRANCISCO SAFECO INSURANCE COMPANY OF AMERICA DOES 1-25 SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR DEC-19-2008 PROOF OF SERVICE DUE ON SEP-22-2008 CASE MANAGEMENT STATEMENT DUE ON DEC-04-2008	View	335.00

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Attachment B4



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Document Scanning Lead Sheet

Aug-09-2011 7:52 am

Case Number: CGC-08-477790

Filing Date: Aug-08-2011 8:26

Juke Box: 001 Image: 03292942

NOTICE OF SETTLEMENT FILED BY DEFENDANT

TOM'S METAL SPECIALISTS, INC VS. WEST BAY BUILDERS, INC et al

001C03292942

Instructions:

Please place this sheet on top of the document to be scanned.

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Attachment B4

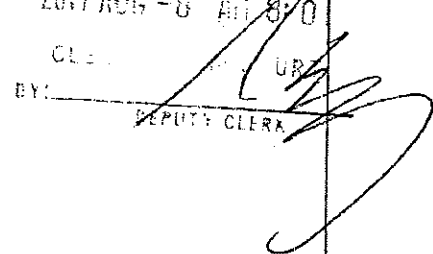
8/05/2011

FIRST LEGAL

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Brian M. Junginger (Bar # 247470) McInerney & Dillon, P.C. 1999 Harrison Street, Suite 1700 Oakland, CA 94612 TELEPHONE NO.: (510) 465-7100 FAX NO. (Optional): (510) 465-8556 E-MAIL ADDRESS (Optional): bmj@mcinerney-dillon.com ATTORNEY FOR (Name): West Bay Builders, Inc. and Safeco Insurance Company of America, Defendants	FOR COURT USE ONLY 2011 AUG -8 AM 8:00 CLERK BY:  DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister St. MAILING ADDRESS: CITY AND ZIP CODE: San Francisco 94102 BRANCH NAME:	
PLAINTIFF/PETITIONER: Tom's Metal Specialist, Inc. DEFENDANT/RESPONDENT: West Bay Builders, Inc., et al.	
NOTICE OF SETTLEMENT OF ENTIRE CASE	CASE NUMBER: CGC-08-477790
	JUDGE: Ronald E Quidachay DEPT.: 501

NOTICE TO PLAINTIFF OR OTHER PARTY SEEKING RELIEF

You must file a request for dismissal of the entire case within 45 days after the date of the settlement if the settlement is **unconditional**. You must file a dismissal of the entire case within 45 days after the date specified in item 1b below if the settlement is **conditional**. Unless you file a dismissal within the required time or have shown good cause before the time for dismissal has expired why the case should not be dismissed, the court will dismiss the entire case.

To the court, all parties, and any arbitrator or other court-connected ADR neutral involved in this case:

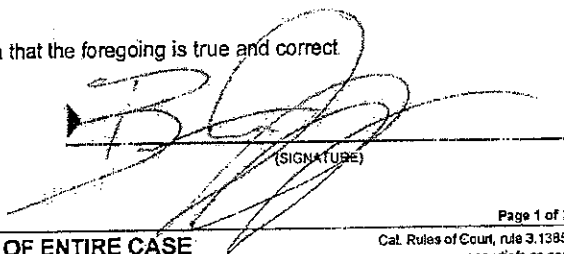
- 1 This entire case has been settled. The settlement is:
 - a **Unconditional.** A request for dismissal will be filed within 45 days after the date of the settlement
Date of settlement:
 - b **Conditional.** The settlement agreement conditions dismissal of this matter on the satisfactory completion of specified terms that are not to be performed within 45 days of the date of the settlement. A request for dismissal will be filed no later than (date): **October 1, 2011**
- 2 Date initial pleading filed: **July 22, 2008**
- 3 Next scheduled hearing or conference:
 - a Purpose: **Hearing on parties' Motions in Limine**
 - b (1) Date: **September 12, 2011**
(2) Time: **3:00 p.m.**
(3) Department: **501**
- 4 Trial date:
 - a No trial date set.
 - b (1) Date: **October 3, 2011**
(2) Time: **9:30 a.m.**
(3) Department: **501**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Date: **August 5, 2011**

Brian M. Junginger

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)


(SIGNATURE)

Attachment B4

8/05/2011

FIRST LEGAL

156261331

A*WBS270

proof

*Tom's Metal Specialists, Inc. v. West Bay Builders, Inc., et al.,
San Francisco County Superior Court Case No.: CGC 08 477790*

PROOF OF SERVICE

I, the undersigned, declare:

I am employed by the law office of McInerney & Dillon, P.C., located at 1999 Harrison Street, Suite 1700, Oakland, California, 94612, and am over the age of 18 years and am not a party to the within titled cause. On the date last written/typed below, I caused the following document(s):

1. NOTICE OF SETTLEMENT OF ENTIRE CASE

to be served on the parties, through their attorneys of record by placing true and correct copies thereof:

(By First Class Mail). In the ordinary course of business such correspondence is deposited with the U.S. Postal Service at Oakland, California, in a sealed envelope, with proper postage affixed, the same day that the envelope is sealed and placed for collection and mailing

By Facsimile transmission from fax number (510) 465-8556 and also by First Class Mail (as stated above) on the same day.

(By Hand Delivery). I caused the above noted to be personally served by hiring a professional messenger service to hand deliver the above document in an envelope addressed as noted below.

(By Overnight Express Next Day Delivery). In the ordinary course of business such correspondence is picked up by an agent from Overnight Express at Oakland, California, the same day that the envelope is sealed and placed for collection and mailing.

(By Electronic Mail). Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons, through [LexisNexis Corporation/the Court's ECF-PACER webpage/or other internet service provider], in which counsel below are registered to receive e-mail at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct

Executed August 5, 2011, at Oakland, California.


Shelly J. Fish

Attachment B4

8/05/2011

FIRST LEGAL

1156261331

A WBS270

*Tom's Metal Specialists, Inc. v. West Bay Builders, Inc., et al.,
San Francisco County Superior Court Case No. CGC 08 477790*

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ADDRESS(ES)

William C. Last, Jr.
Jonathan M. Bowne
Last & Faoro
520 S. El Camino Real, #430
San Mateo, CA 94402
Fax: 650.696.8365
*Attorneys for Tom's Metal Specialist, Inc. and
IMR Contractor Corp.*

Dennis Herrera
Louise Simpson
Office of the City Attorney
1390 Market St., Room 428
San Francisco, CA 94102
Fax: 415.255.0733
*Attorneys for City and County of San
Francisco*

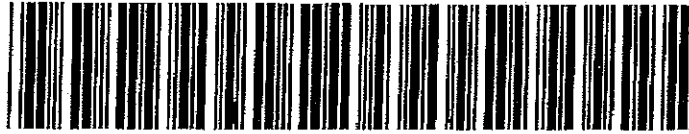
David Bicknell
Bicknell Law Offices
2542 S. Bascom Avenue, Suite 185
Campbell, CA 95008
Fax: 408.559.5055
Attorneys for Calhoun Bros. Grading & Paving

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Fogarty & Zell
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Attorneys for Mito Masonry, Inc.

Peter J. Bassing
4300 Redwood Highway, Suite 100
San Rafael, CA 94903
Fax: 415.258.0681
Attorneys for Trahan Mechanical, Inc.

Trevor Zink
Omni Law Group
1500 E. Hamilton Avenue, Suite 202
Campbell, CA 95008
Attorneys for Calhoun Bros. Grading & Paving

Attachment B4



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Feb-09-2011 3:15 pm

Case Number: CGC-08-477790

Filing Date: Dec-08-2010 3:06

Juke Box: 001 Image: 03120124

ORDER TO CONSOLIDATE ACTIONS

TOM'S METAL SPECIALISTS, INC VS. WEST BAY BUILDERS, INC et al

001C03120124

Instructions:

Please place this sheet on top of the document to be scanned.

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Attachment B4

FILED
San Francisco County Superior Court

DEC 08 2010

CLERK OF THE COURT

BY: *[Signature]*
Deputy Clerk

1 Timothy McInerney, SBN 124807
Brian M. Junginger, SBN 247470
2 McInerney & Dillon, P.C.
1999 Harrison Street, Suite 1700
3 Oakland, California 94612-3610
Telephone: (510) 465-7100
4 Facsimile: (510) 465-8556

5 Attorneys for Defendants
6 West Bay Builders, Inc. and Safeco
Insurance Company of America
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

10 TOM'S METAL SPECIALISTS, INC.,

11 Plaintiff,

12 v.

13 WEST BAY BUILDERS, INC., CITY AND
14 COUNTY OF SAN FRANCISCO;
15 SAFECO INSURANCE COMPANY OF
AMERICA and DOES 1-25,

16 Defendants.

) Case No. CGC-08-477790

) [Consolidated with CGC-09-484299,
CGC-09-489255, CGC-09-490551;
CGC-09-495321]

~~PROPOSED~~ ORDER AFTER
HEARING ON WEST BAY BUILDERS,
INC.'S MOTION TO CONSOLIDATE

17 WEST BAY BUILDERS, INC., a
California Corporation,

18 Plaintiff,

19 v.

20 CITY AND COUNTY OF SAN
21 FRANCISCO and DOES 1-5, inclusive,

22 Defendants.

) Case No. CGC-10-503396

) Hearing Date: October 26, 2010
Time: 3:30 p.m.
Judge: Ronald E. Quidachay
Dept: 501

23
24 The motion of defendant West Bay Builders, Inc. for an order consolidating the above-
25 captioned cases came on hearing in Department 501 of this Court on November 30, 2010 before
26 Hon. Ronald E. Quidachay, Judge, presiding.

27 Brian M. Junginger appeared on behalf of the moving party, West Bay Builders.

28 Jonathan W. Bowne appeared on behalf of Tom's Metal Specialist, Inc. and IMR Contractor

Attachment B4

1 Corporation. Teresa Tan appeared on behalf of the City and County of San Francisco.

2 Having read the motion, the points and authorities and declaration filed by the moving
3 and opposing parties, and having heard the argument of counsel, and good cause appearing
4 therefor, West Bay Builders' Motion to Consolidate is GRANTED.

5 IT IS HEREBY ORDERED that:

6 (1) The *West Bay Builders, Inc. v. City and County of San Francisco*, Superior Court
7 of San Francisco, Case No. CGC-10-503396 shall be consolidated for all purposes with *Tom's*
8 *Metal Specialists, Inc. v. West Bay Builders, Inc., et al.*, Superior Court of San Francisco Case
9 No. CGC-08-477790 [Consolidated with CGC-09-484299, CGC-09-489255, CGC-09-490551;
10 CGC-09-495321];

11 (2) The trial date in *Tom's Metal Specialists, Inc. v. West Bay Builders, Inc., et al.*,
12 Superior Court of San Francisco Case No. CGC-08-477790 [Consolidated with CGC-09-
13 484299, CGC-09-489255, CGC-09-490551; CGC-09-495321] set for January 10, 2011 is
14 vacated.

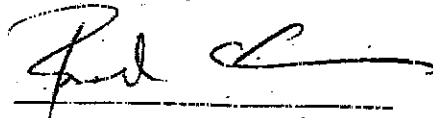
15 (3) All hearings relating to the January 10, 2011 trial date are also vacated.

16 (4) A further case management conference is set for January 10, 2011 at 3:00 p.m.

17 (5) Discovery shall be re-opened and all pre-trial deadlines, including discovery
18 deadlines, shall be continued to correspond with the new trial date.

19 IT IS SO ORDERED.

20 Date: December 8, 2010



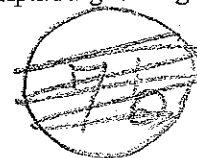
Judge of the Superior Court

RONALD EVANS QUIDACHAY

23 ~~#~~ 477790
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Attachment B4

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Superior Court of California, County of San Francisco

Case Number: CGC-09-490551

Title: TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION VS. WEST BAY BUILDERS
INC., A CALIFORNIA CORPORATION et al

Cause of Action: CONTRACT/WARRANTY

Generated: Sep-28-2012 2:23 pm PST

[Register of Actions](#)
 [Parties](#)
 [Attorneys](#)
 [Calendar](#)
 [Payments](#)
 [Documents](#)

Register of Actions

Date Range: First Date Last Date (Dates must be entered as MMM-DD-YYYY)

Date	Proceedings	Document	Fee
DEC-08-2010	ORDER TO CONSOLIDATE ACTIONS OF CASE(S) CGC-09-495321, CGC-09-489255, CGC-09-490551, CGC-09-484299, CGC-10-503396 WITH CASE CGC-08-477790, ORDER; ALL FURTHER ENTRIES UNDER CASE CGC-08-477790	View	
NOV-22-2010	DISMISSAL WITH PREJUDICE THIS DISMISSAL RELATES ONLY TO ACTION AND X-ACTION IN CASE NO. CGC-09-490551	View	
SEP-21-2010	MOTION TO CONSOLIDATE ACTIONS OF CASE(S) CGC-09-489223, CGC-09-490551, CGC-09-495321 WITH CASE CGC-09-484299, PROOF OF SERVICE, POINTS AND AUTHORITIES, DECLARATION ; REQUEST FOR JUDICIAL NOTICE HEARING SET FOR OCT-26-2010 AT 03:30 PM IN DEPT 501		
APR-19-2010	CASE MANAGEMENT STATEMENT FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO JURY DEMANDED, ESTIMATED TIME FOR TRIAL: 15.0 DAYS		
APR-01-2010	CASE MANAGEMENT STATEMENT FILED BY PLAINTIFF TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION JURY DEMANDED, ESTIMATED TIME FOR TRIAL: 5.0 DAYS		
FEB-26-2010	CASE MANAGEMENT STATEMENT FILED BY PLAINTIFF TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION ALSO FILED BY CROSS DEFENDANT TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION		
JAN-05-2010	PARTIES/ATTORNEYS FROM CONSOLIDATED CASE NUMBER 484299, 489223 AND 490551 ADDED TO LEAD CASE NUMBER 477790 FOR MAILING OF COURT NOTICES.		
DEC-29-2009	ORDER TO SHOW CAUSE OF JAN-11-2010 IS OFF CALENDAR, CONSOLIDATED WITH CASE # 477790 FOR TRIAL. NOTICE SENT BY COURT.	View	
DEC-22-2009	NOTICE OF ENTRY OF ORDER/NOTICE OF RULING FILED CONSOLIDATING CASES FILED BY DEFENDANT WEST BAY BUILDERS, INC. SAFECO INSURANCE COMPANY OF AMERICA		
DEC-18-2009	(ORDER CONSOLIDATING CASES FOR TRIAL ONLY; #477790, #484299, #489223 & #490551; SEE ORDER FILED ON 12/18/09 UNDER #477790)		
DEC-07-2009	ORDER TO SHOW CAUSE SET FOR JAN-11-2010 IN DEPARTMENT 212 AT 1:30 PM FOR FAILURE TO COMPLETE CONSOLIDATION. THE DEC-18-2009 CASE MANAGEMENT CONFERENCE IS OFF CALENDAR. NOTICE SENT BY COURT.	View	

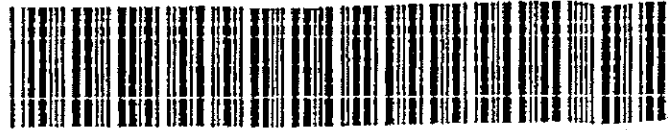
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9/28/2012 2:37 PM

DEC-02-2009	CASE MANAGEMENT STATEMENT FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO JURY DEMANDED, ESTIMATED TIME FOR TRIAL: 20.0 DAYS		
NOV-20-2009	CASE MANAGEMENT STATEMENT FILED BY PLAINTIFF TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION JURY DEMANDED, ESTIMATED TIME FOR TRIAL: 4.0 DAYS		
OCT-28-2009	MOTION TO CONSOLIDATE ACTIONS OF CASE(S) CGC-09-484299, CGC-09-489223, CGC-09-490551 WITH CASE CGC-08-477790, PROOF OF SERVICE, POINTS AND AUTHORITIES, DECLARATION HEARING SET FOR NOV-30-2009 AT 09:30 AM IN DEPT 302		
OCT-22-2009	NOTICE OF RELATED CASE FILED BY DEFENDANT WEST BAY BUILDERS, INC. SAFECO INSURANCE COMPANY OF AMERICA		
OCT-01-2009	ANSWER TO CROSS COMPLAINT FILED BY WEST BAY BUILDERS, INC ON AUG 28, 2009 FILED BY CROSS DEFENDANT TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION	View	
AUG-31-2009	ANSWER TO COMPLAINT FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO		EXEMPT
AUG-28-2009	SUMMONS ISSUED ON X-COMPLAINT TO CROSS COMPLAINANT WEST BAY BUILDERS, INC.	View	
AUG-28-2009	CROSS COMPLAINT FILED BY CROSS COMPLAINANT WEST BAY BUILDERS, INC. AS TO CROSS DEFENDANT TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION ROES 1-10, INCLUSIVE	View	
AUG-28-2009	ANSWER TO COMPLAINT FILED BY DEFENDANT WEST BAY BUILDERS, INC. SAFECO INSURANCE COMPANY OF AMERICA	View	740.00
AUG-12-2009	SUMMONS ON COMPLAINT AND COMPLAINT, PROOF OF SERVICE ONLY, FILED BY PLAINTIFF TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION SERVED JUL-30-2009, PERSONAL SERVICE ON DEFENDANT CITY AND COUNTY OF SAN FRANCISCO	View	
AUG-12-2009	SUMMONS ON COMPLAINT AND COMPLAINT, PROOF OF SERVICE ONLY, FILED BY PLAINTIFF TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION SERVED AUG-01-2009, SUBSTITUTE SERVICE ON CORPORATION ON DEFENDANT WEST BAY BUILDERS INC., A CALIFORNIA CORPORATION	View	
AUG-12-2009	SUMMONS ON COMPLAINT AND COMPLAINT, PROOF OF SERVICE ONLY, FILED BY PLAINTIFF TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION SERVED JUL-30-2009, PERSONAL SERVICE ON DEFENDANT SAFECO INSURANCE COMPANY OF AMERICA A WASHINGTON CORPORATION	View	
JUL-17-2009	NOTICE TO PLAINTIFF	View	
JUL-17-2009	CONTRACT/WARRANTY, COMPLAINT FILED BY PLAINTIFF TRAHAM MECHANICAL INC A CALIFORNIA CORPORATION AS TO DEFENDANT WEST BAY BUILDERS INC., A CALIFORNIA CORPORATION CITY AND COUNTY OF SAN FRANCISCO SAFECO INSURANCE COMPANY OF AMERICA A WASHINGTON CORPORATION DOES 1 TO 10 SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR DEC-18-2009 PROOF OF SERVICE DUE ON SEP-15-2009 CASE MANAGEMENT STATEMENT DUE ON DEC-03-2009	View	365.00

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Attachment B4



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Jul-17-2009 1:16 pm

Case Number: CGC-09-490551

Filing Date: Jul-17-2009 1:14

Juke Box: 001 Image: 02558630

COMPLAINT

NICAL INC A CALIFORNIA CORPORATION VS. WEST BAY BUILDERS INC., A CALIFORN

001C02558630

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Attachment B4

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

WEST BAY BUILDERS, INC., a California corporation, CITY AND COUNTY OF SAN FRANCISCO, SAFECO INSURANCE COMPANY OF AMERICA, a Washington corporation, and DOES 1 TO 10

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

TRAHAN MECHANICAL, INC., a California corporation

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, City and County of San Francisco
400 McAllister St., Room 103, San Francisco CA 94102

CASE NUMBER
(Número de Caso) **09.490551**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Peter J. Bassing / 4300 Redwood Hwy., Ste. 100 / San Rafael CA 94903
Tel: (415) 258-9987

GORDON PARKER
Clerk, by Valma E. Bautista, Deputy
(Secretario) (Adjunto)

DATE:
(Fecha) **JUL 17 2009.**

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

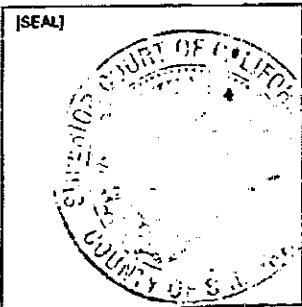
NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):



Page 1 of 1

Attachment B4

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Peter J. Bassing (SBN 063315) 4300 Redwood Hwy., Ste. 100 San Rafael CA 94903-2103 TELEPHONE NO: (415) 258-9987 FAX NO: (415) 258-0681 ATTORNEY FOR (Name): Plaintiff Trahan Mechanical, Inc.	FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> Superior Court of California County of San Francisco <div style="font-size: 1.2em; font-weight: bold;">JUL 17 2009</div> GORDON PARK LI, Clerk BY: <i>[Signature]</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS 400 McAllister St., Room 103 MAILING ADDRESS 400 McAllister St., Room 103 CITY AND ZIP CODE: San Francisco CA 94102-4512 BRANCH NAME: UNLIMITED JURISDICTION	CASE NAME: Trahan Mechanical, Inc. v. West Bay Builders, Inc., et al.
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation: CGC <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER: 09-490551	JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) Non-P/PI/D/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/D/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	--

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a monetary b nonmonetary, declaratory or injunctive relief c punitive

4. Number of causes of action (specify): **2**

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 17, 2009
 Peter J. Bassing (TYPE OR PRINT NAME) *[Signature]* (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code) (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

6b4.13

Attachment B4

1 Peter J. Bassing (CA St. Bar No. 63315)
2 4300 Redwood Highway, Suite 100
3 San Rafael, CA 94903-2103
4 Telephone: (415) 258-9987
5 Facsimile: (415) 258-0681

6 Attorney for Plaintiff
7 Trahan Mechanical, Inc.

FILED
Superior Court of California
County of San Francisco

JUL 17 2009

GORDON PARK-LI, Clerk
Deputy Clerk

DEC 18 2009 - 9:00 AM

DEPARTMENT 212

RECEIVED

8 IN THE SUPERIOR COURT OF CALIFORNIA
9 CITY AND COUNTY OF SAN FRANCISCO

10
11 TRAHAN MECHANICAL, INC., a)
12 California corporation,)
13 Plaintiff,)
14 v.)
15 WEST BAY BUILDERS, INC., a)
16 California corporation, CITY AND)
17 COUNTY OF SAN FRANCISCO,)
18 SAFECO INSURANCE)
19 COMPANY OF AMERICA, a)
20 Washington corporation and DOES 1)
21 TO 10,)
22 Defendants.)

CASE NO. CGC-09.490551

COMPLAINT ON CONTRACT, STOP
NOTICE AND BOND (PUBLIC
WORKS)

23 Plaintiff alleges:

24 GENERAL ALLEGATIONS

25 1. Plaintiff, TRAHAN MECHANICAL, INC., is now, and at all times mentioned
26 in this complaint was, a corporation organized and existing under the laws of the State of
27 California, with its principal place of business in Marin County, California, duly licensed
28 by the State of California to perform the work alleged in this complaint.

Complaint of Trahan Mechanical, Inc.
on Contract, Stop Notice and Bond (Public Works)

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1 awarded by the Court to the prevailing party in said suit, such attorney's fee to be taxed
2 as costs in said suit, and to be including in the judgment therein rendered, as is provide
3 in said bond and/or in the above-mentioned statute. Said bond was duly filed with the
4 City and approved by the regularly constituted authorities thereof.

5 5. Plaintiff does not know the true names of Defendants DOES 1 through 10 and
6 therefore sues them by those fictitious names. Plaintiff is informed and believes, and on
7 the basis of that information and belief alleges, that each of those Defendants was in
8 some manner legally responsible for the events and happenings alleged in this complaint
9 and for Plaintiff's injuries and damages.

10 6. Plaintiff is informed and believes and on that basis alleges, that at all times
11 mentioned in this complaint, Defendants were the agents and employees of their co-
12 Defendants, and in doing the things alleged in this Complaint were acting within the
13 course and scope of that agency and employment.

14 7. On or about September 15, 2005, Plaintiff and West Bay entered into a written
15 Subcontract Agreement concerning the Project, a true and correct copy of which is
16 attached hereto as "Exhibit B" and by this reference made a part hereof. The terms of
17 the agreement required Plaintiff to furnish and install various portions of the heating,
18 ventilating air conditioning fixtures and equipment at the Project and required West Bay
19 to compensate Plaintiff for work so performed. Plaintiff has performed all work
20 required by the Subcontract Agreement and written modifications thereof, and Plaintiff
21 became entitled to payment in the sum of \$560,120 as a result of the work performed by
22 Plaintiff under the subcontract agreement, as so modified. Said work and materials so
23 furnished by Plaintiff in connection with the Project were and are reasonably worth said
24 sum. West Bay has paid to Plaintiff the sum of \$455,335 in connection with the Project,
25 leaving the sum of \$104,785 due and owing.

26 Complaint of Trahan Mechanical, Inc.
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1 8. Additionally, in breach of the express and implied provisions of the
2 subcontract West Bay caused and suffered various delays on the project, extending the
3 reasonable and expected duration of Plaintiffs' involvement with the project, all to
4 Plaintiff's damage for extended overhead and related damages in the amount of \$67,854,

5 9. The subcontract provides that if any litigation arises between the parties to
6 enforce the obligations, the prevailing party will be entitled to recover its attorney fees.

7
8 **FIRST CAUSE OF ACTION**
9 **(Breach of Contract and Enforcement of Stop Notice**
10 **against City and West Bay)**

11 10. Plaintiff incorporates paragraphs 1 through 9 hereinabove.

12 11. City holds funds or proceeds allocated for the Project. On or about May 11,
13 2009, Plaintiff filed with City its stop notice in accordance with the requirements of
14 Civil Code Section 3103, within the time limits provided by Civil Code Section 3184. A
15 copy of that stop notice is attached to this complaint as "Exhibit C", and incorporated
16 by this reference.

17 12. Plaintiff is informed and believes and on that basis alleges that, at the time of
18 the filing and service of the stop notice, there was sufficient money due from City out of
19 the construction funds allocated to the said project to satisfy Plaintiff's claims and the
20 reasonable costs of litigation.

21 13. City and West Bay, and each of them, have failed, neglected, and refused to
22 pay Plaintiff the sum of \$172,639 on the Project, and that sum, plus interest from date of
23 filing of said stop notice at the rate of 10 percent per annum is now due, owing, and
24 unpaid. Said failure represents a breach by West Bay of the said Subcontract
25 Agreement.

26 WHEREFORE Plaintiff demands judgment as set forth below.

27 Complaint of Iranian Mechanical, Inc.
28 on Contract, Stop Notice and Bond (Public Works)

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1 SECOND CAUSE OF ACTION
2 (Enforcement of Payment Bond
3 against Safeco)

4 14. Plaintiff incorporates paragraphs 1 through 9 and 11 through 13 hereinabove.

5 15. Plaintiff gave the notice provided in Civil Code Section 3252(b) within the
6 time provided in that statute.

7 16. Although demand has been made, West Bay and Safeco have failed and
8 refused to pay, pursuant to the terms and conditions of the stop notice release bond, the
9 net amount due to Plaintiff in connection with the said project, to wit, the sum of
10 \$172,639..

11 WHEREFORE, Plaintiff demands judgment against Defendants as set forth below.

12 WHEREFORE, Plaintiff demands judgment as follows:

13 A. On the First Cause of Action, against West Bay,

- 14 (a) the sum of \$172,639
15 (b) interest on the foregoing amount at the rate of ten percent (10%)
16 per annum from such date or dates as appear according to proof;
17 (c) costs of suit;
18 (d) attorney's fees.

19 B. On the First cause of Action against City and County of San Francisco:
20 judgment decreeing that any monies withheld by City under and pursuant to the
21 stop notice claims of Plaintiff herein alleged be paid to Plaintiff, and applied in
22 payment and satisfaction of this judgment, and for such other and further relief as
23 to the Court may seem just and equitable.

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26 Complaint of Trahan Mechanical, Inc.
27 on Contract, Stop Notice and Bond (Public Works)


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C. On the Second Cause of action, against Safeco as follows:

- (a) the sum of \$172,639;
- (b) interest on the foregoing amount at the rate of ten percent (10%)
per annum from such date or dates as appear according to proof;
- (c) costs of suit;
- (d) attorney's fees.

Dated: July 17, 2009


Peter J. Bassing, Attorney for Plaintiff
Trahan Mechanical, Inc.

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15 554 6232

DPW

10:34:50 a.m.

10-16-2008

2/3

RECREATION & PARK COMMISSION RESOLUTION NO. 0507-014 DATED July 21, 2005
Bond Number 6346959 Premium: \$89,006.00

PERFORMANCE BOND & LABOR AND MATERIAL BOND

KNOWN ALL MEN BY THESE PRESENT, That WHEREAS, the Recreation And Parks Commission of the City and County of San Francisco, State of California, has awarded to:

West Bay Builders, Inc.
250 Bel Marin Keys Blvd. Building A
Novato, CA 94949

hereinafter designated as the "Principal", a contract for:

Specification No. 6159A

Minnie and Loye Ward Recreation Center and Ocean View Park

WHEREAS, said Principal is required under the terms of said contract to furnish a Bond for the faithful performance of said contract; and to furnish a separate Bond for the payment of any materials, provisions, or other supplies, used in, upon, for or about the performance of the work contracted to be done;

NOW, THEREFORE, we the Principal and *(Please enter Surety Name, Address & Phone Number)*
Safeco Insurance Company of America, 400 Taylor Blvd., Pleasant Hill, Ca. 94523
(925) 969-2000

as Surety, are held and firmly bound unto the City and County of San Francisco in the penal sum of

Ten Million Eight Hundred Ten Thousand
and Nineteen Dollars
\$10,810,019.00

Ten Million Eight Hundred Ten Thousand
and Nineteen Dollars
\$10,810,019.00

PERFORMANCE BOND

lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by the these presents a performance bond and an equal and separate penal sum of a separate labor and material bond. The conditions of this obligation is such that if the said Principal does well and faithfully performs all the conditions and covenants of said contract, according to the true intent and meaning thereof, upon his part to be kept and performed, then the above obligation is to be null and void, otherwise to remain in full force and effect.

LABOR AND MATERIAL BOND

PERFORMANCE BOND

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said contract including the provisions for liquidated damages in the said contract, any changes, additions or alterations thereof made or thereof provided, on his or their part, to be kept and performed at the time and in the manner therein specified and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City and County of San Francisco, its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

LABOR AND MATERIAL BOND

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said principal, his or its heirs, executors, administrators, successors or assigns, or his or its subcontractor or subcontractors, shall fail to pay for any materials, provisions, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor performed of any kind, or amount due to the Lienor/lessor/insurer Act with respect to such work or labor, then the surety of this bond will pay for same, in an amount not exceeding the sum specified in the bond, and in case suit is brought upon this bond will also pay a reasonable attorney's fee, to be fixed by the Court.

This bond shall have to the benefit of any and all persons, companies, corporations, postal subdivisions and state agencies, entitled to file claims under the provisions of California Civil Code Section 3247 et seq.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder of the specifications accompanying the same and no inadvertent overpayment of progress payments shall in any wise affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the specifications or of any inadvertent overpayment of progress payments.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their seals this 15th day of September, 2005, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Approved as to form:
DENNIS J. HERRERA
City Attorney

By: [Signature]
Deputy City Attorney

West Bay Builders, Inc.
Principal

By: [Signature]

Paul Thompson, President
Surety Safeco Insurance Company of America
By: [Signature]
Rosemarie Guanill, Attorney-in-Fact

Exhibit A

6b4.20

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250 Bel Marin Keys Blvd.
Building A
Novato, CA 94949
Phone: (415) 456-8972
Fax: (415) 459-0665
General Contractor
License Number C26859

Subcontract Agreement

Subcontract No. 269 C155005

THIS AGREEMENT, made and entered into at Novato, CA, this 15th day of September 2005, by and between West Bay Builders, Inc., hereinafter called CONTRACTOR, with its principal office at 250 Bel Marin Keys Boulevard, Novato, CA, and Trahan Mechanical, Inc. 60 A Belvedere Street, San Rafael, CA 94901 hereinafter called SUBCONTRACTOR.

RECITALS

On or about the 8th day of September, 2005 West Bay Builders, Inc., CONTRACTOR entered into a prime contract with City and County of San Francisco - Director of Public Works, hereinafter called OWNER, whose address is 30 Van Ness Avenue, Suite 4100, San Francisco, CA 94102, to perform the following construction work:

Minnie and Lowie Ward Recreation Center and
Ocean View Park
151 Montana Street
San Francisco, CA 94112
WBS Job #269

Said work is to be performed in accordance with the prime contract and the plans and specifications. Said plans and specifications have been prepared by or on behalf of Mark Dorian, ARCHITECT, whose address is 30 Van Ness Avenue, Suite 4100, San Francisco, CA 94102.

SECTION 1 - ENTIRE CONTRACT

SUBCONTRACTOR certifies that it is fully familiar with all of the terms, conditions and obligations of the Contract Documents, as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed, and that it enters into this Agreement based upon its investigation of all of such matters and is in no way relying upon any opinions or representations of CONTRACTOR. This Agreement represents the entire agreement. The Contract Documents are incorporated in this Agreement by this reference, with the same force and effect as if they were set forth at length herein, and that SUBCONTRACTOR and its subcontractors will be and are bound by any and all of the Contract Documents insofar as they relate in any part or in any way, directly or indirectly to the work covered by this Agreement. SUBCONTRACTOR agrees to be bound to CONTRACTOR in the same manner and to the same extent as CONTRACTOR is bound to OWNER under the Contract Documents, to the extent of the work provided for in this Agreement, and that where, in the Contract Documents reference is made to CONTRACTOR and the work or specification therein pertains to SUBCONTRACTOR'S trade, craft, or type of work then such work or specification shall be interpreted to apply to SUBCONTRACTOR instead of CONTRACTOR. In the event of any conflict between the requirements of the prime contract and this Subcontract, the SUBCONTRACTOR shall be governed by the provisions imposing the greater duty on the SUBCONTRACTOR. The phrase "Contract Documents" is defined to mean and include this Agreement, together with any exhibits or addenda thereto, the prime contract, together with its general, supplementary and other conditions including alternate 1, 2 and 3, addenda and modifications, plans and specifications.

SECTION 2 - SCOPE

SUBCONTRACTOR agrees to furnish all labor, services, materials, installation, cartage, hoisting, supplies, insurance, equipment, scaffolding, tools and other facilities of every kind and description required for the prompt and efficient execution of the work described herein and to perform the work necessary or normally performed by SUBCONTRACTOR'S trade or incidental to complete HVAC for the project in strict accordance with the Contract Documents and as more particularly, though not exclusively, specified in Section(s): 10200 - Louvers and vents, 15000 - general mechanical requirements, 15050 - basic mechanical materials and methods, 15200 - vibration isolation and seismic control, 15250 - insulation, 15500 - heating, ventilation and air conditioning, 15557 - hydronic systems, 15855 - air handling units, 15975 - temperature control systems and 15990 - testing, adjusting and balancing.

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SEP 15 2005

Subcontractor WBS 1

Exhibit B

6b4.21

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SECTION 3 - CONTRACT PRICE

CONTRACTOR agrees to pay SUBCONTRACTOR for the strict performance of its work, the sum of ~~Five Hundred Twenty One Thousand Five Hundred and No/100 dollars (\$521,575)~~, subject to additions and deductions for changes in the work as may be agreed upon, and to make payment in accordance with the Payment Schedule, Section 4.

TNT
ND

~~Five Hundred Twenty One Thousand Five Hundred and No/100~~ ~~\$521,575.00~~ ~~TNT~~
Five Hundred Twenty one Thousand Five Hundred-Seventy Five and ^{no/100} ~~no/100~~ Dollars

(P)

SECTION 4 - PAYMENT SCHEDULE
CONTRACTOR agrees to pay SUBCONTRACTOR in monthly payments of 90% of labor and materials, which have been placed in position and for which the right to payment has been properly documented pursuant to the terms of this agreement. No payment made prior to completion and acceptance of the work shall be construed as evidence of acceptance of any part of SUBCONTRACTOR'S work. Payment is contingent upon SUBCONTRACTOR providing the standard West Bay Builders, Inc. conditional and unconditional lien releases (Forms AGCC-10 & AGCC-11 attached), Insurance certificates, and its certified payrolls for any and all of its vendors and subcontractors as applicable.

\$ 521,575.

OK

Payment to be made within 10 days from receipt of funds from owner contingent upon applicable paperwork provided.
SECTION 5 - WAGE RATE DECISIONS / PREVAILING WAGE / CERTIFIED PAYROLL REPORTS

SUBCONTRACTOR is responsible for following the guidelines of the California Labor Codes, including overtime hours, apprentice requirements, etc... (Attached is an excerpt of the Labor Codes for SUBCONTRACTOR to review and initial). The General Wage Decision applicable to this contract is: California Director of Industrial Relations 2005-1 for Alameda County until superseded by a new determination issued by the Director of Industrial Relations. SUBCONTRACTOR agrees to submit certified payroll reports to CONTRACTOR no later than three (3) working days after labor has been paid.

SECTION 6 - GENERAL SUBCONTRACT PROVISIONS

The General Subcontractor Provisions are an integral part of this Agreement. OWNER has entered into a Project Labor Agreement (PLA) for this project. SUBCONTRACTOR shall confirm its assent and adoption of the Project Labor Agreement by executing the Letter of Assent as a prerequisite to payment.

SECTION 6.1 - EXCLUSIONS

Cutting, patching, blocking, framing, priming, painting, gas piping, condensate drain piping, electrical, bond, permits, carpentry, soffit vents, equipment pads, scaffolding, conduit, asbestos removal, roofing, flashing for plumbing or electrical, all work at portable/modular buildings, ceiling access doors, concrete coring and sawing, trenching, back filling, excavating and project labor agreements

SECTION 7 - SPECIAL PROVISIONS

This notice required by Business and Professions Code 7030 is an integral part of this Agreement: Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against Contractors if a complaint is filed within three years of the date of the alleged violation. Any questions concerning a Contractor may be referred to The Registrar, Contractors' State License Board, P.O. Box 2600, Sacramento, CA 95826. Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is: Contractors' State License Board - 1020 "N" Street, Sacramento, CA 95814

SECTION 8 - INSURANCE

SUBCONTRACTOR shall, at his expense, procure and maintain insurance on all of his operations, in companies acceptable to CONTRACTOR, as follows: Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance shall be provided to the full extent required by state law, and shall include a Worker's Compensation Waiver of Subrogation Endorsement (this endorsement must be attached to the Worker's Compensation Certificate). If there is an exposure of injury to SUBCONTRACTOR'S employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. Employer's liability insurance shall be in an amount no less than \$1,000,000. each employee for bodily injury and disease.

General Liability Insurance. SUBCONTRACTOR shall carry Comprehensive-General-Liability or Commercial General Liability Insurance covering all operations by or on behalf of the SUBCONTRACTOR, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

Subcontractor TNT 2

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"Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than the longest period of time required by either the CONTRACTOR or the SUBCONTRACTOR to pursue to conclusion their legal remedies against the OWNER or other responsible party to obtain payment, including (but not limited to) mechanic's lien remedies or other related and similar remedies.

If the SUBCONTRACTOR asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the OWNER or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, CONTRACTOR will present the SUBCONTRACTOR'S claim to the OWNER or other responsible party. The SUBCONTRACTOR shall cooperate fully with the CONTRACTOR in all steps taken in connection with prosecuting such claim and shall hold harmless and reimburse the CONTRACTOR for all expenses, including legal expense incurred by CONTRACTOR, which arises out of CONTRACTOR'S submission of SUBCONTRACTOR'S claim to OWNER or other responsible party. Any adjudication or award shall bind SUBCONTRACTOR in any action or proceeding resolving such a claim.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assigns on the day and year written below.

SUBCONTRACTOR
Trahan Mechanical, Inc.

By [Signature]
(Name)
President

FED ID # 68-0451999^(Title)

Contractor's State License No. 774154

Corporation Partnership Proprietorship
Date: _____

CONTRACTOR
West Bay Builders, Inc.

By [Signature]
(Name)
Paul Thompson, President

Contractor's State License No. 626859

Corporation Partnership Proprietorship
Date: 7/11/16

Note: Failure to execute and return this contract within thirty days shall be considered your agreement to perform the work on the terms stated herein.

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7/11/16

TRAHAN MECHANICAL INC

Subcontractor INT

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Attachment B4

General Subcontract Provisions

A. **INSURANCE**- SUBCONTRACTOR shall at all times carry on all operations hereunder, such insurance as is set forth in section 8 to this agreement, made a part hereof and fully incorporated herein by this reference. The requirements for carrying the insurance as set forth in section 8 shall not derogate from any provisions for indemnification of CONTRACTOR by SUBCONTRACTOR pursuant to the terms of this Agreement.

B. **INDEMNITY PROVISION** -SUBCONTRACTOR does hereby release CONTRACTOR and the DISTRICT, and save CONTRACTOR and the DISTRICT harmless from and against all claims and liabilities of every nature (including but not limited to injury or death of SUBCONTRACTOR'S employees, injury or damage to property or persons, attorneys' fees, and court costs) directly or indirectly arising from the performance of this agreement, or arising out of the failure of SUBCONTRACTOR to comply with the requirement of the SUBCONTRACTOR to provide safe place to work (including as required by sections 3300, 6401, and 6406 of the California Labor Code) and from any claims, loss damage injury, death or liability, however, caused or incurred, including injury to or death of SUBCONTRACTOR'S employees, resulting directly or indirectly from the nature of the work or provision or supplies or rental of equipment or tools covered by this agreement. Such duties to release and save CONTRACTOR and the DISTRICT harmless shall apply to liability incurred or claimed as a result of negligence of the CONTRACTOR or the DISTRICT for CONTRACTOR'S or the DISTRICT'S sole negligence or willful misconduct.

~~C. **BONDING OF SUBCONTRACTORS** - Concurrently with the execution of this Agreement, or at any time during its performance, SUBCONTRACTOR shall, if required by CONTRACTOR, execute a Labor and Material Bond and a Faith Performance Bond in an amount equal to one hundred percent (100%) of the Contract Price in Section 3. The bonds shall be executed by a company, surety acceptable to CONTRACTOR, shall be executed on CONTRACTOR'S form, and shall be provided within ten (10) days. Failure to provide or properly maintain bonds shall be a material breach of contract. CONTRACTOR shall pay the bond premium in an amount not to exceed the national Board or Surety standard bond rate, unless otherwise provided herein in the Contract Documents.~~

D.1 **TIME** - Time is of the essence of this Agreement. It shall be SUBCONTRACTOR'S obligation to conform to CONTRACTOR'S progress schedule, subject to CONTRACTOR'S modifications, which are incorporated herein by this reference and made a part hereof. If the SUBCONTRACTOR takes issue with the progress schedule, the SUBCONTRACTOR has five (5) business days to respond in writing after receipt of the CONTRACTOR'S schedule and its monthly modifications thereafter. Failure to respond in writing constitutes acceptance of the CONTRACTOR'S schedule with all of its scheduled durations. If, in CONTRACTOR'S opinion, SUBCONTRACTOR is not supplying a sufficiency of workers or delivering material with such promptness as to prevent any delay in the progress of the work, or is failing in any respect diligently to commence and prosecute the work, or if the work is not commenced, prosecuted, finished, delivered, or installed on time, CONTRACTOR shall have the right to direct SUBCONTRACTOR to furnish additional labor and, at SUBCONTRACTOR'S cost and expense, to expedite deliveries of material, or if additional labor shall not be available, SUBCONTRACTOR shall work overtime to such extent as will be sufficient to speed up and complete the work in compliance with the Contract Documents, without any additional charge to CONTRACTOR. SUBCONTRACTOR shall cooperate in any way required by CONTRACTOR to remedy the delay. Failure to comply with the CONTRACTOR'S schedule as required by the Contract Documents shall be a material breach of contract. SUBCONTRACTOR shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of its work in conformance with the progress schedule. Submission of as-built drawings for work performed during previous progress or final payment period is an express condition precedent to CONTRACTOR'S duty to make any payment for that payment period. SUBCONTRACTOR shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors, and of the CONTRACTOR in a manner which will facilitate the sufficient completion of the entire work. CONTRACTOR shall have complete control of the premises on which the work is performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and in general, all matters representing the timely and orderly conduct of the work of SUBCONTRACTOR on the premises.

D.2 Should SUBCONTRACTOR be delayed in the prosecution or completion of the work by act, neglect, or default of OWNER, of ARCHITECT, or of CONTRACTOR, or should SUBCONTRACTOR be delayed by waiting for materials required by this contract to be furnished by OWNER or CONTRACTOR, or by damage caused by fire or other casualty for which SUBCONTRACTOR is not responsible, or by the combined action of the workers, in no way caused by, or resulting from default or collusion on the part of SUBCONTRACTOR, or in the event of a lockout by CONTRACTOR, then the time fixed herein for the completion of the work shall be extended the number of days that SUBCONTRACTOR has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to the CONTRACTOR within forty-eight (48) hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent CONTRACTOR from completing the entire project within the time that OWNER allows CONTRACTOR for such completion. Within fifteen (15) calendar days of above notification SUBCONTRACTOR shall submit a detailed time impact analysis substantiating the delay. Failure to submit this impact analysis constitutes waiver of SUBCONTRACTOR'S rights for the delay.

D.3 No claims for additional compensation or damages for delays, whether in the furnishing of material by CONTRACTOR, or delays by other SUBCONTRACTORS or OWNER, will be allowed by the SUBCONTRACTOR; provided, however, that in the event, and in such event only, that CONTRACTOR obtains additional compensation from OWNER on account of such delays and for which subcontractor has provided notice of said delay, SUBCONTRACTOR shall be entitled to such portion of the additional compensation so received by CONTRACTOR from OWNER as is equitable under all of the circumstances. Notwithstanding the foregoing, CONTRACTOR shall have the right to suspend work for a reasonable time without payment of additional compensation. Nothing herein contained shall require CONTRACTOR to make any claim against OWNER for such delays, and it is specifically agreed that the failure of

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CONTRACTOR to prosecute any such claim against OWNER shall not entitle SUBCONTRACTOR to any claim for damages against CONTRACTOR. In the event CONTRACTOR prosecutes such a claim against OWNER, SUBCONTRACTOR agrees to pay its prorata share of all costs and expenses incurred in the prosecution of the claim, including, but not limited to, actual attorneys' fees incurred in good faith, and SUBCONTRACTOR shall fully cooperate with CONTRACTOR in the prosecution of the claim.

E.1 CHANGES IN THE WORK - SUBCONTRACTOR hereby agrees to make any and all changes, furnish the materials and perform the work that CONTRACTOR may require, without nullifying this agreement, at a reasonable addition to or reduction from the Contract Price stated herein, and prorata to the Contract Price. SUBCONTRACTOR shall adhere strictly to the plans and specifications unless a change is authorized in writing. SUBCONTRACTOR shall notify CONTRACTOR within five (5) days, in writing, of any discrepancies in any of the Contract Documents, after SUBCONTRACTOR has discovered the discrepancy(ies). SUBCONTRACTOR shall be deemed to have waived all right to compensation for extra costs incurred unless proper notification of the discrepancy is made pursuant to this paragraph. Under no conditions shall SUBCONTRACTOR make any changes either as additions or deductions, without the written order of CONTRACTOR, and CONTRACTOR shall not pay any extra charges made by SUBCONTRACTOR that have not been agreed upon in writing by CONTRACTOR. Field orders signed by our field personnel do not in any way constitute an acceptance or an agreement for the extra work. Extra work orders signed by our field personnel serve only as a verification of time performed on a specific activity. If SUBCONTRACTOR makes any changes in the work without written direction from CONTRACTOR, SUBCONTRACTOR thereby agrees it will not be paid for that changed work, even if it received verbal direction from CONTRACTOR or any form of direction, written or otherwise, from OWNER or any other person or entity. In addition, SUBCONTRACTOR shall be liable for any and all losses, costs, expenses, damages, fees and liability of any nature whatsoever associated with or in any way arising out of any such change it makes without written direction from CONTRACTOR. Payment to the CONTRACTOR for authorized extras is an express condition precedent to CONTRACTOR'S duty to pay SUBCONTRACTOR for authorized extras. SUBCONTRACTOR shall immediately submit to the CONTRACTOR written copies of its costs or credit proposal for changes in the work. Disputed work shall be performed as ordered in writing by CONTRACTOR and the proper cost or credit breakdowns therefore shall be submitted daily to CONTRACTOR for approval by SUBCONTRACTOR to CONTRACTOR.

E.2 SUBCONTRACTOR shall give written notice of claim, relating to any work for which extra compensation is asserted, within twenty (20) days, or as defined by the general conditions of the prime contract, or whichever is more stringent, whether or not such work has been performed or SUBCONTRACTOR shall be deemed to have abandoned its claim. If SUBCONTRACTOR makes a valid claim, the CONTRACTOR'S duty to the SUBCONTRACTOR is limited to passing on claims in full compliance with the Contract Documents. The SUBCONTRACTOR shall bear its prorata share of any administrative costs, including attorneys' and consultants' fees, required to process the claim pursuant to the Contract Documents.

E.3 If the SUBCONTRACTOR initiates a substitution, deviation or change in the work, which affects the scope of the work or the expense of other trades, SUBCONTRACTOR shall be liable for the resulting expense. It shall not be incumbent upon CONTRACTOR to discover any mistakes, errors, or deviations from the requirements of the Prime Contract, drawings, and specifications as referenced above in the Subcontractor's shop drawings or submittals; and the OWNER'S final approval of SUBCONTRACTOR'S shop drawings or submittals shall not relieve SUBCONTRACTOR from responsibilities of any unauthorized changes, deviations, or omissions, or other errors of any sort from the requirements of the Prime Contract, drawings, and specifications.

E.4 No change, alteration or modification in or deviation from this Agreement or the plans and specifications, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part, any surety or any bond given in connection with this Agreement, and neither OWNER nor CONTRACTOR shall be under any obligation to notify the surety or sureties of any such change.

E.5 For any disputed changes between the OWNER and prime CONTRACTOR or between the prime CONTRACTOR and the SUBCONTRACTOR, the SUBCONTRACTOR shall proceed with the work per the written direction of the CONTRACTOR. SUBCONTRACTOR shall seek reimbursement through remedies available per the Subcontract Agreement.

F. DAMAGES CAUSED BY DELAY - Should SUBCONTRACTOR default in the proper performance of its work, thereby causing delay to the prime contract work, SUBCONTRACTOR shall be liable for any and all loss and damages, including consequential damages and liquidated damages, sustained by CONTRACTOR as a result thereof. SUBCONTRACTOR shall not be liable under this paragraph if such default is caused by strikes, lockouts, or acts of God, so long as notice of occurrence of non-liability shall be given in writing immediately by SUBCONTRACTOR to CONTRACTOR.

G. LIENS - SUBCONTRACTOR shall at all times indemnify and hold CONTRACTOR and OWNER harmless against all liability for claims and liens for labor performed or materials used or furnished to be used on the job by any second-tier supplier and material-men, including any costs and expenses for actual attorneys' and consultants' fees incurred in good faith and all incidental or consequential damages resulting to CONTRACTOR or OWNER from such claims or liens. SUBCONTRACTOR agrees within ten (10) days after written demand to cause the effect of any legal proceedings or lien to be removed from the premises, and in the event SUBCONTRACTOR shall fail to do so, CONTRACTOR is authorized to use whatever means which in its discretion it may deem appropriate, to cause the lien or legal proceeding to be removed or dismissed, and the costs, together with actual attorneys' and consultants' fees incurred in good faith, shall be immediately due and payable to CONTRACTOR by SUBCONTRACTOR.

H.1 RECOURSE BY CONTRACTOR - In the event that SUBCONTRACTOR at any time refuses or neglects to supply a sufficient number of properly skilled workers or a sufficient quantity of materials of proper quality or is adjudicated a bankrupt, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for benefit of creditors without CONTRACTOR'S consent, or fails to make prompt payment to its material suppliers and laborers, or fails in any respect to properly and diligently prosecute the work covered by this Agreement, or becomes delinquent with respect to contributions or payments required to be made to any Health and Welfare, Pension, Vacation, Apprenticeship or other employee benefit program or trust, or otherwise fails to perform fully any and all the agreements herein contained, CONTRACTOR may, at its option, after giving forty-eight (48) hours written notice to SUBCONTRACTOR, provide any such labor and materials as may be necessary, and deduct the cost thereof, including, without limitation, CONTRACTOR'S profit and overhead, administrative costs and attorneys' and consultants' fees actually incurred in good faith, from any money then due or thereafter to become due to the SUBCONTRACTOR under this Agreement, or CONTRACTOR may, at its option, terminate SUBCONTRACTOR'S right to proceed with the work and, in that event, CONTRACTOR shall have the right to enter upon the premises of the project and take possession, for the purposes of completing the work included under this Agreement, of all materials, tools, machinery and equipment of SUBCONTRACTOR, and may employ any other person(s) or entity(s) to finish the work and provide the materials therefore. In case of such termination of SUBCONTRACTOR'S right to proceed with the work, SUBCONTRACTOR shall not be entitled to receive any further payment under this Agreement until all the work undertaken by CONTRACTOR in its prime contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by CONTRACTOR for furnishing materials, for finishing the

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work, for actual attorneys' fees and consultants' fees incurred in good faith, and for any damages sustained by CONTRACTOR by reason of SUBCONTRACTOR'S default, plus a markup of fifteen percent (15%) General Overhead and ten percent (10%) Profit on any and all such expenses; and CONTRACTOR shall have a lien upon all materials, tools, and machinery and equipment taken possession of as aforesaid, to secure SUBCONTRACTOR'S payment thereof. The notice referred to in this paragraph will be sufficient and complete when mailed to SUBCONTRACTOR at the address shown in this Agreement. In the event of an emergency affecting the safety of persons or property, no notice referred to in this paragraph shall be required.

H.2 CONTRACTOR may also terminate this Agreement in the event of any other material breach by SUBCONTRACTOR of this Agreement. In addition to any other material breach, failure to make any payment to the various Employee Fringe Benefit Trusts, including, but not limited to, Health and Welfare, Pension, Vacation, or Apprenticeship Trust shall be a material breach. With respect to any and all payments to be made by CONTRACTOR to SUBCONTRACTOR under this Agreement, CONTRACTOR at its option may issue joint checks payable to SUBCONTRACTOR and any trust referred to herein, subcontractor or material supplier to the extent necessary to assure the payments required to be made under this Agreement are paid.

H.3 CONTRACTOR may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any payment under SECTION 4, to such extent as may be necessary to protect CONTRACTOR from loss, including costs and actual attorneys' fees incurred in good faith on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of SUBCONTRACTOR to make payments properly to its subcontractors, or for material, labor, or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor; (6) failure of SUBCONTRACTOR to complete the contract in accordance with the Contract Documents; (7) unsatisfactory performance of the work by the SUBCONTRACTOR.

H.4 When the above grounds are removed, such amounts as are then due and owing shall be paid or credited to SUBCONTRACTOR.

H.5 Should one or more contracts now or hereafter exist between the parties hereto or with an affiliated corporation or company of CONTRACTOR, concerning this or any other construction projects, then a breach by the SUBCONTRACTOR of any contract may, at the option of the CONTRACTOR, be considered a breach of all contracts. In such event CONTRACTOR may terminate any or all of the contracts so breached, or may withhold monies due, or to become due, on such contracts, and apply the same toward payment of any damages suffered on that or any other contract.

I.1 **TERMINATION OF AGREEMENT** - In the event the prime contract is terminated prior to its completion, SUBCONTRACTOR shall be entitled only to payment for the work actually completed by it at the prorate of the price herein set forth unless CONTRACTOR itself receives additional compensation or damages on account of such termination, in which event SUBCONTRACTOR shall be entitled to such proportion of the additional compensation or damages actually received as is equitable under all of the circumstances. Nothing herein contained shall require CONTRACTOR to make any claim against OWNER for additional compensation or damages in the event of termination before completion, and it is specifically agreed that the failure of CONTRACTOR to prosecute any such claim against OWNER shall not entitle SUBCONTRACTOR to any claim for additional compensation or damages against CONTRACTOR.

D. INT
Notwithstanding the preceding paragraph, CONTRACTOR reserves the absolute right to terminate this Agreement. In the event of termination without cause, SUBCONTRACTOR shall be entitled to payment only as follows:

- 1) Cost of the work actually completed in conformity with the Agreement;
- 2) Plus other costs actually incurred by SUBCONTRACTOR;
- 3) Plus fifteen percent (15%) of costs referred to in Paragraph 1 above, for overhead and profit.

There shall be deducted from such sums as provided in this paragraph the amount of any payments made to SUBCONTRACTOR prior to the date of termination of this Agreement. SUBCONTRACTOR shall not be entitled to any claim, or claim of lien, against CONTRACTOR or against OWNER for any additional compensation or damages in the event of such termination and payment. In the event this Agreement is terminated for cause, SUBCONTRACTOR shall not be entitled to receive any further payment until the work undertaken by CONTRACTOR in its prime contract is completely finished. At that time, if the amounts earned but not paid SUBCONTRACTOR before the termination exceed the expenses incurred by CONTRACTOR in finishing SUBCONTRACTOR'S work, any excess shall be paid by CONTRACTOR to SUBCONTRACTOR; but if the expenses shall exceed the amount earned and unpaid by SUBCONTRACTOR at the time of termination, SUBCONTRACTOR shall promptly pay to CONTRACTOR the amount by which the expenses exceed the unpaid balance. The expenses incurred by CONTRACTOR shall include costs for furnishing materials, for finishing the work, for actual attorneys' and consultants' fees incurred in good faith, and for any damages sustained by CONTRACTOR by reason of SUBCONTRACTOR'S default, plus a markup of fifteen percent (15%) general overhead and ten percent (10%) profit on any and all such expenses.

J. **LABOR RELATIONS** - Employment of labor by SUBCONTRACTOR shall be effected under conditions which are satisfactory to CONTRACTOR. SUBCONTRACTOR shall keep a representative at the jobsite during all times when SUBCONTRACTOR'S work is in progress, and such representative shall be authorized to represent SUBCONTRACTOR as to all phases of the work. Prior to commencement of the work, SUBCONTRACTOR shall notify CONTRACTOR who SUBCONTRACTOR'S representative is to be, and in the event of any change of representative, SUBCONTRACTOR shall notify CONTRACTOR who the new representative is to be prior to such change becoming effective.

SUBCONTRACTOR acknowledges that CONTRACTOR has entered into labor agreements covering work at its construction job sites with the following labor unions: Carpenters and Laborers. In addition, the CONTRACTOR is party to the following labor agreements:

SUBCONTRACTOR agrees to comply with all of the terms and conditions of these labor agreements set forth above insofar as SUBCONTRACTOR may lawfully do so, and in particular, agrees to comply with the terms and provisions of the Agreements setting forth the jurisdiction and the scope of work claimed by each of the crafts and the procedure contained therein for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute, SUBCONTRACTOR agrees, at its own cost and expense, upon request of CONTRACTOR, to take any and all lawful steps to secure a binding and final determination of the jurisdictional by the National Labor Relations Board. SUBCONTRACTOR further promises and agrees to provide CONTRACTOR, on a monthly basis, a status letter from their union and their sub-subcontractors' union as a condition prior to payment from CONTRACTOR to SUBCONTRACTOR.

Should there be picketing on the CONTRACTOR'S jobsite, and the CONTRACTOR establishes a reserved gate for the SUBCONTRACTOR'S purposes, it shall be the obligation of the SUBCONTRACTOR to continue the proper performance of its work without interruption or delay. Should SUBCONTRACTOR'S presence or activity cause a labor-related problem at the construction site, the SUBCONTRACTOR shall bear the full costs thereof. SUBCONTRACTOR shall

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Attachment B4

also promptly obtain, and pay the full costs of, any court orders necessary to restrain acts in violation of the law resulting from SUBCONTRACTOR'S presence or activities. SUBCONTRACTOR shall be bound by all relevant local, state and federal laws governing labor relations, and shall fully indemnify and hold CONTRACTOR harmless from and against claims, liability, loss, damage, cost, expenses, including attorneys' fees actually incurred in good faith, awards, fines or judgments arising by reason of any violation of such laws, or failure to fulfill the covenants set forth in this paragraph. SUBCONTRACTOR further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing jobsite work of the type covered by this Agreement, to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to SUBCONTRACTOR.

K. LAYOUT RESPONSIBILITY - CONTRACTOR shall establish principal axis lines and levels whereupon SUBCONTRACTOR shall lay out and shall be strictly responsible for the accuracy of its work and for any loss or damage to other contractors engaged in work on the site by reason of failure of SUBCONTRACTOR to set out or perform its work correctly. SUBCONTRACTOR shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finished surfaces.

L. WORKMANSHIP - Every part of the work herein described shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be the best of its several kinds, and all materials used in the work herein described shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new and the best of their respective kinds, except such materials as may be expressly provided in the Contract Documents to be otherwise.

M. PROVISION FOR INSPECTION - SUBCONTRACTOR shall furnish to CONTRACTOR and its representatives ample facilities at all times for inspecting materials at the site of construction, at the shops, or any place where materials under this Agreement may be in course of preparation, process, manufacture or treatment. SUBCONTRACTOR shall further furnish to CONTRACTOR as often as required, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture; the reports shall show the progress of such preparation and manufacture in such details as may be required by CONTRACTOR, including any plans, drawings or diagrams in course of preparation. The making or failure to make any inspection of or payment for or acceptance of the materials shall not impair CONTRACTOR'S right to later reject nonconforming materials, or to avail itself of any other remedy which CONTRACTOR may be entitled, notwithstanding CONTRACTOR'S knowledge of the nonconformity, its substantiality, or the ease of its discovery. SUBCONTRACTOR shall be liable for all inspection, reshipment and return costs on nonconforming materials. SUBCONTRACTOR shall not replace returned materials unless so directed by CONTRACTOR in writing. CONTRACTOR shall retain all rights granted herein notwithstanding the provisions of Paragraph N of this Agreement.

N. MATERIALS AND EQUIPMENT - In the event the scope of work includes installation of materials or equipment furnished by others, it shall be the responsibility of SUBCONTRACTOR to examine the items provided, and handle, store and install the same with such skill and care as to ensure a satisfactory installation. Loss or damage due to acts of SUBCONTRACTOR shall be charged to the account of SUBCONTRACTOR and deducted from monies due under this Agreement.

Title to any goods or material intended to be incorporated into the Project shall pass to CONTRACTOR once the goods or materials are capable of being identified as intended for the Project, but SUBCONTRACTOR shall be required to maintain insurance on and bear the risk of loss of or harm to any such goods and materials, as elsewhere set forth in this Agreement, for any and all applicable time periods, but in any event, until completion of the Project, as defined in the Contract Documents. The provisions of this paragraph shall not nullify or modify any other provisions of this Agreement, which shall remain in full force and effect.

O. PROTECTION OF WORK - SUBCONTRACTOR shall effectively secure and protect the work done pursuant to this Agreement and assume full responsibility for the condition of its work until final acceptance by ARCHITECT, OWNER, and CONTRACTOR. SUBCONTRACTOR further agrees to provide such protection as necessary to protect the work and the workers of the CONTRACTOR and other subcontractors from its operations.

SUBCONTRACTOR shall be liable for any loss or damage to any work in place or to any equipment and materials on the job site caused by it or its agents, employees or guests. SUBCONTRACTOR shall promptly repair or replace any damaged work, property or materials.

P. USE OF CONTRACTOR'S EQUIPMENT - The SUBCONTRACTOR, its agents, employees, subcontractors or suppliers shall not use the CONTRACTOR'S equipment without the express written permission of the CONTRACTOR'S designated representative. SUBCONTRACTOR shall be fully responsible for and shall be deemed to have inspected any such equipment and accepts the use of such equipment as is.

If the SUBCONTRACTOR, or any of its agents, employees, suppliers, or subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts, or similar items owned, leased or under the control of CONTRACTOR, SUBCONTRACTOR shall act as an independent contractor and shall be primarily liable for any loss or damage (including personal injury or death) which may arise from such use regardless of who is operating any of CONTRACTOR'S equipment under SUBCONTRACTOR'S control, and shall fully indemnify and hold CONTRACTOR harmless, pursuant to the provisions of Paragraph B of this Agreement, from any loss, claim, liability, damage, costs, expenses, including actual attorneys' fees incurred in good faith, awards, fines or judgments arising by reason of such use.

Q.1. SPECIFIC CLEAN-UP - During the course of construction, SUBCONTRACTOR shall remove waste materials from the site as often as is necessary to maintain the premises in a clean and orderly condition. Upon completion of the work under this Agreement, SUBCONTRACTOR shall remove from the site all temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement. If SUBCONTRACTOR fails to perform a clean-up function within two (2) days after notification from CONTRACTOR, written or oral, to do so, CONTRACTOR may proceed with that function as it judges necessary in the manner it may deem expedient, and the cost thereof shall be charged to SUBCONTRACTOR and deducted from monies due under this Agreement.

Q.2. GENERAL CLEAN-UP - During the course of construction the CONTRACTOR will be performing "general" clean up on a daily basis. These clean-up costs will be distributed back to the SUBCONTRACTORS based on your pro-rata share of manpower on the site in relation to the total.

R. GUARANTEE - SUBCONTRACTOR guarantees all materials and workmanship and agrees to replace at its sole cost and expense, and to the satisfaction of CONTRACTOR, any and all materials adjudged defective or improperly installed. SUBCONTRACTOR further guarantees the OWNER and CONTRACTOR against liability, loss or damage arising from the installation of the work during a period one (1) year from completion and acceptance of the work covered by the

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Attachment B4

prime contract. If however, the period of guarantee in the Contract Documents exceeds over one (1) year, SUBCONTRACTOR shall be bound during the longer period stipulated. SUBCONTRACTOR shall further guarantee the materials and workmanship of all repair work done pursuant to this provision for a period of eighteen (18) months after the repairs are performed.

S. ASSIGNMENT OF CONTRACT - SUBCONTRACTOR shall not, without written consent of CONTRACTOR, assign, transfer or sublet any portion or part of the work required by this Agreement or assign any payments hereunder to others. If SUBCONTRACTOR is given written consent to assign, transfer or sublet any portion or part of the work, SUBCONTRACTOR shall bind its subcontractors, assignees or subletors to all of the terms and provisions of this Agreement. No assignment, subcontract, or sublet shall be valid unless SUBCONTRACTOR has fully complied with the provisions of this paragraph. CONTRACTOR may assign or transfer the whole part of this Agreement, and its rights hereunder, to any corporation, individual or partnership.

T. WAIVER - Any act or omission of CONTRACTOR which SUBCONTRACTOR might claim as an excuse for its own failure to perform shall be deemed waived by SUBCONTRACTOR unless it shall notify CONTRACTOR in writing of its intention to assert such excuse within ten (10) days after the occurrence of any such act or omission. SUBCONTRACTOR waives any right it might have to assert the provisions of CALIFORNIA CIVIL CODE Sec. 1654 against CONTRACTOR.

U. ATTORNEYS' FEES - In the event a dispute arises as a result of this Agreement, which leads to arbitration and/or litigation, both the CONTRACTOR and SUBCONTRACTOR shall bear their own Attorney's fees.

V.1 DISPUTES - (a.) If at any time any controversy shall arise between CONTRACTOR and SUBCONTRACTOR regarding anything pertaining to this Agreement, which the parties hereto do not promptly adjust and determine, or which the OWNER'S representative or ARCHITECT cannot decide to the satisfaction of both parties, then the written orders of CONTRACTOR to SUBCONTRACTOR shall be followed.

V.2 In the event that the CONTRACTOR and OWNER arbitrate a controversy that, in CONTRACTOR'S opinion, involves SUBCONTRACTOR'S performance, Subcontract requirements and/or claims arising there under, then CONTRACTOR may join SUBCONTRACTOR as a party to the arbitration. SUBCONTRACTOR agrees and consents to such joinder. In the event SUBCONTRACTOR is so joined, SUBCONTRACTOR shall be bound and abide by the terms, administration, conditions and rules of arbitration, and the award of the arbitrators shall be final and binding with respect to all claims, and issues presented or which were capable of presentation in the proceedings.

V.3 If at any time, any controversy shall arise between CONTRACTOR and SUBCONTRACTOR, it is agreed that CONTRACTOR and SUBCONTRACTOR shall submit all disputes to mediation as a condition precedent to demanding arbitration. In the event mediation is unsuccessful, CONTRACTOR has the option to direct the dispute to Judicial Arbitration Mediation Service (J.A.M.S.) and/or American Arbitration Association and both parties agree to be bound by the arbitration award, and to accept, as its full compensation for any claim or dispute.

V.4 If the SUBCONTRACTOR does not participate as a party to the CONTRACTOR and OWNER arbitration, SUBCONTRACTOR agrees to fulfill its duties and obligations under Paragraph B above and cooperate with CONTRACTOR in presenting and defending claims in arbitration. SUBCONTRACTOR hereby agrees to be bound by the arbitration award, and to accept, as its full compensation for any claim, its prorata share of the arbitration award.

W.1 INDEMNITY CLAUSE RE: SAFETY AND EMPLOYMENT- SUBCONTRACTOR shall at its own expense, comply with CONTRACTOR'S project safety program and all specific safety requirements, laws, regulations, rules or ordinances, promulgated by any government authority, whether state, federal or local, now existing or subsequently enacted. SUBCONTRACTOR shall be fully responsible for compliance with the provisions of this paragraph by itself, its agents, employees, material suppliers, and subcontractors with respect to its portion of its work, and shall pay, respond to, or defend any citation, assessment, fine or penalty relating to the failure of any person or entity listed hereunder to so comply.

W.2 SUBCONTRACTOR shall conform to the Equal Employment Opportunity policies of the CONTRACTOR and all state, federal and local laws, rules, regulations, plans, programs, standards and regulations now existing or subsequently enacted. SUBCONTRACTOR shall be fully responsible for compliance hereunder by itself, its agent, employees, material suppliers and subcontractors with respect to its portion of the work, and shall pay, respond to, or defend any citation, assessment, fine, penalty, order, claim, charge or criminal or civil action, arising by reason of the failure of any party named hereunder to so comply.

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Attachment B4

STOP NOTICE LEGAL NOTICE TO WITHHOLD CONSTRUCTION FUNDS (Public or Private Work) (Per California Civil Code Section 3103)

RECEIVED MAY 11 2009

To: City & County of San Francisco, Dept. of Public Works
(NAME OF OWNER, PUBLIC BODY OR CONSTRUCTION FUND HOLDER)
875 Stevenson Street, Suite #420
(ADDRESS IF TO A BANK OR SAVINGS USE ADDRESS OF BRANCH HOLDING FUNDS)
San Francisco, CA 94103-0903
(CITY, STATE AND ZIP)

Project: Minnie & Lovie Ward Recreation Center
(NAME)
151 Montana Street
(ADDRESS)
San Francisco, CA 94112-2960
(CITY, STATE AND ZIP)

TAKE NOTICE THAT

Trahan Mechanical Inc
(NAME OF THE PERSON OR FIRM CLAIMING THE STOP NOTICE. LICENSED CONTRACTORS MUST USE THE NAME UNDER WHICH CONTRACTORS LICENSE IS ISSUED)

whose address is P.O. Box 10462, San Rafael, CA 94912
(ADDRESS OF PERSON OR FIRM CLAIMING STOP NOTICE)

has performed labor and furnished materials for a work of improvement described as follows: Minnie & Lovie Ward Recreation Center, 151 Montana Street, San Francisco, CA 94112-2960
(NAME AND LOCATION OF PROJECT WHERE WORK OR MATERIALS WERE FURNISHED)

The labor and materials furnished by claimant are of the following general kind: Heating, Venting, Air Conditioning and Sheet Metal
(KIND OF LABOR, SERVICE, EQUIPMENT OR MATERIALS FURNISHED OR AGREED TO BE FURNISHED BY CLAIMANT)

The labor and materials were furnished to or for the following party: West Bay Builders 250 Bel Marin Keys Blvd., Building A, Novato, CA 94949
(NAME OF THE PARTY WHO ORDERED THE WORK OR MATERIALS)

Total value of the whole amount of labor and materials agreed to be furnished (Original contract):	<u>\$521,575.00</u>
Written Change Order:	<u>\$38,545.00</u>
Expenditure/loss necessitated by project delay:	<u>\$67,854.00</u>
The value of the labor and materials furnished to date is:	<u>\$627,974.00</u>
Claimant has been paid the sum of:	<u>\$455,335.00</u>
And there is due, owing and unpaid the sum of:	<u>\$172,639.00</u>

You are required to set aside sufficient funds to satisfy this claim with interest, court costs and reasonable costs of litigation, as provided by law. You are also notified that claimant claims an equitable lien against any construction funds for this project which are in your hands.

FIRM NAME: Trahan Mechanical Inc

By: Patrick Trahan

VERIFICATION

I, the undersigned, say: I am the Vice President/CEO of the claimant named Trahan Mechanical Inc in the foregoing Stop Notice; I have read said Stop Notice and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 4, 2009, at San Rafael, CA

(DATE THIS DOCUMENT WAS SIGNED) (CITY AND STATE WHERE THIS DOCUMENT WAS SIGNED)

(PERSONAL SIGNATURE OF THE INDIVIDUAL WHO IS SWEARING THAT THE CONTENTS OF STOP NOTICE ARE TRUE)

REQUEST FOR NOTICE OF ELECTION

(Private Works Only)

(For California Civil Code Section 3159, 3161, or 3162)

If an election is made not to withhold funds pursuant to this stop notice by reason of a payment bond having been recorded in accordance with Sections 3256 or 3162, please send notice of such election and a copy of the bond within 30 days of such election in the enclosed preaddressed stamped envelope. This information must be provided by you under Civil Code Sections 3159, 3161, or 3162.

Signed: _____

(Contract must Enclose Self-Addressed Stamped Envelope)

BEFORE YOU USE THIS FORM, FILL IN ALL BLANKS, AND MAKE WHATEVER CHANGES ARE APPROPRIATE AND NECESSARY TO YOUR PARTICULAR TRANSACTION. CONSULT A LAWYER IF YOU DOUBT THE FORM'S FITNESS FOR YOUR PURPOSE AND USE. WWW.THECONTRACTORSGROUP.COM MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY OR FITNESS OF THIS FORM FOR AN INTENDED USE OR PURPOSE

REV. 04-01

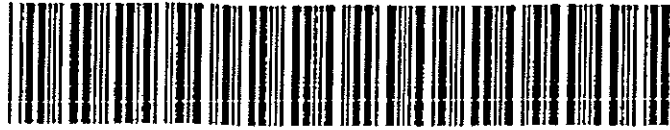
Exhibit C

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Attachment B4

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Attachment B4



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Document Scanning Lead Sheet

Aug-19-2009 10:03 am

Case Number: CGC-09-490551

Filing Date: Aug-12-2009 10:00

Juke Box: 001 Image: 02590266

PROOF OF SERVICE OF SUMMONS AND COMPLAINT

VICAL INC A CALIFORNIA CORPORATION VS. WEST BAY BUILDERS INC., A CALIFORN

001C02590266

Instructions:

Please place this sheet on top of the document to be scanned.

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Attachment B4

<i>Attorney or Party without Attorney:</i> :Peter J. Bassing :4300 Redwood Highway :Suite 100 :San Rafael, CA 94903 : Telephone No: (415) 258-9987				<i>For Court Use Only</i> <div style="font-size: 2em; font-weight: bold; text-align: center;">FILED</div> San Francisco County Superior Court AUG 12 2009 GORDON PARK-II, Clerk by: <u>James W. [Signature]</u> Deputy Clerk	
Attorney for: Plaintiff			Ref. No. or File No.:		
Insert name of Court, and Judicial District and Branch Court: SAN FRANCISCO COUNTY SUPERIOR COURT					
Plaintiff: TRAHAN MECHANICAL, INC. Defendant: WEST BAY BUILDERS, INC., et al.					
PROOF OF SERVICE SUMMONS		Hearing Date:	Time:	Dept/Div:	Case Number: CGC-09-490551

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS AND COMPLAINT; NOTICE TO PLAINTIFF; ADR INFORMATION PACKAGE; CASE MANAGEMENT STATEMENT;; JUDICIAL MEDIATION PROGRAM.
3.
 - a. Party served: SAFECO INSURANCE COMPANY OF AMERICA, a Washington corporation
 - b. Person served: KaShonda Lawson, person authorized by the Agent to accept service for the Party in item 3.a..
4. Address where the party was served: CSC-Lawyers Incorporating Service
2730 Gateway Oaks Drive
Suite 100
Sacramento, CA 95833
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Thu., Jul. 30, 2009 (2) at: 2:35PM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
on behalf of: SAFECO INSURANCE COMPANY OF AMERICA, a Washington corporation
Under CCP 416.10 (corporation)
7. Person Who Served Papers:

<ol style="list-style-type: none"> a. Jenice Rossner b. Jean Randall Process Service 561 Louis Drive Novato, CA 94945-0000 c. 415 897-2361 	Recoverable Cost Per CCP 1033.5(a)(4)(B) d. The Fee for Service was: \$75.00 e. I am: (3) registered California process server <ol style="list-style-type: none"> (i) Independent Contractor (ii) Registration No.: 98-02 (iii) County: Sacramento (iv) Expiration Date: Sun, Jan. 03, 2010
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8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date:
 Mon, Aug. 03, 2009

 (Jenice Rossner)

ORIGINAL

Attachment B4



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Nov-22-2010 3:20 pm

Case Number: CGC-09-490551

Filing Date: Nov-22-2010 11:16

Juke Box: 001 Image: 03040148

DISMISSAL WITH PREJUDICE THIS DISMISSAL RELATES ONLY TO ACTI

WILSON BROS. CONSTRUCTION CO. INC. A CALIFORNIA CORPORATION VS. WEST BAY BUILDERS INC., A CALIFORNIA CORPORATION

001C03040148

Instructions:

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Attachment B4

11/22/2010

FIRST LEGAL

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CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Peter J. Bassing (SBN 063315) 4300 Redwood Highway, Ste. 100 San Rafael CA 94903-2103	TELEPHONE NO.: (415) 258-9987 FAX NO.: (415) 258-0681	FOR COURT USE ONLY F I L E D Superior Court of California County of San Francisco NOV 22 2010 CLERK OF THE COURT BY:  Deputy Clerk
ATTORNEY FOR (Name): Plaintiff, Cross-Defendant Trahan Mechanical, Inc. Insert name of court and name of judicial district and branch court, if any: Superior Court of California City and County of San Francisco		
PLAINTIFF/PETITIONER: TRAHAN MECHANICAL, INC. DEFENDANT/RESPONDENT: WEST BAY BUILDERS		CASE NUMBER: CGC-08-477790 (consolidated with CGC-09-490551 and others)
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): contract, bond		
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -		

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) With prejudice (2) Without prejudice
- b. (1) Complaint (2) Petition
 (3) Cross-complaint filed by (name):
 (4) Cross-complaint filed by (name):
 (5) Entire action of all parties and all causes of action
 (6) Other (specify):*

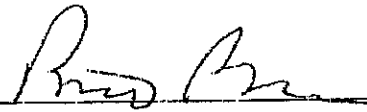
NOTE: This dismissal relates only to action and cross-action in Case # _____ on (date): _____
 CGC-09-490551 on (date): _____

Date: October 1, 2010

Peter J. Bassing

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.


(SIGNATURE)

Attorney or party without attorney for:

- Plaintiff/Petitioner Defendant/Respondent
 Cross-complainant


2 TO THE CLERK: Consent to the above dismissal is hereby given.**

Date: 10/14/10

Brian M. Junginger/Defendant & Cross Complainant

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

** If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j)


(SIGNATURE)

Attorney or party without attorney for:

- Plaintiff/Petitioner Defendant/Respondent
 Cross-complainant

(To be completed by clerk)

- 3 Dismissal entered as requested on (date): _____
 4 Dismissal entered on (date): _____ as to only (name): _____
 5 Dismissal not entered as requested for the following reasons (specify): _____

 6 a Attorney or party without attorney notified on (date): _____
 b Attorney or party without attorney not notified. Filing party failed to provide
 a copy to conformed means to return conformed copy

Date: _____ Clerk, by _____ Deputy

POS

PROOF OF SERVICE

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I, the undersigned, declare:

I am employed by the law office of McNerney & Dillon, P.C., located at 1999 Harrison Street, Suite 1700, Oakland, California 94612, am over the age of 18 years and am not a party to the within titled cause. On the date last written/typed below, I caused the following document(s):

1. REQUEST FOR DISMISSAL

to be served on the parties, through their attorneys of record by placing true and correct copies thereof:

- (By First Class Mail).** In the ordinary course of business such correspondence is deposited with the U.S. Postal Service at Oakland, California, in a sealed envelope, with proper postage affixed, the same day that the envelope is sealed and placed for collection and mailing
- (By Facsimile transmission).** Based on the agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- (By UPS Overnight delivery.)** In the ordinary course of business such correspondence is picked up by an agent from UPS at Oakland, California, the same day that the envelope is sealed and placed for collection and transmittal
- By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at te e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

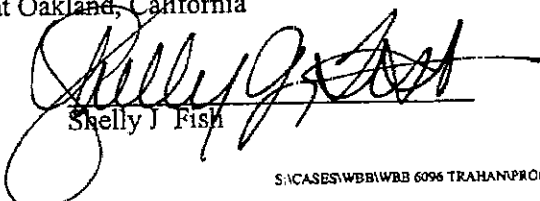
ADDRESSEE(s):

Peter J Bassing
4300 Redwood Highway, Suite 100
San Rafael, CA 94903
Attorneys for Trahan Mechanical, Inc

Dennis Herrera
City & County of San Francisco
1390 Market Street, 4th Floor
San Francisco, CA 94102
City & County of San Francisco

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this November 22, 2010, at Oakland, California


Shelly J Fish

S:\CASES\WBBI\WB 6096 TRAHAN\PROOF MASTER.wpd

Public Records Request
Attachment B5
email city clerk at relliott@unioncity.org (Renee)
510-675-5348

5b

Home About Union City Business City Services Contact Us Index

City Government

MAYOR AND CITY COUNCIL

AGENDAS AND MINUTES

MEETING VIDEOS

COMMISSIONS/COMMITTEES

CITY ORGANIZATION CHART

CITY STAFF DIRECTORY

CITY MANAGER

CITY CLERK

CITY ATTORNEY

MUNICIPAL CODE

ELECTED OFFICIALS

ELECTIONS

DIRECTIONS TO CITY HALL

City Hall

ADMINISTRATIVE SERVICES

ECONOMIC & COMMUNITY DEVELOPMENT

FIRE SERVICES

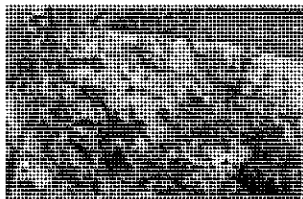
LEISURE SERVICES

HUMAN RESOURCES

POLICE DEPARTMENT

PUBLIC WORKS

TRANSIT AND PARATRANSIT



Contact Us

City Hall Address:

City of Union City
34009 Alvarado-Niles Road
Union City, California 94587
[Map](#)

Main Phone Number:

Telephone (510) 471-3232
Fax (510) 475-7318

Hours: Monday through Thursdays, 8:00 A.M. to 6:00 P.M.
Fridays: 8:00 A.M. to 5:00 P.M. **City Hall is closed on alternate Fridays. See schedule**

Elected Officials

Mayor Mark Green
(510) 675-5325
mgreen@ci.union-city.ca.us

Vice Mayor Pat Gacoscos
(510) 675-5624
pgacoscos@unioncity.org

Councilmember Jim Navarro
(510) 675-5613
mailto:uccouncil@jimnavarro.com

Councilmember Emily Duncan
(510) 675-5623
emilyd@unioncity.org

Councilmember Lorrin Ellis
(510) 675-5621
lellis@unioncity.org

Community Emergency Response Team CERT

34009 Alvarado-Niles Road
Union City, California 94587
(510) 675-5401

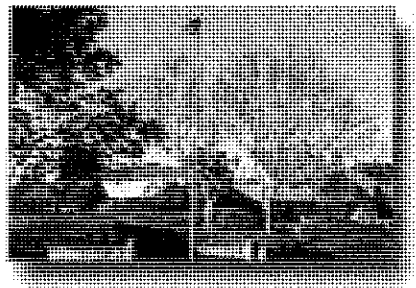
Community Centers

Holly Community Center
31600 Alvarado Boulevard
(510) 675-5488

Kennedy Community Center
13333 Decoto Road
(510) 675-5329

Ruggieri Senior Center
33997 Alvarado-Niles Road
(510) 675-5495

Union City Sports Center
31224 Union City Boulevard
(510) 675-5808



City Hall

[City Employee Directory](#)

City Manager's Office
Larry Cheeves, City Manager (510) 675-5351
lcheeves@unioncity.org

Administrative Services
Rich Digre, Director (510) 675-5431
rdigre@unioncity.org

Economic and Community Development
Joan Malloy, Director (510) 675-5327
jmalloy@unioncity.org

Leisure Services Department
Jill Stavosky, Leisure Services Manager
(510) 675-5265
jstavosky@unioncity.org

Police Department
Brian Foley, Police Chief (510) 471-1365
UCPD@unioncity.org

Public Works Department
Mintze Cheng, Director (510) 675-5305
mcheng@unioncity.org

Fire Services
Alameda County Fire Chief Sheldon Gilbert
sheldon.gilbert@acgov.org
(510) 618-3490

Personnel
Employment Hotline 675-5339
dmorimune@unioncity.org

Union City Transit and Paratransit
Wilson Lee, Transit Manager (510) 675-5409
wlee@unioncity.org

Website Administrator
robertom@unioncity.org

6b5.1

Contact BART

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Pick up a postage-paid comment card from a Station Agent or write:

Customer Service
Bay Area Rapid Transit District
P.O. Box 12688
Oakland CA 94604-2688



Transit Information

Operators available 6:00 a.m. to 11:00 p.m., seven days a week.
Automated schedules fares and real-time info 24/7.



Local Telephone Numbers

Oakland/Berkeley/San Leandro	510 465-2278
San Francisco/Daly City	415 989-2278
South San Francisco/San Bruno/San Mateo	650 992-2278
Concord/Walnut Creek/Lafayette/ Antioch/Pittsburg/Livermore/Orinda	925 676-2278
Hayward/San Leandro/Fremont/ Union City/Dublin/Pleasanton	510 441-2278
Richmond/El Cerrito	510 236-2278
All other locations	510 465-2278

510-464-6000

Comments and Complaints

8:30 a.m. to 5:00 p.m., Monday-Friday 24/7
voice mail 510 464-7134

Public records request:
email Ken Duron,
BART District Secretary,
at kduron@bart.gov
510-464-6084

BART Police

Emergency 911
Non-emergency 877 679-7000

Complaints About BART Police

Office of the Independent Police Auditor 510 874-7477

Reporting Security, Safety or Hazardous issues

For urgent matters on BART dial 911 call (510) 464-7000 use the train intercom or contact a station agent. For non-emergency matters call (877) 679-7000.

TDD 510 839-2220

Elevator Availability 510 834-LIFT or 888 235-3828

Lost & Found 510 464-7090
or <http://www.bart.gov/lostandfound>

Graffiti Hotline 510 464-6740

6b5.2

Attachment B5

56

NOTICE AND AGENDA OF SPECIAL MEETING

JOINT MEETING OF THE CITY COUNCIL OF THE CITY OF UNION CITY
ACTING IN ITS CAPACITY AS THE HOUSING SUCCESSOR AGENCY TO THE
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF UNION CITY AND AS THE
SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF UNION CITY

SPECIAL MEETING

Tuesday, October 9, 2012

Time: Immediately following the adjournment of the 7:00 p.m. Council/Successor Agency Meeting

City Council Conference Room
34009 Alvarado Niles Road

- I. **CALL TO ORDER** – Roll Call
- II. **ORAL COMMUNICATIONS** – *comments limited to items on the Special Meeting Agenda*
- III. **CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
(Pursuant to Government Code Section 54956.9)
(One matter)
- IV. **CLOSED SESSION – CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 087-0102-005, 087-0102-006, 087-0102-007, 087-0102-001, 087-0102-080
Buyer: City of Union City
Seller: Pacific States Steel Corporation
- V. **CLOSED SESSION – CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 087-0340-003-00, 087-0340-002-00
Buyer: Windflower Properties LLC
Seller: Economic & Community Development Director Malloy and Redevelopment Manager Evanoff
Under negotiation: Price and terms
- VI. **ADJOURNMENT**

Dated October 5, 2012

/s/ Mark Green

Mark Green, Mayor

6b5.3

Attachment B5



7a

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Sep-12-2012 1:16 pm

Case Number: CGC-07-466727

Filing Date: Sep-12-2012 1:10

Filed by: GINA GONZALES

Juke Box: 001 Image: 03760416

TEXT JUDGMENT

**CLEVELAND WRECKING COMPANY, A DELAWARE CORPORATION VS. WEST
BAY BUILDERS, A CALIFORNIA CORPORATION et al**

001C03760416

Instructions:

Please place this sheet on top of the document to be scanned.

6b5.4

Attachment B5

1 trial, the jury reached a verdict in favor of Cleveland Wrecking as to its causes of action
2 for Breach of Contract and Open Book Account, and found that West Bay had violated
3 the California prompt payment statute as to progress payments owed to Cleveland
4 Wrecking. The Court has reached a judgment in favor of Cleveland Wrecking in
5 connection with its cause of action on First National's stop notice release bond issued in
6 connection with the litigation. The parties appealed certain portions of the judgment.
7 The case was remanded by the Court of Appeal, with instructions to make additional
8 findings and amend the judgment accordingly, as reflected in this Third Amended
9 Judgment.

10 **GOOD CAUSE APPEARING THEREFOR, IT IS ORDERED, ADJUDGED AND**
11 **DECREEED AS FOLLOWS:**

12 Judgment shall be, and hereby is, entered as follows:

- 13 1. Judgment is entered in favor of Cleveland Wrecking and against West Bay
14 as follows:
- 15 a. On the first cause of action for breach of contract in the principal
16 amount of \$124,250, together with interest at the legal rate of 10% per
17 annum from November 5, 2007 to November 21, 2008 (the date of the
18 original judgment) for a total of \$13,037.74 in interest;
 - 19 b. On the fourth cause of action for an open book account in the principal
20 amount of \$107,000;
 - 21 c. On the second cause of action for violation of prompt payment statutes,
22 West Bay improperly withheld payment of \$87,000.00 owed to
23 Cleveland Wrecking in violation of California Business & Professions
24 Code §7108.5 ("the Prompt Payment Statute"), thus entitling Cleveland
25 Wrecking to a charge of 2% per month on the amount due from and
26 after November 5, 2007. Said interest comes to \$21,051.62 through
27 November 21, 2008 (the date of the original judgment) and will continue
28 to accrue at the rate of \$57.21 per day until entry of judgment; and

76 182

E-FILED

Aug 14, 2008 3:39 PM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
Case #1-05-CV-053450 Filing #G-10288
By M. Rosales, Deputy

1 SHEPPARD MULLIN RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
EDWARD B. LOZOWICKI, Cal. Bar No. 45536
3 BRIAN R. BLACKMAN, Cal. Bar No. 196996
Four Embarcadero Center, 17th Floor
4 San Francisco, California 94111-4106
Telephone: 415-434-9100
5 Facsimile: 415-434-3947

6 Attorneys for Plaintiff VIRACON, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA CLARA

11 ENGINEERED GLASS WALLS, INC.,

12 Plaintiff,

13 v.

14 WEST BAY BUILDERS, INC., CITY OF
SAN JOSE, and DOES 1 through 25,
inclusive,

15 Defendants.

16 WEST BAY BUILDERS, INC.,

17 Plaintiff,

18 v.

19 ENGINEERED GLASS WALLS, INC., and
DOES 1 through 20, inclusive,

20 Defendants

21 VIRACON INC.,

22 Plaintiff,

23 v.

24 ENGINEERED GLASS WALLS, INC.;
WEST BAY BUILDERS, INC.; SAFECO
25 INSURANCE COMPANY OF AMERICA;
CITY OF SAN JOSE; and DOES 1 through
26 100, inclusive,

27 Defendants

Case No. 105CV053450

[Consolidated with Case Nos. 106CV064387
and 106CV071242]

**NOTICE OF MOTION AND MOTION TO
SEVER; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION
OF BRIAN BLACKMAN; [PROPOSED]
ORDER**

Date: September 19, 2008

Time: 9:00 a.m.

Dept.: 17

The Honorable Jack Komar

28

Attachment B5

1 TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September 19, 2008, at 9:00 a.m., or as soon thereafter
3 as this matter may be heard in Department 17 of the above-entitled Court, located at 161 North
4 First Street, San Jose, CA, plaintiff Viracon, Inc. ("Viracon") will and does move this Court for an
5 Order Severing its action (Case No. 106CV071242) from the matters consolidated under lead case
6 *Engineered Glass Walls v. West Bay Builders, Inc., et al.*, Case No. 1-05-CV-053450.

7 This Motion is based on California Code of Civil Procedure section 1048(b) and on the
8 grounds that severance will further the interest of convenience, is necessary to avoid continued
9 prejudice to Viracon, and will minimize expense and delay.

10 Plaintiff Viracon bases this Motion to Sever on the following grounds:

11 1. Its action was improperly consolidated under California Code of Civil Procedure
12 section 1048(a).

13 2. Severance will be convenient to all parties to this litigation. It is clear from the
14 pleadings that Viracon's action, Case No. 106CV071242, involves far fewer and different parties
15 and claims than the remaining matters (Case Nos. 105CV053450 and 106CV064387), as well as
16 significantly different facts. Because Viracon's action has virtually nothing in common with the
17 other two consolidated matters, there is no convenience or economy in maintaining the
18 consolidation – let alone trying all three cases together.

19 3. A severance will also prevent the continued and inevitable prejudice to Viracon
20 were the actions to remain consolidated. If Viracon's action is not severed, it will continue to be
21 delayed by the extensive discovery and pre-trial motion practice that can be expected in
22 conjunction with the other consolidated matters. Plaintiff will also be saddled with the added and
23 unnecessary expense of participating in discovery, motion practice, trial and trial preparation, as
24 well as sitting through a much longer trial than if its action were tried alone.

25 4. Severance will also minimize expenses and delay. Discovery has severely limited
26 the issues in Viracon's matter, which amounts to a debt collection claim. It will be more
27 efficiently tried separately because of the divergent issues presented in each case. The other
28 consolidated actions present legal issues that will require extended discovery and pre-trial

Attachment B5

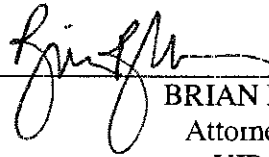
1 briefings that will not be required in Viracon's action.

2 This Motion is based upon this Notice of Motion and Motion, the attached Memorandum
3 of Points and Authorities, the Declaration of Brian R. Blackman, all papers, records and
4 documents on file in this action, and such oral arguments as the Court may permit at the time of
5 hearing.

6 DATED: August 14, 2008

7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

8
9 By



10 _____
11 BRIAN R. BLACKMAN
12 Attorneys for Plaintiff
13 VIRACON, INC.
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Attachment B5

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

1
2
3 The present consolidated action consists of three originally separate lawsuits: (i) Viracon,
4 Inc. v. Engineered Glass Walls, Inc., et al., Case No. 106CV071242 (the "Viracon Action"), (ii)
5 Engineered Glass Walls, Inc. v. West Bay Builders, Inc., et al., Case No. 105CV053450 (the
6 "EGW Action"), and (ii) West Bay Builders, Inc. v. Engineered Glass Walls, Inc., et al., Case No.
7 106CV064387 (the "West Bay Action") Viracon is not a party to either the EGW Action or the
8 West Bay Action.

9 The Viracon Action is a relatively straight forward collection matter with very limited
10 issues and only four defendants – two of which are nominal surety defendants. By contrast, The
11 EGW and West Bay Actions involve more than thirty different parties, include complex issues
12 relating to scope of work, construction defects, apportionment of liability, and two different
13 construction projects. The Viracon Action has very little, if anything, in common either legally or
14 factually with the EGW and West Bay Actions – beyond the naming of West Bay and EGW as
15 parties. Indeed, the Viracon Action has nothing to do with the Alum Rock Branch Library
16 Project, which – based on the allegations of their complaints – is at the root of the major disputes
17 between EGW, West Bay, and some twenty-nine (29) other contractors, subcontractors,
18 materialmen, designers, agents and employees on that project.

19 Defendant EGW agreed to stipulate to having this matter severed, but defendant West Bay
20 and its sureties would not. Viracon, therefore, seeks an order severing its straightforward
21 collection matter from the complex construction defect cases consolidated under the lead case of
22 Engineered Glass Walls, Inc. v. West Bay Builders, Inc., Case No. 1-05-053450. Severance will
23 serve the interest of justice, convenience and economy, as well as avoid the continued prejudice to
24 Viracon inherent from the delay and added expense of having to prosecute its claims as part of
25 this much larger consolidated action.

26 ///

27 ///

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Attachment B5

II. FACTUAL & PROCEDURAL BACKGROUND

A. The Viracon Action

Viracon has sued EGW, West Bay and West Bay's payment bond and stop notice release bond sureties, Safeco Insurance Company of America and First National Insurance Company of America, to collect more than \$110,000 it is owed for specialty glass that it designed, manufactured and furnished to the Almaden Community Center and Branch Library Project (the "Almaden Project"). (Ex. A to the Declaration of Brian Blackman ("Blackman Decl.")). West Bay was the general contractor for this project. (Id. at ¶ 13.) West Bay subcontracted with EGW for the furnishing and installation of curtain walls, entrance doors and glazing. (Id. at ¶ 14.) EGW, in turn, contracted with Viracon for the supply of some of the specialty glass it needed to complete its scope of work on the Almaden Project. (Id. at ¶ 15.)

Viracon designed, manufactured and furnished \$121,870.56 worth of specialty glass to the Almaden Project.¹ (Ex. A at ¶¶ 16 to Blackman Decl.) EGW only paid Viracon \$11,159.22 for this glass, leaving a balance due of \$110,711.34. (Id. at ¶ 19.) After EGW failed and refused to pay the balance owed, Viracon served a stop notice on the City of San Jose, West Bay and EGW. (Id. at ¶ 20.) Instead of paying the obligation, West Bay posted a stop notice release bond and denied Viracon's demand for payment. (Id. at ¶¶ 35-36.)

On September 15, 2006, Viracon sued EGW for breach of contract, account stated and goods sold and delivered. (Ex. A to Blackman Decl.) Viracon also sued West Bay and its sureties on the stop notice release bond and the payment bond for the Almaden Project, claiming it furnished materials with a value in excess of \$110,711.00 to the project for which it has not been paid. (Id.) There were no cross-complaints or third party complaints filed in the Viracon Action. (Blackman Decl. at ¶ 2.)

The Viracon Action has already undergone a mandatory pretrial mediation session before Ken Bryant on August 22, 2007 and completed a significant portion of its discovery. (Blackman

¹ This amount excludes the \$1,233.52 worth of specialty glass that EGW ordered and Viracon manufactured, but did not ship because it had not been paid for its prior shipments. Most of the glass EGW ordered was shipped directly to the project. A small portion, however, was shipped, at EGW's request, to its warehouse.

Attachment B5

1 Decl. at ¶ 3.) Indeed, the parties' discovery has dramatically reduced the potential issues for trial.
2 (Id.) Specifically, EGW has admitted that: (1) it ordered the subject glass from Viracon for the
3 Almaden Project; (2) it did not pay for all of the glass that Viracon furnished to the Almaden
4 Project; (3) it installed all of the Viracon glass at the Almaden Project; and (4) Viracon is owed
5 more than \$109,000 for this glass. (Ex. B to Blackman Decl.) West Bay, in turn, has admitted
6 that: (1) Viracon supplied specialty glass to the Almaden Project; and (2) some of the glass
7 conformed to specifications and was installed at the project. (Ex. C to Blackman Decl.)

8 Given these admissions, there is only one main issue of fact. West Bay contends that
9 some of the glass Viracon furnished to the Almaden Project was broken, stolen or defective. (Ex.
10 D to Blackman Decl.) West Bay, however, can only point to \$1,700 worth of the more than
11 \$110,711.34 that is owed to Viracon as being broken, stolen or defective. (Ex. D to Blackman
12 Decl.) This issue of fact, in all likelihood, will preclude summary judgment. Viracon, therefore,
13 must await trial.

14 Prior to consolidation on September 18, 2007 and with only a few depositions left to take,
15 Viracon intended on requesting a trial date at the mediation status review that was scheduled for
16 September 27, 2007. (Blackman Decl. at ¶ 7.) This conference, however, was taken off calendar
17 following consolidation. The Viracon Action has now sat idle for almost eleven (11) months,
18 awaiting the consolidated matter to be "at issue." (Id.)

19 **B. The EGW Action**

20 The EGW Action arises from work EGW alleged performed or failed to perform on the
21 Alum Rock Branch Library Project (the "Alum Rock Project"). Viracon did not furnish any
22 material or work to the Alum Rock Project. Viracon was never named, nor could it be, as a party
23 in this case. (Blackman Decl. at ¶ 8.) Viracon, therefore, knows very little about the EGW
24 Action.

25 According to EGW's Amended Complaint, West Bay was the general contractor on the
26 Alum Rock Project and subcontracted the furnishing and installation of curtain walls, windows
27 and glazing to EGW. (Ex. E to Blackman Decl.) EGW claims that West Bay still owes
28 \$333,108.99 for the work it completed on the Alum Rock Project. (Id. at ¶ 10.) West Bay

Attachment B5

1 responded by filing a Cross-Complaint against EGW, claiming inter alia that EGW breached the
2 subcontract, installed defective material, and failed to properly conduct, coordinate and supervise
3 its work on the Alum Rock Project. (Ex. F to Blackman Decl.) EGW thereafter filed its own
4 Cross-Complaint for implied equitable indemnity and contribution, negligence and declaratory
5 relief against some twenty-nine (29) contractors, subcontractors, material suppliers, designers,
6 agents and employees that worked on or provided materials to the Alum Rock Project. (Ex. G to
7 Blackman Decl.) At least two of these cross-defendants, Inemec Company, Inc. and Dependable
8 Precision Manufacturing, Inc., have filed their own cross-complaints. (Blackman Decl. at ¶ 10.)

9 Viracon (a glass manufacturer and supplier) did not manufacture or supply any glass to the
10 Alum Rock Project. The EGW Action, therefore, bears no factual connection to Viracon or its
11 claims on the Almaden Project, and cannot be used as either defenses to or offsets against
12 Viracon's claims.

13 C. The West Bay Action

14 On May 25, 2006, West Bay filed an action against EGW in connection with their
15 subcontract for the Almaden Project, alleging claims for breach of contract, negligence and
16 indemnity (Ex. H to Blackman Decl.) West Bay contends that it has been damaged by EGW's
17 allegedly defective and incomplete work on the Almaden Project. (Id.) EGW cross-complained
18 for breach of contract and recovery on the stop notice release bond and payment bond for the
19 project. (Blackman Decl. at ¶ 11.)

20 D. Consolidation

21 The Viracon Action was consolidated with the EGW and West Bay Actions on September
22 18, 2007. Prior to consolidation, Viracon had only a few (less than 5) depositions left to complete
23 and intended on requesting a trial date at the mediation status review conference set for
24 September 27, 2007. (Blackman Decl. at ¶ 7.) Since consolidation, everything has come to a
25 grinding and prejudicial halt.

26 As of the last case management conference on June 13, 2008, the consolidated case was
27 not at issue because all of the parties to the Alum Rock Project claims had not appeared, or been
28 served, or even possibly identified. (Blackman Decl. at ¶ 13.) In addition, very little or no

Attachment B5

1 discovery appears to have been completed in either the EGW or West Bay Actions. (Id) This
2 invariably means that unless its claims are severed Viracon will have to wait another year for a
3 trial date.

III. ARGUMENT

4
5 Code of Civil Procedure section 1048(b) ("Section 1048(b)") provides that the Court may
6 order a separate trial of any cause of action, issue, or issues when such severance is "in
7 furtherance of convenience, or to avoid prejudice, or when separate trials will be conducive to
8 expedition and economy " Cal. Civ. Proc. Code § 1048(b). Section 1048(b) is precisely the tool
9 that should be used to separate the Viracon Action from the EGW and West Bay Actions.

10 Courts regularly employ Civil Procedure Code section 1048(b) to sever unrelated cases
11 and claims. See, e.g., Roylance v. Doelger (1962) 57 Cal.2d 255, 261-62 (observing that trial
12 court's discretion to sever issues for separate trial under Section 1048 affords a solution where a
13 cross-complaint raises complex issues); Lindsay v. Am. President Lines, Ltd. (1963)
14 214 Cal App.2d 146, 149 (1963) (cross-complaint for indemnity brought by defendant employer
15 against employee seaman who assaulted fellow seaman plaintiff was improperly stricken, but
16 could be severed to allow issues raised therein to be tried separately); Omni Aviation Managers,
17 Inc. v. Mun. Court (1976) 60 Cal App 3d 682, 685 (cross-complaint for malpractice attached to
18 unrelated complaint was properly severed).

19 In upholding a trial court's proper exercise of discretion to sever a cross-complaint under
20 Section 1048, one court explained:

21 Section 1048 of the Code of Civil Procedure authorizes a separation
22 of the issues whenever it can be done without prejudice to a
23 substantial right The issues, as presented by the cross-
24 complaint, were purely personal between appellant and those cross-
25 defendants, and their respective rights thereunder would require an
26 accounting between them. Plaintiffs should not be saddled with this
27 added burden and cost of trial.

28 Bratton & Moretti v. Finerman & Son (1959) 171 Cal.App 2d 430, 435 (affirming judgment for
the plaintiff and finding no error in the trial court's decision to sever issues raised in the cross-
complaint).

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1 This case presents exactly the same situation. Viracon's claims for debt collection have
2 absolutely nothing to do with the allegations of breach of contract, negligence, indemnity,
3 contribution and declaratory relief raised in the EGW Action. Indeed, the Viracon Action has
4 nothing to do with the Alum Rock Project. These two distinct cases, therefore, should be severed.
5 This is particularly true given that there are more than twenty-nine additional parties to the EGW
6 Action that have no connection or role in the Viracon Action.

7 Although the Viracon Action bears some relation to the West Bay Action (because they
8 arise from the same construction project), their factual and legal issues are very different. The
9 Viracon Action contains only four claims and two common counts – all aimed at collecting the
10 more than \$110,000 owed for materials furnished to the Almaden Project. (Ex. A to Blackman
11 Decl.) Moreover, the only remaining issue in the Viracon Action is whether defendants are liable
12 to Viracon for glass that was broken, stolen or defective, and, if not, how much is Viracon owed
13 for the glass that was not broken, stole or defective. (Exs. C-D to Blackman Decl.) This issue is
14 only a tiny piece of the much broader breach of contract and negligence issues raised by the West
15 Bay Action

16 By way of contrast, West Bay claims, inter alia, that EGW (i) failed to complete its scope
17 of work, (ii) breached the covenant of good faith and fair dealing under their subcontract, (iii)
18 failed, neglected and refused to properly conduct, coordinate and supervise its work, (iv) delayed
19 the project, (v) abandoned the project, and (vi) has failed to defend and indemnify West Bay
20 under the subcontract. (Ex. H to Blackman Decl.) None of these factual or legal issues are
21 present in the Viracon Action. (Compare Exs. A and H to Blackman Decl.) Finally, the West
22 Bay Action is based on the EGW and West Bay subcontract, which is not directly at issue in the
23 Viracon Action.

24 The Viracon, EGW and West Bay Actions are distinct and different, and will require
25 different proof put on by different witnesses and different evidence. The fact that some witnesses
26 and evidence may be the same in all three cases should not preclude severance. Kaiser Steel
27 Corp. v. Westinghouse Electric Corp. (1976) 55 Cal App.3d 737, 746 (bifurcation under C.C.P. §
28 598 upheld because ends of justice served despite repeat of some evidence in both phases).

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1 Because, the Viracon Action is distinct and different from the EGW and West Bay Actions, it
2 should be severed.

3 **A. The Viracon Action Was Improperly Consolidated With The EGW and West Bays**
4 **Actions.**

5 Consolidation pursuant to Code of Civil Procedure section 1048 and Civil Code
6 section 3214 are not a matter of right. Courts enjoy broad discretion to refuse consolidation.
7 Fisher v. Nash Building Co. (1952) 113 Cal App 2d 397, 402. Consolidation is properly refused
8 where individual issues predominate or consolidation would prejudice one or more of the parties.
9 State Farm Mut. Auto Ins. Co. v. Superior Court (1956) 47 Cal App 2d 428, 431-32; Todd-
10 Stenberg v. Dalkon Shield Claimants Trust (1996) 48 Cal App 4th 976, 979.

11 As discussed in detail above, the Viracon Action presents widely divergent issues and
12 facts from both the EGW Action and the West Bay Action. As such, the Viracon Action does not
13 share the "common questions of law or fact" required for consolidation under Code of Civil
14 Procedure section 1048(a). The only common fact shared by all three of these cases is that West
15 Bay was the general contractor and EGW the subcontractor. Beyond this simple relationship, the
16 two contractual disputes between West Bay and EGW fail to share any common questions that
17 would justify consolidation with Viracon's collection matter.

18 **B. Severance Will Serve the Convenience of All Parties.**

19 Severance will promote the interests of convenience to all parties. The parties to the
20 Viracon Action and the EGW Action are entirely different (except for West Bay and EGW), as
21 are the underlying causes of action. (Compare Exs. A and E to Blackman Decl.) Because the two
22 lawsuits have nothing in common (not even the same construction project), there is no
23 convenience or economy in trying the two cases together. In fact, trying these two unrelated
24 actions would greatly inconvenience the parties. Viracon's rather simple claims for debt
25 collection will almost certainly be bogged down and lost in the details of the contract, negligence,
26 indemnity, contribution and declaratory relief claims of some thirty different parties to the EGW
27 Action.

28 As for the West Bay Action, the underlying factual and legal issues are completely

Attachment B5

1 different and more complex than those raised in the Viracon Action. The West Bay Action
2 addresses all of EGW's work on the Almaden Project and its obligations under their subcontract.
3 The Viracon Action addresses only a tiny portion of EGW's work on the Almaden Project –
4 namely the supply of glass and payment therefor.

5 Absent severance, Viracon will be saddled with the burden of addressing claims,
6 participating in discovery and settlement conferences, and attending trial of claims that have
7 nothing to do with it. Viracon is not a party to either the EGW or West Bay Actions. (See
8 generally, Exs. E-I to Blackman Decl) The interest of convenience, therefore, favor severing the
9 Viracon Action from this consolidated proceeding

10 C. Severance Will Prevent Continued Prejudice to Viracon.

11 Severance will also prevent the continued and inevitable prejudice to Viracon. If
12 Viracon's Action is not severed, its claims will continue to be delayed by the extensive discovery,
13 settlement and pre-trial motion practice that can be expected in conjunction with the EGW and
14 West Bay Actions. The complicated legal and factual issues involved in the EGW and West Bay
15 Actions will delay Viracon's ability to prosecute its simple debt claim. See, e.g., Roylance, 57
16 Cal. 2d at 261-62; Omni, 60 Cal. App. 3d at 685. In fact, they already have.

17 The Viracon Action was all but ready for trial in September 2007 when these matters were
18 consolidated. (Blackman Decl. at ¶ 7.) In the ten months since consolidation, this action is still
19 not "at issue" and has not begun discovery. (Id.) Viracon, therefore, will likely have to wait
20 another year before it is given a trial date.

21 Furthermore, the EGW Action contains fact, issues and more than twenty-nine parties that
22 have absolutely nothing to do with the Viracon Action. (Exs. A and E to Blackman Decl.) A trial
23 of the EGW and Viracon Actions together will unfairly saddle Viracon with the burden and
24 expense of attending a much longer and more complicated trial

25 Finally, Viracon will also be prejudiced if its action is not severed because the majority of
26 discovery time will be spent on issues completely unrelated to its claims. Viracon should not be
27 saddled with the added burden, fees, and costs associated with the additional degree of
28 complexity associated with the improper consolidation of the Viracon Action with the EGW and

Attachment B5

1 West Bay Actions.

2 **D. Severance Is in the Interests of Judicial Economy and Efficiency.**

3 Severance of the Viracon Action will minimize expenses and delay. The Viracon Action
4 can be more efficiently tried separately because of the limited issues and divergent claims and
5 facts from those raised by the EGW and West Bay Actions. See, e.g., Roylance, 57 Cal. 2d at
6 261-62. The EGW and West Bay Actions present complex legal issues that will require extended
7 discovery and pre-trial briefings, as well as a lengthy trial, that will not be required in a trial of the
8 Viracon Action – a straightforward debt collection claim. Because the claims involved in the
9 EGW and West Bay Actions are much more complicated than those involved in the Viracon
10 Action, severance is appropriate.

11 **IV. CONCLUSION AND REQUESTED RELIEF**

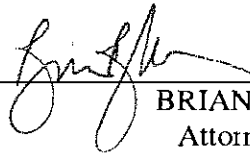
12 Severance of the Viracon Action is necessary. This action was improperly consolidated
13 with the EGW and West Bay Actions. Without severance, the various parties (most notably
14 Viracon) and the Court will be inconvenienced and prejudiced. Further, severance will provide a
15 more efficient resolution of the issues involved in the Viracon Action.

16 For all the foregoing reasons, Viracon respectfully request that the Court sever the
17 Viracon Action (Case No. 106CV071242) from these consolidated proceedings and set a trial
18 dated at a time and date convenient to the Court in or after January 2009.

19 DATED: August 14, 2008

20 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

21
22 By



23 BRIAN R. BLACKMAN
24 Attorneys for Plaintiff
25 VIRACON, INC.
26
27
28

Attachment B5

E-FILED

Oct 17, 2008 3:27 PM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
Case #1-05-CV-053450 Filing #G-11558
By J. Cao-Nguyen, Deputy

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6 Attorneys for Plaintiff VIRACON, INC.

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA CLARA

10
11 ENGINEERED GLASS WALLS, INC.,

12 Plaintiff,

13 v.

14 WEST BAY BUILDERS, INC., CITY OF
SAN JOSE, and DOES 1 through 25,
inclusive,

15 Defendants.

16 WEST BAY BUILDERS, INC.,

17 Plaintiff,

18 v.

19 ENGINEERED GLASS WALLS, INC., and
DOES 1 through 20, inclusive,

20 Defendants

21 VIRACON INC.,

22 Plaintiff,

23 v.

24 ENGINEERED GLASS WALLS, INC.;
WEST BAY BUILDERS, INC.; SAFECO
25 INSURANCE COMPANY OF AMERICA;
CITY OF SAN JOSE; and DOES 1 through
26 100, inclusive,

27 Defendants

Case No. 105CV053450

[Consolidated with Case Nos. 106CV064387
and 106CV071242]

*Assigned to: The Hon. Jack Komar
Department: 17*

DEFENDANT'S CASE MANAGEMENT CONFERENCE STATEMENT

Date: October 24, 2008

Time: 10:00 a.m.

Dept: 17

Attachment B5

1 Plaintiff Viracon, Inc. submits this case status conference statement pursuant Complex
2 Civil Guideline 6 and the Court's instruction during the August 22, 2008 case management
3 conference.

4 I. SUMMARY OF THE CASE

5 The present consolidated action consists of three originally separate lawsuits: (i)
6 Engineered Glass Walls, Inc. v. West Bay Builders, Inc., et al., Case No. 105CV053450 (the
7 "EGW Action"), (ii) West Bay Builders, Inc. v. Engineered Glass Walls, Inc., et al., Case No.
8 106CV064387 (the "West Bay Action"), and (iii) Viracon, Inc. v. Engineered Glass Walls, Inc., et
9 al., Case No. 106CV071242 (the "Viracon Action") All three actions arise from the construction
10 of two public libraries for the City of San Jose, called the Alum Rock Branch Library Project and
11 the Almaden Community Center and Branch Library Project.

12 West Bay was the general contractor on both projects and hired EGW to perform certain
13 window and glazing work at the projects. EGW contracted with Viracon to supply glass for
14 Almaden Library Project. Viracon did not perform any work or supply any materials to the Alum
15 Rock Project.

16 EGW has sued West Bay alleging various claims relating to West Bay's alleged failure
17 and refusal to pay EGW for work it performed on the Alum Rock Project. West Bay has sued
18 EGW alleging various claims relating to EGW's allegedly defective work, delays and
19 abandonment of the Almaden Library Project. Viracon has sued EGW, West Bay and West Bay's
20 payment bond and stop notice release bond sureties to collect amounts due and owing for glass it
21 supplied to Almaden Library Project.

22 II. PROCEDURAL STATUS

23 A. Pleadings And Motions

24 The EGW Action was filed on November 3, 2005 with an Amended Complaint filed on
25 February 27, 2007 West Bay answered EGW's Complaint and filed a Cross-Complaint in
26 February 2006.

27 The West Bay Action was filed on May 25, 2006. EGW answered West Bay's Complaint
28 and filed a Cross-Complaint in June 2006.

Attachment B5

1 The Viracon Action was filed on September 15, 2006. All parties have answered
2 These three cases were consolidated by order dated September 18, 2007 and designated
3 complex by order dated March 28, 2008. Viracon move for an order severing its claims for
4 separate trial in August 2008. The Court denied the motion on September 19, 2008.

5 **B. Discovery**

6 **1. Written and Deposition Discovery**

7 Viracon has completed all of its written discovery in connection with the Viracon matter.
8 Viracon has one deposition to complete prior to trial. Viracon understands that West Bay and
9 EGW have begun their discovery in connection with the West Bay and EGW Actions and that
10 their discovery is on going.

11 **C. Trial**

12 The Viracon Action was filed more than two years ago and is ready for trial. Come
13 November 2008, the EGW Action will be three years old. Viracon requests that the Court set this
14 consolidated matter for trial in the first half of 2009.

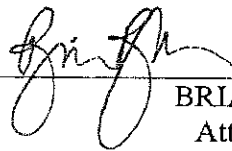
15 **III. STATUS OF SETTLEMENT DISCUSSIONS**

16 Settlement discussions between plaintiff Viracon and defendants West Bay, its sureties
17 and EGW have proved unable to resolve the Viracon Action and further settlement discussions
18 have ceased.

19 DATED: October 17, 2008

20 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

21
22 By



23 BRIAN R. BLACKMAN
24 Attorneys for Plaintiff
25 VIRACON, INC.
26
27
28

Attachment B5

E-FILED

Feb 24, 2009 11:21 AM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
Case #1-05-CV-053450 Filing #G-13859
By C. Pinacate, Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA
10

11 ENGINEERED GLASS WALLS, INC.,

12 Plaintiff,

13 v.

14 WEST BAY BUILDERS, INC., CITY OF
SAN JOSE, and DOES 1 through 25,
15 inclusive,

16 Defendants

17 WEST BAY BUILDERS, INC.,

18 Plaintiff,

19 v.

20 ENGINEERED GLASS WALLS, INC., and
DOES 1 through 20, inclusive,

21 Defendants

22 VIRACON INC.,

23 Plaintiff,

24 v.

25 ENGINEERED GLASS WALLS, INC.;
WEST BAY BUILDERS, INC.; SAFECO
INSURANCE COMPANY OF AMERICA;
CITY OF SAN JOSE; and DOES 1 through
26 100, inclusive,

27 Defendants
28

Case No. 105CV053450

[Consolidated with Case Nos. 106CV064387
and 106CV071242]

Assigned to: *The Hon. Jack Komar*
Department: 17

DEFENDANT'S CASE MANAGEMENT CONFERENCE STATEMENT

Date: February 27, 2009
Time: 10:00 a.m.
Dept: 17

Attachment B5

1 Plaintiff Viracon, Inc. submits this case status conference statement pursuant Complex
2 Civil Guideline 6 and the Court's instruction during the last case management conference.

3 I. SUMMARY OF THE CASE

4 The present consolidated action consists of three originally separate lawsuits: (i)
5 Engineered Glass Walls, Inc. v. West Bay Builders, Inc., et al., Case No. 105CV053450 (the
6 "EGW Action"), (ii) West Bay Builders, Inc. v. Engineered Glass Walls, Inc., et al., Case No.
7 106CV064387 (the "West Bay Action"), and (iii) Viracon, Inc. v. Engineered Glass Walls, Inc., et
8 al., Case No. 106CV071242 (the "Viracon Action"). All three actions arise from the construction
9 of two public libraries for the City of San Jose, called the Alum Rock Branch Library Project and
10 the Almaden Community Center and Branch Library Project.

11 West Bay was the general contractor on both projects and hired EGW to perform certain
12 window and glazing work at the projects. EGW contracted with Viracon to supply glass for
13 Almaden Library Project. Viracon did not perform any work or supply any materials to the Alum
14 Rock Project.

15 EGW has sued West Bay alleging various claims relating to West Bay's alleged failure
16 and refusal to pay EGW for work it performed on the Alum Rock Project. West Bay has sued
17 EGW alleging various claims relating to EGW's allegedly defective work, delays and
18 abandonment of the Almaden Library Project. Viracon has sued EGW, West Bay and West Bay's
19 payment bond and stop notice release bond sureties to collect amounts due and owing for glass it
20 supplied to Almaden Library Project.

21 II. PROCEDURAL STATUS

22 A. Pleadings And Motions

23 The EGW Action was filed on November 3, 2005 with an Amended Complaint filed on
24 February 27, 2007. West Bay answered EGW's Complaint and filed a Cross-Complaint in
25 February 2006.

26 The West Bay Action was filed on May 25, 2006. EGW answered West Bay's Complaint
27 and filed a Cross-Complaint in June 2006.

28 The Viracon Action was filed on September 15, 2006. All parties have answered.

Attachment B5

1 These three cases were consolidated by order dated September 18, 2007 and designated
2 complex by order dated March 28, 2008. Viracon move for an order severing its claims for
3 separate trial in August 2008. The Court denied the motion on September 19, 2008

4 The consolidated action is set for trial starting on April 20, 2009 and Mandatory
5 Settlement Conference on April 15, 2009

6 **B. Discovery**

7 **1. Written and Deposition Discovery**

8 Viracon has completed most of its written discovery in connection with the Viracon
9 matter. Viracon has a few deposition to complete prior to trial. Viracon understands that West
10 Bay and EGW have begun their discovery in connection with the West Bay and EGW Actions
11 and that their discovery is on going.

12 **C. Trial**

13 The Court has set the consolidated case for trial starting April 20, 2009.

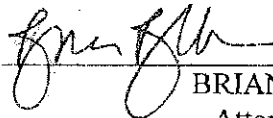
14 **III. STATUS OF SETTLEMENT DISCUSSIONS**

15 Viracon completed a full day mediation with West Bay before mediator Ken Bryant in the
16 fall of 2007. That mediation was unsuccessful. Settlement discussions between plaintiff Viracon
17 and defendants West Bay and its sureties are ongoing.

18 DATED: February 20, 2009

19 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

20
21 By



22 BRIAN R. BLACKMAN
23 Attorneys for Plaintiff
24 VIRACON, INC.
25
26
27
28

Attachment B5

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA
10

11 ENGINEERED GLASS WALLS, INC.,

12 Plaintiff,

13 v

14 WEST BAY BUILDERS, INC., et al.

15 Defendants

16 WEST BAY BUILDERS, INC.,

17 Plaintiff,

18 v.

19 ENGINEERED GLASS WALLS, INC., et al

20 Defendants

21 VIRACON, INC.,

22 Plaintiff,

23 v

24 ENGINEERED GLASS WALLS, INC., et al ,

25 Defendants

Case No 105CV053450

[Consolidated with Case Nos : 106CV064387
and 106CV071242]

**STIPULATION FOR ENTRY OF
JUDGMENT**

Attachment B5

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff Viracon, Inc. ("Viracon") and defendant Engineered Glass Walls, Inc. ("EGW")
3 hereby stipulate to entry of judgment in favor of Viracon and against EGW with reference to the
4 following recitals

5 A. On or about May 5, 2004, West Bay Builders, Inc. ("West Bay") entered into a
6 prime contract with the City of San Jose (the "City") for the construction and completion of a
7 public work project commonly known as the Almaden Community Center and Branch Library
8 Project, located at 6445 Camden Avenue, San Jose, California 95120 (the "Project");

9 B. On or about May 25, 2004, West Bay entered into a subcontract with EGW for the
10 supply and installation of all glazing, curtain walls and entrance doors for the Project;

11 C. EGW contracted with Viracon for the supply of specially designed and
12 manufactured glass for the Project;

13 D. On September 8, 2005, Viracon served a Preliminary 20-Day Notice on the City,
14 West Bay, and EGW, identifying Viracon as a glass supplier for the Project;

15 E. Throughout the course of the Project, EGW ordered from Viracon and Viracon
16 furnished to the Project approximately \$121,870.56 worth of specially designed and manufactured
17 glass to the Project;

18 F. EGW did not pay Viracon for all of the glass that Viracon furnished to the Project;

19 G. On September 15, 2006, Viracon filed an action in the Santa Clara County Superior
20 Court, entitled Viracon, Inc. v. Engineered Glass Walls, et al., Case No. 106CV071242 (the
21 "Action");

22 H. Viracon contends that it is owed \$110,711.34 for specialty glass that it
23 manufactured and furnished to the Project, plus attorney's fees, costs, and interest;

24 **STIPULATION**

25 **IT IS HEREBY STIPULATED AND AGREED** by and between Plaintiff Viracon and
26 Defendant EGW as follows:

27 1. The Court shall enter judgment in Viracon's favor and against EGW in the
28 principal amount of \$110,711.34;

Attachment B5

1 2. Viracon may apply to the Court on an *ex parte* basis for the entry of
2 judgment. EGW hereby waives notice of any proceeding to have judgment entered in accordance
3 with paragraph 1 of this stipulation.

4 3. EGW further waives any right to set aside the judgment, appeal therefrom,
5 or otherwise attack the validity of the judgment.

6 4. This stipulation may be executed in any number of counterparts. The
7 parties agree that a facsimile signature shall be treated in all respects as having the same effect as
8 an original signature.

9 5. This stipulation is without prejudice to Viracon's independent causes of
10 action in the Action against co-defendants West Bay Builders, Inc , Safeco Insurance Company of
11 America, and First National Insurance Company of America.

12 **IT IS SO STIPULATED.**

13 ENGINEERED GLASS WALLS, INC.

14 Name: _____
15 Title: _____

16 VIRACON, INC.

17 Name: _____
18 Title: _____

19 APPROVED AS TO FORM:

20 Dated: March ___, 2009

21 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

22 By _____

23 EDWARD B. LOZOWICKI
24 BRIAN R. BLACKMAN
25 Attorneys for Plaintiff
26 Plaintiff Viracon, Inc.

Attachment B5

1 Dated: ^{Apr} March 9, 2009

2 LAW OFFICES OF CHARLES L. HASTINGS

3
4 By 

5 CHARLES L. HASTINGS
6 Attorneys for
7 Defendant Engineered Glass Walls, Inc.

8 JUDGMENT

9 Defendant Engineered Glass Walls, Inc. (EGW") having entered into a Stipulation for
10 Entry of Judgment providing that judgment may be entered herein in favor of plaintiff Viracon,
11 Inc. ("Viracon");

12 IT IS HEREBY ORDERED that judgment be and hereby is entered in favor of plaintiff
13 Viracon and against defendant EGW in the principal sum of \$110,711.34.

14 Dated: April __, 2009

15
16 _____
17 THE HONORABLE JACK KOMAR
18 SUPERIOR COURT JUDGE
19
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28

Attachment B5

E-FILED

May 5, 2009 3:29 PM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
Case #1-05-CV-053450 Filing #G-15423
By C. Pinacate, Deputy

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6 Attorneys for Plaintiff VIRACON, INC.

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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14 WEST BAY BUILDERS, INC., CITY OF
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inclusive,

15 Defendants.

16 WEST BAY BUILDERS, INC.,

17 Plaintiff,

18 v

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24 ENGINEERED GLASS WALLS, INC.;
WEST BAY BUILDERS, INC.; SAFECO
25 INSURANCE COMPANY OF AMERICA;
CITY OF SAN JOSE; and DOES 1 through
26 100, inclusive,

27 Defendants

Case No. 105CV053450

[Consolidated with Case Nos. 106CV064387
and 106CV071242]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VIRACON'S MOTION FOR AWARD OF
ATTORNEYS' FEES AND COSTS**

Date: June 12, 2009

Time: 9:00 a.m.

Dept.: 17

The Honorable Jack Komar

Attachment B5

TABLE OF CONTENTS

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I. INTRODUCTION

1
2 Plaintiff Viracon, Inc. ("Viracon") is entitled as a matter of right to its out of pocket costs
3 and expenses spent pursuing rightful compensation for the materials it furnished to the Almaden
4 Community Center and Branch Library project (the "Project"). Defendant Engineered Glass
5 Walls, Inc. ("EGW") – the subcontractor that ordered and installed Viracon's glass at the Project –
6 admitted almost two years ago that it did not pay Viracon for the glass. Despite this irrefutable
7 evidence of their statutory liability, defendants West Bay Builders, Inc. ("West Bay"), its payment
8 bond surety Safeco Insurance Company of America ("Safeco") and its stop notice release bond
9 surety First National Insurance Company of America ("First National") waged a litigation war of
10 attrition, attempting to exhaust Viracon's resolve despite having all but conceded they had no
11 defense to Viracon's claims.

12 In doing so, Safeco flagrantly ignored its statutory obligation to pay promptly any
13 materialmen, who furnished material to the Project, upon the default of West Bay or its
14 subcontractor EGW. Civil Code §§ 2807, 3248. Worse, Safeco and West Bay rebuffed all
15 attempts to settle the dispute both before and throughout the litigation often refusing to make any
16 settlement proposal or counteroffer whatsoever. Safeco, West Bay and First National knew they
17 had no legitimate defense to Viracon's claims, but dragged this litigation out over almost three-
18 years. In typical insurer fashion, defendants waited until just days before trial to agree to the
19 settlement proposed by Viracon in November 2008.

20 West Bay, Safeco, First National and Viracon have executed a Stipulated Settlement and
21 Order, which was entered by the Court on April 15, 2009 (the "Stipulated Settlement").¹ The
22 Stipulated Settlement does three things. First, it allows Viracon to accept payment from West
23 Bay of the full \$110,711.34 principal balance owed for glass it furnished to the Project without
24 prejudice to its claims for attorney's fees, costs and interest. Second, and most importantly, it
25 establishes Viracon as the "prevailing party" on its payment bond (fourth cause of action) and

26
27 ¹ Viracon has also obtained a Stipulated Judgment from EGW. At the request of all defendants, Viracon has
28 agreed to hold-off entering the Stipulated Judgment for ninety-days so that this motion may be resolved and a single
judgment entered.

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1 stop notice release bond (third cause of action) claims without trial. Third, it submits to the Court
2 for determination two limited issues, which will be reduced to judgment, (i) the amount of fees
3 and costs Viracon shall collect from Safeco and West Bay on the payment bond claim, and (ii) the
4 amount and right to recover prejudgment interest from defendants West Bay, Safeco and First
5 National.

6 As detailed below, Safeco, West Bay and First National had every opportunity to settle
7 these claims before litigation was filed, at mediation and in response to any number of Viracon's
8 settlement requests, all of which Safeco and West Bay ignored without so much as offering a
9 single penny. It was not until just days before trial that these defendants finally conceded, in part
10 to avoid the costs and expense of trial, forcing Viracon to incur substantial fees and costs
11 preparing its case for trial. Against this backdrop, Viracon requests an award of **\$224,770.90** in
12 attorney fees (plus an additional amount covering fees incurred in May 2009), and **\$5,185.94** in
13 statutory costs. As one court noted, "[p]arties who litigate with no holds barred in cases such as
14 this, in which the prevailing party is entitled to a fee award, assume the risk they will have to
15 reimburse the excessive expenses they force upon their adversaries." *Stokus v. Marsh*, 217
16 Cal.App.3d 647, 653-54 (1990)

17 II. FACTUAL & CASE HISTORY

18 A. The Project And The Payment Bond

19 In 2004 the City of San Jose (the "City") called for bids for the construction of a public
20 work project commonly known as the Almaden Community Center and Branch Library project,
21 located at 6445 Camden Avenue, San Jose, California (the "Project"). The City awarded the
22 prime construction contract to West Bay. West Bay provided a \$1.7 million payment bond from
23 Safeco to satisfy its statutory bonding obligations (Civil Code §§ 3247 and 3248) for the Project.
24 (*See Exhibit 2 attached to Declaration of Edward B. Lozowicki ("Lozowicki Decl.")*.)

25 The payment bond secures payment of, among others, all materialmen that furnish
26 materials or supplies to the Project in the event that either the prime contractor (West Bay) or any
27 subcontractor fail to make payment. Civil Code § 3248. The Safeco payment bond tracks the
28 language of California Civil Code section 3248, stating in pertinent part:

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1 THE CONDITIONS OF THIS OBLIGATION IS SUCH that if said
2 Principal, **subcontractors**, heirs, executors, administrators,
3 successors or assigns, shall fail to pay any of the persons named in
4 Section 3181 of the California Civil Code, ... the Surety will pay
for the same, in an amount not exceeding the sum hereinabove
specified, and also, in case suit is brought upon this bond, a
reasonable attorney's fee to be fixed by the court.

5 (Ex. 2 to Lozowicki Decl. [emphasis added].) Safeco and West Bay are jointly and severally
6 liable on the payment bond. "[W]e, the Principal and Safeco Insurance Company of America ...
7 bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally,
8 firmly by these presents." (*Id.*)

9 **B. West Bay Subcontracts With EGW For Certain Glass Work**

10 In May 2004, West Bay entered into a subcontract with defendant EGW. (*See* Exhibit 12
11 to the Declaration of Brian Blackman ("Blackman Decl ").) The subcontract states that EGW
12 shall provide "all labor, services, materials, installation ... to complete curtain walls, entrance
13 doors, glazing for the project..." (*Id.* at Section 2 [emphasis added].) EGW, therefore, was
14 responsible for ordering and furnishing the glass necessary for completing its scope of work.
15 EGW had a pre-existing agreement with Viracon for the design, manufacture, purchase and
16 delivery of glass on credit. (Exhibit 9 attached to Declaration of Jerry Drake ("Drake Decl.")).
17 Between August 2005 and May 2006, EGW ordered more than \$121,000 worth of specially
18 designed glass from Viracon for the Project. (Drake Decl., ¶ 4; Ex. 10 attached thereto.)

19 **C. Viracon Serves Notice And Furnishes Glass To The Project.**

20 On September 8, 2005, Viracon served a Preliminary 20-Day Notice on the City, West
21 Bay, and EGW, identifying Viracon as a glass supplier for the Project. (Ex. 13 to Blackman
22 Decl.) Viracon thereafter designed, manufactured and shipped \$121,870.56 worth of specialty
23 glass to the Project in accordance with the specification it received from EGW. (Drake Decl.,
24 ¶¶ 3-4; Ex. 10.) EGW only paid Viracon \$11,159.22 for these shipments, leaving a balanced
25 owed of \$110,711.34. (Drake Decl., ¶ 5; Ex. 10.)

26 **D. Viracon Demands Payment From Safeco.**

27 On May 2, 2006, Viracon served the City, West Bay and EGW with a Stop Notice,
28 demanding the City withhold funds due West Bay under the prime contract in the amount of

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1 \$106,523.25 Viracon also made demand on Safeco for payment under the payment bond.
2 (Exhibit 14 to Blackman Decl.) Safeco acknowledged receipt of the demand by letter dated May
3 11, 2006, stating it would "immediately take this matter up with our bond principal [West Bay]."
4 (*Id.*) Viracon made a second demand on Safeco and West Bay by letter dated May 17, 2006,
5 requesting payment of the full \$110,711.34 owed, and served an Amended Stop Notice reflecting
6 the same. (Exs. 15-16 to Blackman Decl.) *Had Safeco abided its statutory obligation to pay*
7 *Viracon at this point, then its liability could have been limited to the principal balance plus*
8 *interest.* Safeco, and for that matter West Bay, however, failed to make payment and Viracon
9 referred the matter to counsel for collection.

10 E. Viracon Responds To Stop Notice Challenge

11 The City notified Viracon in June 2006 that West Bay had challenged Viracon's stop
12 notice as "excessive." Viracon prepared and filed a counter affidavit, substantiating its claim for
13 \$110,711.34. (Ex. 11 to Drake Decl.) After the City continued to withhold payment based on
14 Viracon's stop notice, West Bay provided a stop notice release bond from defendant First
15 National to secure release of the withheld funds. (Ex. 17 to Blackman Decl.)

16 F. Viracon Makes Its Third Payment Demand To Safeco

17 By letter dated August 25, 2006, Viracon's counsel made a third demand upon Safeco to
18 pay the full principal balance plus interest and the attorneys fees that Viracon had incurred in
19 pursuing Safeco's obligation. (Ex. 3 to Lozowicki Decl.) Counsel included with the letter a
20 Statement of Account together with all of the outstanding invoices. (*Id.*) Safeco acknowledged
21 receipt of the letter on September 7, 2006, indicating that it would forward the material to West
22 Bay for its response. *Had Safeco abided its statutory obligations at this point, it could have*
23 *limited its exposure to the principal balance plus roughly \$5000 in interest and \$5100 in*
24 *attorneys fees.*

25 G. Viracon Files Suit

26 On September 15, 2006, Viracon filed suit against EGW, West Bay, Safeco, the City and
27 Does 1 through 50, alleging claims for breach of contract, account stated, goods sold and
28 delivered, recovery on payment bond, enforcement of stop notice and recovery on stop notice

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1 release bond. (Lozowicki Decl., ¶ 6.) Upon receipt of the Complaint, Safeco wrote to Viracon
2 requesting that it produce certain documentation and again stating it would "review the litigation
3 with our principal in order to ascertain its position." (Ex. 4 attached to Lozowicki Decl.) Viracon
4 voluntarily produced the requested documents together with the affidavit that it had previously
5 submitted to the City in support of its stop notice claim by letter dated October 10, 2006. (*Id.*)
6 Safeco never responded. *Had Safeco abided its statutory obligations and paid Viracon's claim at
7 this point, it could have limited its exposure on attorney's fees to less than \$10,000.*

8 1. The City, West Bay and Safeco Answer Viracon's Complaint

9 The City, West Bay and Safeco answered the Complaint in October 2006. West Bay and
10 Safeco asserted some twenty-four and twenty-two affirmative defenses, respectively. West Bay
11 also sent Viracon (for the first time) a copy of the stop notice release bond. After reviewing the
12 bond, Viracon dismissed its stop notice enforcement claim and the City, and filed an amendment
13 that named First National as defendant Doe 1.²

14 2. EGW Defaults

15 EGW did not answer the Complaint. Viracon, therefore, entered EGW's default in
16 November 2006 and moved for a Court Judgment in December. The Court entered Judgment
17 against EGW on December 21, 2006. EGW thereafter moved to set aside the default judgment,
18 which the Court granted in February 2007.

19 H. Viracon Commences Discovery After Attempts At Settlement Go Unanswered

20 With its case at issue, Viracon twice wrote to defendants in an effort to resolve informally
21 the case before commencing costly and time consuming discovery. (Ex. 18 to Blackman Decl.)
22 Viracon did not receive a response to either of its settlement inquiries. (Blackman Decl., ¶ 10.)
23 Viracon thereafter served its initial sets of documents requests, requests for admission, form
24 interrogatories and special interrogatories on West Bay and EGW in May 2007. The discovery
25 was designed to elicit what, if any, facts defendants had to support their more than twenty-four

26
27 ² When First National failed to answer the Complaint, Viracon entered its default on March 1, 2007. Viracon
28 later stipulated to setting the default aside and First National answered the Complaint on March 9, 2007. First
National's answer asserted the same twenty-two affirmative defenses as Safeco.

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1 affirmative defenses and to eliminate as many issues as possible. Specifically, Viracon requested
2 that defendants admit, among other things, that (1) EGW was a subcontractor on the Project, (2)
3 the Project specifications called for Viracon glass, (3) EGW ordered glass from Viracon for the
4 Project, (4) Viracon furnished glass to the Project, (5) EGW installed Viracon's glass at the
5 Project, (6) EGW did not pay for all of the glass, (7) defendants received Viracon's Preliminary
6 20-Day Notice, and (8) Viracon was owed \$110,711.34. (Blackman Decl. ¶ 8; Exs. 19-20.)

7 **1. EGW Admits Viracon Is Owed More Than \$109,000.**

8 EGW answered Viracon's discovery on July 11, 2007. EGW admitted almost all of
9 Viracon's requests for admission. Most importantly, however, EGW admitted that it had not paid
10 Viracon more than \$109,000 for specially designed glass that Viracon furnished and EGW
11 installed at the Project. (Ex. 19 to Blackman Decl.) Given these responses, it was absolutely
12 clear that Safeco had no defense to at least \$109,000 of Viracon's claim. Safeco, however, still
13 refused to abide its statutory obligation to pay Viracon. *Had Safeco paid Viracon at this point, it*
14 *could have limited its attorney's fee exposure to roughly \$45,000.*

15 **2. Viracon Forced To Compel Responses From West Bay.**

16 West Bay served its initial responses to Viracon's written discovery on June 27, 2007.
17 The responses consisted mainly of objections, and incomplete and evasive answers. In addition,
18 although West Bay offered to make its documents available for inspection, it did not give a date
19 when Viracon could conduct its inspection. After four months of trying to meet and confer with
20 West Bay over its discovery responses and obtain a date to inspect its documents, Viracon moved
21 to compel on December 7, 2007. The Court granted the motion in its entirety on January 23, 2008
22 expect for the portion directed at West Bay's document production, as West Bay had promised to
23 make the documents available inspection that same day.³ (Ex. 28 attached to Request for Judicial
24 Notice ("RJN").)

25 West Bay served its Further Responses to Viracon's written discovery on February 15,
26 2008, admitting: (i) Viracon supplied glass to the Project, (ii) some of the glass was installed at

27 ³ The Court also sanctioned West Bay for its incomplete and evasive responses. West Bay later refused to
28 produce the documents on January 23, 2008 and did not make them available for inspection until February 5th.

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1 the Project, (iii) some of the glass was not defective, and (iv) EGW had not paid Viracon for the
2 glass. (Ex. 20 to Blackman Decl.) West Bay explained in its interrogatory responses that only
3 three pieces of Viracon glass were "defective" because they were cracked or broken on delivery.
4 West Bay further conceded that the value of this "defective" glass was only \$1700 Thus, no later
5 than February 15, 2008, West Bay, Safeco and First National knew and had admitted that Viracon
6 was owed at least \$109,000 for glass it had furnished to the Project. Safeco, however, still failed
7 and refused to make payment. *Had Safeco abided its statutory obligations and paid Viracon's*
8 *claim at this point, it could have limited its attorney fee exposure to \$103,000.*

9 **I. Safeco And West Bay Refuse To Make Any Offer At Mediation**

10 During the time Viracon was attempting to resolve its discovery dispute with West Bay,
11 *i.e.*, June-December 2007, the parties agreed to a full days mediation before mediator Ken Bryant.
12 The mediation went forward on August 27, 2007 between Viracon, West Bay, Safeco, and First
13 National. EGW did not attend because several days earlier it offered to Stipulate to Judgment on
14 all claims and for the principal amount of \$111,530.37.⁴ (Ex. 21 attached to Blackman Decl.)
15 Given the admissions obtained prior to mediation and EGW's offer to confess judgment, Viracon
16 made a mediation demand of roughly \$162,000 (including \$110,711 in principal and \$52,000 in
17 fees) plus statutory interest. (Blackman Decl., ¶ 12.) After several hours with the mediator, West
18 Bay, Safeco and First National rejected the Viracon's demand and refused to make any
19 counteroffer whatsoever. (*Id.*)

20 **J. Consolidation**

21 Following mediation, Viracon was prepared to request a trial date at the upcoming
22 mediation review status conference. West Bay, however, moved to consolidate Viracon's action
23 with two other cases pending between West Bay and EGW. Although both of those cases were
24 older than Viracon's action, neither one of them had progressed passed the initial pleadings stage.
25 Indeed, EGW was still in the process of naming and serving some twenty-nine (29) additional

26 _____
27 ⁴ Although EGW offered to confess judgment, the judgment would have no monetary value as it was
28 abundantly clear that EGW had no money and multiple tax liens filed against it that would take priority over any
judgment Viracon obtained.

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1 cross-defendants in one of the cases. That case also related to an entirely separate construction
2 projected called the Alum Rock Branch Library project. Because Viracon did not provide any
3 material to the Alum Rock project, its claims did not share any common issues of law or fact with
4 those arising from the Alum Rock project. Considering these facts, as well as West Bay, Safeco
5 and First National's apparent desire to drag Viracon's claims out as long as possible, Viracon
6 opposed the motion to consolidate. The Court granted West Bay's motion in September 18, 2007.
7 The consolidated matter was subsequently designated complex and assigned to Department 17 for
8 all purposes.⁵

9 **K. Viracon Makes Its Final Attempts At Settlement**

10 Shortly after receipt of West Bay's further discovery responses (admitting Viracon is owed
11 all but \$1700 of its \$110,711.34 claim), Viracon wrote to West Bay, Safeco and First National
12 offering to settle the matter for \$109,011.34 plus attorney fees, costs and interest. (Blackman
13 Decl., ¶ 16.) A few days later, West Bay requested that Viracon provide it with a total payoff
14 amount. Viracon made demand for \$252,483, which included \$109,011 in principal, \$16,351 in
15 interest and \$127,121 in attorney's fees and costs. (Ex. 22 to Blackman Decl.)

16 Defendants did not immediately respond to Viracon's settlement demand. Instead, West
17 Bay served a Section 998 offer in the amount of \$125,000. (Ex. 23 to Blackman Decl.) The offer
18 of compromise stated that the parties would bear their own attorneys' fees and cost – even though
19 an award of fees under Civil Code section 3250 is mandatory. Since defendants offered nothing
20 in compensation for the considerable expense to which Viracon had been put, Viracon rejected
21 the offer and made a counter demand of \$215,000.⁶ (Blackman Decl., ¶ 18)

22 _____
23 ⁵ Once consolidated, very little happened to progress the matter towards trial. EGW continued to add and
24 dismiss cross-defendants in connection with the Alum Rock project and a Special Master was appointed to conduct
25 discovery. After waiting almost a year for West Bay and EGW to advance their matters through written discovery,
26 Viracon (whose claims had been ready for trial since February) moved to sever its claims from the consolidated
27 action and proceed to trial. The Court, however, denied Viracon's motion on September 19, 2008.

28 ⁶ The same day Viracon sent its counter offer, West Bay sent Viracon a letter stating its contention that
29 Viracon could not recover any interest and would not recover all of its attorney's fees. (Ex. 24 to Blackman Decl.)
30 West Bay, however, did not offer any specific amount in settlement. Viracon responded to West Bay's contentions
31 by letter dated May 6, 2008, outlining several facts that demonstrate it was West Bay and Safeco's litigation tactics
32 that caused Viracon to incur most of the fee and costs at issue. (Id.) West Bay did not directly respond to this letter.
33 Rather, it tendered a check for \$109,011.34 to Viracon with instructions to apply the amounts to the outstanding

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1 In October 2008, West Bay sent Viracon a check for \$110,711.43, with instructions to
2 apply the amounts to the principal debt only. (Blackman Decl., ¶ 20.) Because negotiating the
3 check could undermine Viracon's claim for attorneys' fees and costs on its payment bond claim, it
4 did not cash the check. Instead, it sent West Bay a letter outlining a settlement stipulation that
5 would allow Viracon to cash the check without prejudice to its claim for attorneys' fees and
6 submit the issue of the amount of fees, costs and interest to the Court for resolution without trial.
7 (Ex. 25 Blackman Decl.) Three months later and after several requests for a response to its
8 proposal, Viracon returned West Bay's check. (Blackman Decl., ¶ 20.) On March 24, 2009 –
9 almost two months after Viracon returned the check, five months since the offer was made, and
10 just days before the start of trial – West Bay, Safeco, and First National agreed to the proposal.
11 (Ex. 25 to Blackman Decl)

12 The parties thereafter executed a Stipulated Settlement, establishing Viracon as the
13 prevailing party on its payment bond and stop notice release bond claims, and submitting to the
14 Court for resolution without trial the issues of (1) the amount of attorney's fees and costs Viracon
15 shall recover, and (2) the amount, if any, of prejudgment interest Viracon can recover.

III. LEGAL ANALYSIS

17 A. Plaintiff Viracon Is Entitled To Recover Their Attorneys' Fees And Costs As The 18 Prevailing Party On Its Payment Bond Claim.

19 All prime contractors awarded public work contracts with a value greater than \$25,000
20 must provide and file an approved payment bond before commencing performance on the project.
21 Civil Code § 3247(a). All such payment bonds must provide that in the event the prime
22 contractor or a subcontractor fails to pay, among others, any materialmen for materials furnished
23 to the public works project, "the sureties will pay for the same, and also, in case suit is brought
24 upon the bond, a reasonable attorney's fee, to be fixed by the court." Civ. Code. § 3248(b).
25 California Civil Code section 3250 further directs that on any claim against a payment bond

26
27 principal only and provide West Bay with an executed release. (Id.) Viracon returned the check, noting its
28 settlement amount was less than what West Bay had proposed in its Section 998 offer. (Blackman Decl., ¶ 19.)

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1 surety the "court shall award to the prevailing party a reasonable attorney's fee, to be fixed by the
2 Court." Civ. Code § 3250(b) [emphasis added].

3 These specific provisions mandate an award of attorney's fees to the prevailing party on a
4 payment bond claim. *Liton Gen. Engineering Contractor, Inc. v. United Pacific Ins.*, 16
5 Cal.App 4th 577 (1993) ("[S]ection 3250 mandates the award of attorney's fees to the prevailing
6 party in any such action."). The parties have stipulated that Viracon is the prevailing party on its
7 payment bond claim. (See Exhibit 2 to Lozowicki Decl.) Viracon, therefore, is entitled to an
8 award of the attorney's fees and expenses that it has been forced to incur in prosecuting this
9 action, as well as its fees and costs for the preparation and argument of this motion.

10 1. **Viracon's Requested Fees Are Reasonable**

11 The "starting point" for evaluating this motion is to calculate a "lodestar" amount. "[T]hat
12 is, the number of hours reasonably expended multiplied by a reasonable hourly rate." *Hensley v.*
13 *Eckerhart*, 461 U.S. 424, 433 (1983); *Serrano v. Priest (Serrano III)*, 20 Cal.3d 25, 48 fn. 23
14 (1997) (the lodestar method is the "starting point" of every fee award). The lodestar formula is
15 presumed to yield a reasonable attorneys' fee award which is "adequate to attract competent
16 counsel, but which does not produce a windfall to attorneys." *Hensley v. Eckerhart*, 461 U.S. at
17 430 n.4.

18 Although the court has wide discretion in deciding what attorneys' fees are reasonable in a
19 particular case, its discretion must be exercised within the strictures of the lodestar method.
20 *Serrano III*, 20 Cal.3d at 48; *Flannery v. California Highway Patrol*, 61 Cal.App.4th 629,639
21 (1998). Moreover, fee awards derived under the lodestar method are not limited by the amount of
22 damages recovered by the prevailing party. See, e.g., *Vo v. Las Virgenes Mun. Water Dist.* (2000)
23 79 Cal.App.4th 440 (affirming fee award of \$470,000 on damage award of \$37,500); *Stokus v.*
24 *Marsh* (1990) 217 Cal App.3d 647 (noting that to limit fee by damages would allow recalcitrant
25 opponent to deprive prevailing party of reasonable fee). The "party who qualifies for a fee award
26 should recover for all hours reasonable spent unless special circumstances would render an award
27 unjust." *Vo v. Las Virgenes Mun. Water Dist.*, 79 Cal.App.4th at 446.

28

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1 The lodestar method involves a three-step analysis: (1) determine a reasonable hourly
2 rate, multiply it by (2) the number of hours reasonably expended, and (3) decide whether any
3 adjustment is warranted. *Hensley v. Eckerhart*, 461 U.S. at 433; *Thayer v. Wells Fargo Bank*, 92
4 Cal App.4th 819, 833 (2001).

5 **a. Reasonable Attorney Time Was Devoted To This Case.**

6 The substantial attorney time expended in this case was reasonable over the relevant three-
7 year period of litigation. The prevailing party is entitled to recover the reasonable market value of
8 the attorney's services as the measure of a reasonable hourly rate. *Ketchum v. Moses*, 24 Cal.4th
9 1122, 1133-34 (2001); *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1094-95 (2000) (the issue
10 is whether the services rendered were worth the rate charged "as measured in the marketplace");
11 *Sternwest Corp. v. Ash*, 183 Cal.App.3d 74, 75 (1983) (upholding recovery of fees fixed by the
12 "normal attorneys' fees" in the relevant County). Where, as here, Viracon completely prevailed
13 against Safeco and West Bay on the payment bond claim (as well as against EGW and First
14 National on all other claims), all time reasonably spent in attaining the clearly prevailing result is
15 recoverable.

16 The prevailing party is entitled to compensation for all hours reasonably expended,
17 including those necessary to litigate its claim for fees. See *Serrano v. Unruh (Serrano IV)*, 32
18 Cal.3d 62, 63 (1982). The sworn statements of counsel as to the amount of time required to
19 perform certain tasks should be given considerable weight, and it is proper for the Court to rely on
20 counsel's billing statements when determining the reasonableness of attorneys' fees. See *Heppler*
21 *v. J.M. Peters, Co.*, 73 Cal.App.4th 1265, 1296-97 (1999).

22 Viracon's fee claim is based on contemporaneous time records and sworn declarations
23 describing the services for which compensation is claimed. (See Lozowicki Decl., ¶ 9, Exs. 5-7.)
24 The time records submitted as part of this motion were subject to the sound billing judgment of
25 the attorneys performing those tasks, and then further scrutinized by Mr. Lozowicki, the
26 supervising partner. (Lozowicki Decl., ¶ 9.) The work was properly apportioned among the
27 attorneys involved with associate attorneys and paralegals performing most of the work. Indeed,
28 Mr. Lozowicki billed less than twenty percent (20%) of the total fees requested by this motion.

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1 All of the 678 hours bill in attorney time (Exs. 6-7 to Lozowicki Decl.) were necessary to
2 achieving this compelling result (without trial). This work included: (1) responding to West
3 Bay's stop notice challenge, (2) preparing the complaint, (4) conducting extensive written and
4 document discovery, (5) considerable meet and confer efforts over West Bay's discovery
5 responses, (6) successfully moving to compel against West Bay, (7) preparing a mediation
6 statement and attending mediation, (7) opposing motion to consolidate, (8) preparing motions to
7 sever and bifurcate, (9) extensive settlement correspondence including response to West Bay's
8 Section 998 offer, (10) attend case management and mandatory settlement conferences, (11)
9 preparing for trial, and (12) preparing the parties' settlement stipulation.

10 b. The Rates Charged Were Reasonable

11 The rates charged by Sheppard Mullin's attorneys in prosecuting Viracon's payment bond
12 claim against West Bay and Safeco, and Viracon's breach of contract claims against EGW (a
13 necessary predicate to recovering on the payment bond claim), plus additional claims for
14 Viracon's fees, are reasonable and customary for attorneys of their experience and skill in San
15 Jose/San Francisco area. Rates are reasonable when they are in the range of rates charged by
16 private attorneys of similar skill, reputation and experience for comparable litigation. *See*
17 *Children's Hosp. and Med. Cntr. v. Bonta*, 97 Cal.App.4th 740, 783 (2002) (finding that rates
18 awarded were "within the range" of reasonable rates charged by comparable attorneys for
19 comparable work); *Bihun v. AT&T Information Sys. Indus.*, 6 Cal.4th 644 (1993) (upholding a fee
20 award of \$450 per hour in 1993 because "although the amount set by the trial court [is] at the
21 'high end,' [it] is not off the scale"). Thus, because the requested rates are within the range
22 charged by similar attorneys of like experience in the marketplace, the rates should be deemed
23 reasonable and recoverable. *See id.*, *see also, Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th
24 Cir 1993) (the "best measure of the costs of attorney's time is what that attorney could earn from
25 paying clients"). (*See* Lozowicki Decl., ¶ 16, Exs. 5-8.)

26 In addition, and most importantly, although the determination of "market rate" is generally
27 based on the rates prevalent in the community where the services are rendered, prevailing
28 attorneys from a market in which rates are higher than the forum rate may be entitled to their

Attachment B5

1 home rates. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1993); *PLCM Group, Inc. v.*
2 *Drexler*, 22 Cal.4th 1084, 1096 (2000) (affirming a fee award based on the rate prevailing in the
3 market where counsel was located, rather than where the case was litigated). This is especially
4 true in cases where the outcome is of particular importance to a party. See *City of Oakland v.*
5 *Oakland Raiders*, 203 Cal.App.3d 78, 82 (1988) (affirming trial court award to the Raiders'
6 attorneys at the rate charged by the "top law firms in the Bay Area"). In this case, because
7 Viracon is located in Minnesota without any offices in California, the amount at stake, and Mr.
8 Lozowicki's established reputation in handling construction cases in the Bay Area, Viracon chose
9 to retain Sheppard Mullin (with Mr. Lozowicki as lead counsel from commencement of the case
10 through settlement) and should receive the full measure of attorney's fees paid to Sheppard Mullin
11 for their legal services in this matter.

12 A survey by the National Law Journal dated December 8, 2008 of national firms similar to
13 Sheppard Mullin shows that its rates are reasonable and competitive in the Bay Area marketplace.
14 (See Lozowicki Decl., ¶ 15, Ex. 9.) For example, partner and associate hourly rates for the Bay
15 Area offices of the following firms are as follows:

16	<u>Sheppard Mullin:</u>	partner -- \$475 to \$795; associates -- \$275 to \$455
17	<u>Cooley Goodward:</u>	partner -- \$525 to \$980; associates -- \$285 to \$570
18	<u>Howard Rice:</u>	partner -- \$515 to \$795; associates -- \$275 to \$510
19	<u>Luce Forward:</u>	partner -- \$350 to \$650; associates -- \$235 to \$460
20	<u>Manatt Phelps:</u>	partner -- \$495 to \$850; associates -- \$290 to \$505

21 The rates for other law firms in the Bay Area are comparable to these rates. (See
22 Lozowicki Decl., ¶ 15.) Thus, the billing rates charged by Sheppard Mullin were and are
23 comparable to rates charged by other national firms in the San Jose/San Francisco marketplace.
24 (See Lozowicki Decl., ¶¶ 15-16, Ex. 8.)

25 c. No Adjustment Is Warranted

26 In the course of this lawsuit, Mr. Lozowicki discounted many of the invoices where, in his
27 judgment, it was appropriate to avoid inefficiency or duplication of effort. The discount totaled
28 roughly \$34,000. (See Lozowicki Decl., ¶ 9, Ex. 5.) No further discount is warranted.

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1 **2. Safeco And West Bay's Litigation Tactics Make The Requested Fee Award**
2 **Reasonable And Appropriate Under All Relevant Circumstances.**

3 Viracon does not seek a multiplier; only recovery of the fees actually charged and paid.
4 Other factual and equitable considerations render the requested fees reasonable and justified.
5 First, Viracon has completely prevailed in this litigation. EGW confessed judgment; while West
6 Bay, Safeco and First National stipulated that Viracon is the prevailing party so that they could
7 avoid the time and expense of trial.

8 Second, the payment bond statutes and obligations exist to ensure prompt payment to
9 materialmen and others who provide labor or material to public work projects, as they have no
10 mechanic lien rights on public projects, upon default of either the prime contractor or
11 subcontractor. *Liton General Engineering Contractor, Inc. v. United Pacific Ins.*, 16 Cal.App.4th
12 at 584. "[T]he surety's labor and materials bond (payment bond) has uniformly been held to
13 constitute a primary and direct obligation of the surety to the subcontractors and materialmen
14 without reference to the liability of the public works contractor-the principal on the bond." *Id.*
15 (citing *Sukus-Coulson, Inc. v. Allied Canon Co.* (1978) 85 Cal.App.3d 648, 654) "A surety who
16 has assumed liability for payment or performance is liable to the creditor immediately upon
17 default of the principal, and without demand or notice." Civil Code § 2807 [emphasis added];
18 *Liton General Engineering Contractor, Inc. v. United Pacific Ins.*, 16 Cal.App.4th at 584
19 ("[S]ection 2807 holds a surety liable immediately upon default of its principal").

20 Finally, Viracon made repeated attempts at resolving this matter before incurring attorneys
21 fees as well as throughout the course of litigation. As detailed Section II above, all of Viracon's
22 attempts were simply rebuffed without explanation or counteroffer until just weeks before trial.
23 Specifically, Safeco refused to honor its statutory obligations to "immediately" pay Viracon
24 despite the following facts:

- 25 ● Viracon made several demands for payment on Safeco and provided all of the
26 documentation Safeco requested by October 2006;
- 27 ● Viracon demonstrated through EGW's July 2007 discovery responses that it owed
28 Viracon more than \$109,000 for glass furnished and installed at the Project;
- Safeco and West Bay refused to make any offer during mediation;

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- 1 • West Bay admitted in February 2008 that only \$1700 worth (3 pieces) of Viracon
2 glass were actually disputed; and
3 • Although they no longer disputed the principal amount, Safeco and West Bay took
4 over five month (until March 2009) to agree to Viracon November 2008 settlement
5 proposal (forcing Viracon to incur considerable fees to prepare for trial).

6 Safeco and West Bay's flagrant disregarding for their statutory obligations should not be
7 condoned by reducing Viracon's requested fee award. Viracon incurred and paid **\$224,770.90**
8 (after a more than \$30,000 discount) in attorney fees pursuing payment for material furnished and
9 installed at the Project. Viracon submits that, in light of the substantial motion and discovery
10 work required to prepare for trial, and Safeco and West Bay's conduct in refusing to settle until
11 days before trial, its fee request is reasonable and appropriate under all relevant circumstances.

11 **B. Viracon Is Entitled to Recover All Of Its Statutory Costs.**

12 Costs of suit are a matter of right for the prevailing party. Code of Civ. Proc. § 1032(b).
13 The Stipulated Settlement coupled with its collection of the full principal balance of \$110,711.34
14 establish Viracon as the prevailing party. Viracon, therefore, is entitled to recover all of its
15 statutory costs. Recoverable costs include filing fees, motion fees, attorney's fees and charges for
16 service of process. Viracon has incurred and paid **\$5,185.94** in such recoverable costs, as detailed
17 in counsel's billing statements, plus the attorney's fees detailed above. (Ex. 26 to Blackman Decl.;
18 Ex. 7 to Lozowicki Decl.)

19 **IV. CONCLUSION**

20 For the foregoing reasons, Viracon respectfully requests that the Court grant Viracon's
21 motion and award \$224,770.90 (plus an additional amount for May 2009) and costs of \$5,185.94.

22 DATED: May 5, 2009

23 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

24
25 By _____ /s/ Brian Blackman
26 BRIAN R. BLACKMAN
27 Attorneys for Plaintiff
28 VIRACON, INC.

Attachment B5

E-FILED

Apr 8, 2009 5:00 PM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
Case #1-05-CV-053450 Filing #G-14889
By R. Walker, Deputy

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6 Attorneys for Plaintiff VIRACON, INC.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA

10
11 ENGINEERED GLASS WALLS, INC.,

12 Plaintiff,

13 v.

14 WEST BAY BUILDERS, INC., CITY OF
SAN JOSE, and DOES 1 through 25,
inclusive,

15 Defendants.

16 WEST BAY BUILDERS, INC.,

17 Plaintiff,

18 v.

19 ENGINEERED GLASS WALLS, INC., and
DOES 1 through 20, inclusive,

20 Defendants

21 VIRACON INC.,

22 Plaintiff,

23 v.

24 ENGINEERED GLASS WALLS, INC.;
WEST BAY BUILDERS, INC.; SAFECO
25 INSURANCE COMPANY OF AMERICA;
CITY OF SAN JOSE; and DOES 1 through
26 100, inclusive,

27 Defendants

Case No. 105CV053450

[Consolidated with Case Nos. 106CV064387
and 106CV071242]

VIRACON INC.'S MANDATORY SETTLEMENT CONFERENCE STATEMENT

Date: April 15, 2009

Time: 9:00 a.m.

Dept.: 17

The Honorable Jack Komar

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I. INTRODUCTION

1
2 This is a collection action.¹ Plaintiff Viracon, Inc. ("Viracon") designs, fabricates and
3 supplies specialty glass products. Viracon furnished \$121,870.56 worth of specialty glass for the
4 construction of the Almaden Community Center and Branch Library, located at 6445 Camden
5 Avenue, San Jose, California (the "Project"). Viracon was only paid \$11,159.22 and is still owed
6 \$110,711.34 for this specialty glass. Defendant Engineered Glass Walls, Inc. ("EGW") has a
7 contractual obligation to pay Viracon for the specialty glass it order and installed at the project, as
8 well as Viracon's attorney's fees and costs incurred in pursuing this obligation. Defendant West
9 Bay Builders, Inc. ("West Bay"), together with its sureties, has a statutory obligation to pay
10 Viracon for the specialty glass it furnished to the Project, as well as Viracon's attorney's fees and
11 costs for having to sue to enforce this obligation.

12 Neither EGW nor West Bay or its sureties has a valid excuse for not paying Viracon the
13 \$110,711.34 it is owed. Indeed, both West Bay and EGW have admitted that: (1) EGW ordered
14 the subject glass from Viracon for the Project; (2) Viracon furnished the glass to the Project; (3)
15 Viracon provided the appropriate 20-day Preliminary Notice to the City, EGW and West Bay; (4)
16 EGW did not pay for all of the glass that Viracon furnished to the Project; (4) EGW installed all
17 of the Viracon glass at the Project; and (5) Viracon is owed more than \$109,000 for this glass. In
18 short, both main defendants admit the glass was ordered, furnished and installed at the Project,
19 but have failed and refused to pay for it.

20 It is almost three years since Viracon furnished its last shipment of specialty glass to the
21 Project. Only now, on the verge of trial, do the defendants offer to resolve this collection action.
22 As set forth in greater detail below, defendant EGW has Stipulated to Judgment on all of
23 Viracon's claims, which stipulation Viracon will file with the Court in short order. Defendant

24
25 ¹ There are three consolidated actions before the Court. Two of those actions are solely
26 between defendants West Bay Builders, Inc. and Engineered Glass Walls, Inc. over their
27 subcontract for two separate public construction projects. The third action – and the one
28 addressed in this Settlement Conference Statement – was brought by Viracon against West
Bay, its sureties and EGW to recover the amounts due and owing for specialty glass that
Viracon furnished to one of those public construction projects, plus its attorney's fees,
costs and interest

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1 West Bay and its sureties have also agreed, through their counsel, to a proposal that will pay
2 Viracon the principle balance owed and allow the Court to resolve by motion the remaining issues
3 over the amount of attorney's fees, costs, and interest that Viracon shall be entitled to collect as
4 the prevailing party on its payment bond claim. Although this proposal has been agreed to via
5 counsel, Viracon still awaits an executed copy of the proposed Stipulated Settlement that it can
6 submit to the Court for approval.

7 II. SUMMARY OF FACTUAL AND PROCEDURAL BACKGROUND

8 A. Factual History

9 1. The Parties and Project

10 On or about May 5, 2004, the City of San Jose (the "City") and defendant West Bay
11 entered into a prime contract (the "Prime Contract") for the construction and completion of the
12 Project. West Bay thereafter entered into a subcontract with EGW for the furnishing and
13 installation of curtain walls, entrance doors and glazing for the Project. EGW contracted with
14 plaintiff Viracon, through a preexisting credit agreement, purchase orders and invoices, for the
15 design, manufacture and delivery of specialty glass needed for the Project and its subcontract with
16 West Bay.

17 Because the Project qualifies as a public work project with expenditures of more than
18 \$25,000, West Bay was required by statute to provide the City with a payment bond. Defendant
19 Safeco Insurance Company of America ("Safeco") is the surety on West Bay's payment bond.

20 After Viracon served its Stop Notice to Withhold Construction Funds, as described in
21 greater detail below, West Bay provided the City with a Stop Notice Release Bond in order to
22 obtain release of the remaining construction funds owed to it on the Project. Defendant First
23 National Insurance Company of America ("First National") is the surety on West Bay's stop
24 notice release bond.

25 2. Viracon Is Owed \$110,711.34 For Specialty Glass It Furnished To The 26 Project.

27 On September 8, 2005, Viracon served a Preliminary 20-Day Notice on the City, West
28 Bay, and EGW, identifying Viracon as a glass supplier for the Project. **Exhibit A** attached.

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1 Viracon was also expressly identified as a glass supplier in the Project's specifications. Viracon
2 designed and manufactured the glass for the Project according to specification provided to it by
3 EGW. Viracon designed and manufactured \$123,104.08 worth of specialty glass for the Project.
4 Viracon shipped the majority of this specialty glass -- totaling \$109,059.86 -- directly to
5 the Project site. At EGW's request, Viracon delivered two shipments with a total value of
6 \$12,810.70 to EGW's warehouse in Stockton, California.² Viracon retained and refused to deliver
7 eight (8) pieces of specialty glass with a total value of \$1,233.52 because it had not been paid for
8 its prior shipments. Viracon, therefore, furnished \$121,870.56 [*\$123,104.80 minus \$1,233.52*
9 *equals \$121,870.56*] worth of specialty glass to the Project. **Exhibit B** attached. EGW has only
10 paid Viracon \$11,159.22 for this material. Viracon is owed \$111,944.86 for the glass it designed
11 and manufactured for the Project. Excluding the glass items it retained for non-payment, Viracon
12 is owe \$110,711.34 for the material it actually furnished to the Project.

13 3. Viracon Served A Valid Stop Notice

14 When Viracon did not receive payment for the glass it had furnished to the Project, it
15 served a Stop Notice to Withhold Construction Funds dated May 2, 2006 on the City, West Bay
16 and EGW. This initial Stop Notice stated Viracon was owed \$106,523.25 for materials furnished
17 to the Project. Viracon, however, served an Amended Stop Notice to Withhold Construction
18 Funds on June 27, 2006, reflecting the correct amount -- \$110,711.34 -- owed for the glass it
19 furnished to the Project. **Exhibit C** attached

20 On September 28, 2006, West Bay provided a Stop Notice Release Bond through First
21 National to the City. In response to the Stop Notice Release Bond, the City released the more
22 than \$138,000 it still owed West Bay on the Project.

23 B. Procedural Background

24 1. Viracon Action

25 On or about September 15, 2006, Viracon filed suit against the City, West Bay, EGW and
26 Safeco for (i) breach of contract, (ii) enforcement of stop notice, (iii) recovery on stop notice

27 ² West Bay later obtained a court order, forcing EGW to release this glass to West Bay.
28

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1 release bond, (iv) recovery on payment bond, (v) goods sold and delivered, and (vi) account
2 stated. The City, West Bay and Safeco answered the complaint. EGW defaulted. Viracon
3 entered EGW's default and obtained a Court Judgment on or about December 14, 2006. EGW
4 later moved to set aside the Judgment, which the Court granted on or about February 5, 2007.

5 Because West Bay provided a Stop Notice Release Bond, Viracon dismissed its second
6 cause of action for enforcement of stop notice. Viracon also dismissed the City since it was only
7 named as a defendant on Viracon's second cause of action. Viracon thereafter filed an
8 amendment to its complaint, naming First National as a Doe defendant in its third cause of action
9 for recovery on the stop notice release bond. First National failed to answer the complaint and
10 Viracon entered its default on March 1, 2007. Viracon later stipulated to setting the default aside.

11 2. The West Bay and EGW Actions.

12 There are two additional cases pending between West Bay and EGW. The first matter –
13 *Engineered Glass Walls, Inc. v. West Bay Builders, Inc., et al.*, Santa Clara Case No.
14 105CV053450 (the "EGW Action") – involves the work of construction commonly known as the
15 Alum Rock Branch Library, located at 3090 Alum Rock Avenue, San Jose, California (the "Alum
16 Rock Project"). In that case, West Bay and EGW contracted for EGW to provide curtain walls,
17 windows, and glazing for the Alum Rock Project. Viracon did not furnish any glass to the Alum
18 Rock Project. EGW has sued West Bay for breach of contract and enforcement of stop notice,
19 claiming it is owed \$333,108.99. West Bay has cross-complained against EGW for breach of
20 contract, negligence, and indemnity.

21 The second action – *West Bay Builders, Inc. v. Engineered Glass Walls, Inc., et al.*, Santa
22 Clara Case No. 106CV064387 (the "West Bay Action") – involves a dispute over the subcontract
23 for this Project (the Almaden Community Center and Branch Library). West Bay sued EGW for,
24 among other things, breach of contract, negligence, and indemnity, claiming EGW failed to
25 complete the Project and performed defective work. EGW cross-complained against West Bay
26 for breach of contract, enforcement of stop notice, and recovery on the stop notice release bond
27 and payment bond. As part of this action, West Bay obtained a temporary restraining order
28 against EGW, requiring EGW to release the glass held at EGW's warehouse for the Project.

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1 **3. Consolidation**

2 In August 2007, West Bay moved to consolidate the Viracon, West Bay and EGW
3 Actions for all purposes. The Court granted West Bay's motion to consolidate on September 18,
4 2007 over Viracon's objection. Viracon subsequently move to sever its claims from the
5 consolidated action and later bifurcate its claims for separate trial. Both motions were denied

6 **III. DISCUSSION OF VIRACON'S LEGAL POSITION**

7 **A. Viracon's Breach of Contract And Common Counts Against EGW.**

8 There is no longer any dispute over whether or not EGW breached its contracts with
9 Viracon for the design, manufacture and supply of specialty glass for the Project. EGW has
10 Stipulated to Judgment, which stipulation Viracon will submit to the Court for entry of Judgment
11 once it receives all of the original signatures. Both the Stipulation to Judgment and EGW's
12 verified admissions resolve several issues of fact. EGW admits that:

- 13 1. It ordered the glass items from Viracon for the Project;
- 14 2. It provided Viracon with the specifications and drawings for
15 the design and manufacture of the glass items for the
16 Project;
- 17 3. The glass items supplied by Viracon conformed with the
18 drawings and specifications for the Project;
- 19 4. Viracon's glass items were delivered to the Project;
- 20 5. Viracon's glass items were installed at the Project;
- 21 6. It has not paid Viracon for all of the glass items it ordered
22 for the Project; and
- 23 7. Viracon is owed \$110,711.34 in principal balance for the
24 glass items EGW ordered for the Project.

25 These admissions and EGW's stipulation to judgment establish these issues for purposes of
26 Viracon's claims. Viracon, therefore, should be compensated for the full \$110,711.34 that it is
27 owed for the specialty glass it furnished to the Project, plus its attorney's fees, costs and statutory
28 interest at 10% per annum

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1 **B. Recovery On Payment Bond**

2 California law requires every prime contractor, who is awarded a contract by a public
3 entity involving expenditure of more than \$25,000 for any public work, to obtain and file a
4 payment bond. Civ. Code § 3247. The payment bond is required to provide that if the prime
5 contractor or subcontractor fail to pay anyone furnishing supplies to the public work, then the
6 surety will pay the supplier for those supplies and, in the event of suit upon the bond, reasonable
7 attorneys' fees to be fixed by the court. Civ. Code § 3248. Moreover, the only conditions for
8 recovery on a payment bond is that claimant has furnished materials for the project and has not
9 been paid for those materials. Civ. Code §§ 3226, 3110. In addition, the claimant must have
10 provided a Preliminary 20-Day Notice in accordance with Section 3098 of the Civil Code. Civ.
11 Code § 3252.

12 As detailed above, Viracon furnished specialty glass to the Project for which it is owed
13 \$110,711.34. It also served a valid Preliminary 20-Day Notice on September 8, 2005. Viracon,
14 therefore, is entitled by statute to recover the full value of the glass it furnished to the Project –
15 \$110,711.34 – and its reasonable attorney's fees, costs and interest from the payment bond.
16 Viracon has incurred attorneys' fees totaling more than \$177,000.00 in prosecuting this case over
17 the last two and a half years.

18 **C. Recovery On Stop Notice Release Bond**

19 A stop notice is a remedy available on public work projects. Civ. Code §§ 3179-3214. It
20 is a notice to the public entity responsible for the project to withhold construction funds to satisfy
21 the claim. It creates a lien in favor of the claimant that attaches to the construction funds in
22 existence at the time the notice is filed. A public entity who receives a valid stop notice is
23 required to withhold from available funds an amount sufficient to satisfy the claim. Civ. Code
24 § 3186

25 Material suppliers, like Viracon, are entitled to assert stop notices on public works. Civ.
26 Code § 3181. To create a valid stop notice, the supplier must: (i) have given a Preliminary 20-
27 Day Notice in accordance with Section 3098 of the Civil Code, and (ii) served the stop notice
28 either thirty days after recording of a notice of completion or cessation or, if none, then ninety

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1 agreed – through their counsel – that Viracon may accept and negotiate the check without
2 prejudice, all rights reserved, to its claims for attorneys fees, costs and interest under the payment
3 bond. In order to resolve the remaining issues, the parties stipulated – again through counsel – to
4 having the issue over the amount of attorney's fees, costs and interest that Viracon should be
5 awarded as the prevailing party on its claim against the payment bond submitted by motion to the
6 Court for determination. Because the parties themselves must sign any proposed settlement in
7 order for it to be binding, Viracon provided West Bay, Safeco and First National with a proposed
8 Stipulated Settlement and [Proposed] Order. Viracon expects they will execute the Stipulation,
9 but has not yet received it.

10 DATED: August 8, 2007

11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

12
13 By



14 BRIAN R. BLACKMAN
15 Attorneys for Plaintiff
16 VIRACON, INC.
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David H. Yamasaki

Chief Executive Officer/Clerk

Superior Court of CA, County of Santa Clara
Writer's Direct I Case #1-05-CV-053450 Filing #G-17130
elozowicki@sheppardmullin.com By: H. W. G. R., Deputy

July 30, 2009

Our File Number: 121W-125445

VIA ELECTRONIC FILING

Clerk for the Honorable Jack Komar
Superior Court, County of Santa Clara
Complex Division, Department 17
Old Courthouse
191 North First Street
San Jose, CA 95113

Re: Viracon, Inc., v. Engineered Glass Walls, Inc., Case No. 105CV053450
(Consolidated with Case Nos. 106CV064387 and 106CV071242)

To the Clerk for the Honorable Jack Komar:

On April 15, 2009, a Pretrial Conference was held before Judge Komar during which plaintiff Viracon, Inc. ("Viracon") and defendants West Bay Builders, Inc. ("West Bay"), Safeco Insurance Company of America ("Safeco") and First National Insurance Company of America ("First National") placed their Stipulated Settlement on the record. This settlement resolved all of the claims between plaintiff Viracon and these defendants except the issue of an award of attorneys fees, costs and interest, which the parties reserved for resolution by the Court. On July 10, 2009, the Court granted Viracon's motion for an award of attorneys fees and costs and its motion for prejudgment interest. Enclosed is the proposed Order Granting Plaintiff Viracon's Motion For Award Of Attorneys' Fees And Costs And Motion For Prejudgment Interest. Defense counsel have reviewed the Order and stated they have no objection to the form of the order.

I have also enclosed the parties' proposed form of Judgment. The proposed Judgment incorporates the Court's ruling on Viracon's fee and interest motion discussed above, as well as Viracon's Stipulation for Entry of Judgment with defendant Engineered Glass Walls, Inc. ("EGW")(which allows for judgment to be entered against EGW and in favor of Viracon in the amount of \$110,711.34). I have enclosed a copy of this Stipulation for the Court's consideration in entering the proposed Judgment.

It is our understanding that the remainder of this consolidated action has settled and, therefore, entry of Judgment would be appropriate. Specifically, during the Pretrial Conference, West Bay and EGW stated they had reached a settlement in principal that would provide for dismissal of their respective claims, and were in the process of working out the details. The Court has set a dismissal review hearing on this issue for August 7, 2009.

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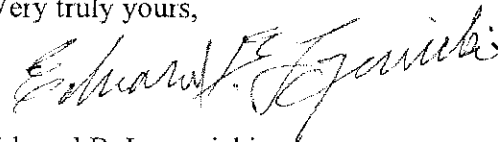
SHEPPARD MULLIN RICHTER & HAMPTON LLP

Clerk for the Honorable Jack Komar
July 30, 2009
Page 2

We provided the proposed form of Judgment to all of the other parties in this action. Those parties, through counsel, have indicated they do not have an objection or additions to the form of the proposed Judgment. In light of the above, we ask that the Court enter the proposed Judgment

Thank you for your assistance in this matter.

Very truly yours,



Edward B. Lozowicki

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:5BBM401691189 1

Enclosures

cc: Timothy McInerney, Esq.
Thomas Dubberke, Esq.
Joseph Schultz, Esq.
Charles Hastings, Esq.
Brian R. Blackman, Esq.

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**THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

**Public Access Civil Case Information
Website**

Oct 22, 2012

Home » Civil Index » Party/Case Type Search » Party/Case Type Results » Cases Involving West Bay Builders, Inc. » **Register of Actions/Docket for Case Number 1-05-CV-053450**

Register of Actions/Docket

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Case Information

Associated Cases

Number: **1-05-CV-053450**
 Title: **Engineered Glass Walls, Inc. V. West Bay Builders, Inc.**
 Category: **Breach Of Contract/Warranty - Unlimited**
 Filed: **11/30/2005** Disposed: **9/4/2009** Status: **Post**

Lead Case: **1-05-CV-053450**

Associated cases	Relationship
1-06-CV-064387	Consolidated
1-06-CV-071242	Consolidated

Calendared Events

Involved Parties

Documents

Type	Name	Disposition
Plaintiff	Viracon Inc. None Attorney: Attorney: Attorney:	CV-BT EntryReqDism-After Settlement Conf Edward B. Lozowicki Sheppard Mullin Richter Et Al , Four Embarcadero Center, 17th Floor, San Francisco, Ca 94111-4109 Mathew R. Troughton Sheppard Mullin Richter Et Al , Four Embarcadero Center, 17th Floor, San Francisco, Ca 94111-4109 Sheppard Mullin Richter Et Al NoneFour Embarcadero Center 17th Floor, San Francisco Ca 94111-4109
Plaintiff/X-Defendant	West Bay Builders Inc None Attorney:	CV-BT EntryReqDism-After Settlement Conf Timothy L. Mcinerney McInerney & Dillon PC , 1999 Harrison Street, Suite 1700 Oakland, Ca 94612
Plaintiff/X-Defendant	Engineered Glass Walls, Inc. None Attorney: Attorney:	CV-BT EntryReqDism-After Settlement Conf Charles L. Hastings Charles L. Hastings Law Office 4568 Feather River Drive, Suite "A" Stockton Ca 95219 David P. Gardner Law Offices Of David P Gardner 755 Baywood Drive,, 2nd Floor, Petaluma Ca 94954
Defendant	City Of San Jose None Attorney:	CV-BT EntryReqDism-No ADR Richard Doyle City Attorney's Office - SJ 200 East Santa Clara St , 16th Floor Tower San Jose, Ca 95113-1905
Defendant	Safeco Insurance Company Of America None	CV-BT EntryReqDism-After Settlement Conf

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Defendant	Travelers Casualty & Surety Company None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	Timothy L. McInerney McInerney & Dillon PC , 1999 Harrison Street, Suite 1700, Oakland, Ca 94612
Defendant	Engineered Glass Walls Inc None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	Charles L. Hastings Charles L. Hastings Law Office , 4568 Feather River Drive, Suite "A", Stockton, Ca 95219
Defendant	West Bay Builders, Inc None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	Timothy L. McInerney McInerney & Dillon PC , 1999 Harrison Street, Suite 1700, Oakland, Ca 94612
	Attorney:	Kimberly S. Fisher West Bay Builders, Inc 250 Bel Marin Keys Blvd., Building "A", Novato, Ca 94949
	Attorney:	Gregory J. Gangitano Gordon & Rees LLP , 275 Battery Street, Suite 2000 San Francisco, Ca 94111
Defendant	Safeco Insurance Company Of America None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	Timothy L. McInerney McInerney & Dillon PC , 1999 Harrison Street, Suite 1700, Oakland Ca 94612
	Attorney:	Kimberly S. Fisher West Bay Builders, Inc. , 250 Bel Marin Keys Blvd., Building "A", Novato Ca 94949
	Attorney:	Gregory J. Gangitano Gordon & Rees LLP 275 Battery Street Suite 2000, San Francisco, Ca 94111
Defendant	City Of San Jose None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	Richard Doyle City Attorney's Office - SJ , 200 East Santa Clara St , 16th Floor Tower, San Jose, Ca 95113-1905
Defendant	First National Insurance Company Of America None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	McInerney & Dillon Pc None1999 Harrison Street, Suite 1700 Oakland, Ca 94612
	Attorney:	Gregory J. Gangitano Gordon & Rees LLP 275 Battery Street, Suite 2000, San Francisco Ca 94111
Sued As	Doe 1 None	None
Sued As	Doe 1 None	None
Defendant/X-Complainant	West Bay Builders, Inc None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	Timothy L. McInerney McInerney & Dillon PC , 1999 Harrison Street, Suite 1700 Oakland, Ca 94612
	Attorney:	Kimberly S. Fisher West Bay Builders Inc. , 250 Bel Marin Keys Blvd., Building "A" Novato, Ca 94949
Defendant/X-Complainant	Engineered Glass Walls, Inc. None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	Charles L. Hastings Charles L. Hastings Law Office , 4568 Feather River Drive Suite "A" Stockton, Ca 95219
Cross-Defendant	Si Equipment Services Inc	CV-BT EntryReqDism-No ADR

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	None	
Cross-Defendant	Pdm Steel Service Center, Inc None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	Deirdre M. Digrande K&L Gates LLP , Four Embarcadero Center, Suite 1200, San Francisco Ca 94111
Cross-Defendant	Surety Company Of The Pacific None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	Charles L Hastings Charles L Hastings Law Office , 4568 Feather River Drive, Suite "A" Stockton, Ca 95219
Cross-Defendant	Aci Distribution None	CV-BT EntryReqDism-After Settlement Conf
Cross-Defendant	Aluma Wall Partition Company, Inc None	CV-BT EntryReqDism-After Settlement Conf
Cross-Defendant	Arch Aluminum Glass Co., Inc. None	CV-BT EntryReqDism-After Settlement Conf
Cross-Defendant	California High Reach & Equipment Rental, Inc None	CV-BT EntryReqDism-After Settlement Conf
Cross-Defendant	Cesar Color Inc None	CV-BT EntryReqDism-After Settlement Conf
Cross-Defendant	C R Laurence International, Inc None	CV-BT EntryReqDism-After Settlement Conf
Cross-Defendant	Carmel Steel Products, Inc. None	CV-BT EntryReqDism-After Settlement Conf
Cross-Defendant	Coast Aluminum And Architectural Inc None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	William P. Schneider Joseph Costella & Associates , 215 Lennon Lane, Suite 200, Walnut Creek, Ca 94598
	Attorney:	Lewis Brisbois Bisgaard & Smith NoneOne Sansome Street Suite 1400, San Francisco Ca 94104-4448
Cross-Defendant	Colorpro, Llc None	CV-BT EntryReqDism-No ADR
	Attorney:	David A. Clinton Clinton & Clinton 100 Oceangate, 14th Floor, Long Beach, Ca 90802
Cross-Defendant	Dependable Precision Manufacturing, Inc. None	CV-BT EntryReqDism-No ADR
	Attorney:	Alexander F Eagle Iii Alexander F Eagle III Law Corp , 248 Blossom Hill Road, Los Gatos. Ca 95032
Cross-Defendant	Eclipse Systems None	CV-BT EntryReqDism-After Settlement Conf
Cross-Defendant	Gerard Homer & Associates None	CV-BT EntryReqDism-After Settlement Conf
Cross-Defendant	Gillies Trucking Inc None	CV-BT EntryReqDism-No ADR
Cross-Defendant	Glaspro None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	Joseph C Costella Joseph Costella & Associates , 215 Lennon Lane, Suite 200, Walnut Creek, Ca 94598
Doing Business As	Gftc, Inc. None	None
Cross-Defendant	Fastenal Company None	CV-BT EntryReqDism-No ADR
Cross-Defendant	Lowry'S, Inc. None	CV-BT EntryReqDism-After Settlement Conf
	Attorney:	George R Hynick

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None5000 N Parkway Calabasas, Suite 219, Calabasas, Ca 91302-1400

CV-BT EntryReqDism-No ADR

CV-BT EntryReqDism-After Settlement Conf

Brian E Colton
 Marc Jennings Law Offices , 1551 North Tustin Ave , Suite 100, Santa Ana, Ca 92705

CV-BT EntryReqDism-No ADR

Paul A. Herp
 Beverly E Narayan Law Office , 101 2nd Street, Suite 1600, San Francisco, Ca 94105

None

CV-BT EntryReqDism-After Settlement Conf

CV-BT EntryReqDism-No ADR

CV-BT EntryReqDism-No ADR

Richard W. Freeman, Jr.
 Wood Smith Henning & Berman LLP , 1401 Willow Pass Rd, Suite 700, Concord, Ca 94520

CV-BT EntryReqDism-After Settlement Conf

CV-BT EntryReqDism-No ADR

CV-BT EntryReqDism-After Settlement Conf

Andrada & Associates
 None180 Grand Avenue, Suite 225 Oakland, Ca 94612

None

None

CV-BT EntryReqDism-No ADR

CV-BT EntryReqDism-No ADR

CV-BT EntryReqDism-After Settlement Conf

City Attorney'S Office - Sj
 None200 East Santa Clara St , 16th Floor Tower, San Jose Ca 95113-1905

CV-BT EntryReqDism-After Settlement Conf

Mcinerney & Dillon Pc
 None1999 Harrison Street, Suite 1700, Oakland, Ca 94612

West Bay Builders, Inc
 None250 Bel Marin Keys Blvd , Building "A", Novato, Ca 94949

CV-BT EntryReqDism-After Settlement Conf

CV-BT EntryReqDism-After Settlement Conf

Brian R Blackman
 Sheppard Mullin Richter Et Al , Four Embarcadero Center, 17th Floor, San Francisco, Ca 94111-4109

Cross-Defendant Lumar Metals
None

Cross-Defendant Oneto Metal
None
Attorney:

Cross-Defendant Sapa Profiles, Inc.
None
Attorney:

Sued As Sapa Anodizing
None

Cross-Defendant Southern Stretch Forming
None

Cross-Defendant Stockton Blue
None

Cross-Defendant Tnemec Company, Inc
None
Attorney:

Cross-Defendant Torrance Aluminum
None

Cross-Defendant United Rentals
None

Cross-Defendant Oldcastle Windows, Inc.
None
Attorney:

Doing Business As Vistawall
None

Sued As Vistawall
None

Cross-Defendant White Cap
None

Cross-Defendant The Stanley Works
None

Cross-Defendant City Of San Jose
None
Attorney:

Cross-Defendant Travelers Casualty And Surety
Company Of America
None
Attorney:
Attorney:

Lien Claimant The Vistawall Group
None

Other Viracon Inc.
None
Attorney:

Date	Time	Dept.	Event Description	Result			Notice Printed	Reset	
				Description	By	Date		To	From
9/4/2009	10:00AM	17	CV Dism aft Settle;3 1385	Dismissed	C	09/04/09	None	None	08/07/2009
8/7/2009	10:00AM	17	CV Dism aft Settle;3 1385	Vacated; Reset future month	C	07/31/09	None	09/04/2009	07/10/2009
7/10/2009	09:00AM	17	CV Mtn: Atty Fees	Granted	C	07/10/09	None	None	06/12/2009
7/10/2009	09:00AM	17	CV Mtn: Other	Granted	C	07/10/09	None	None	06/12/2009
7/10/2009	10:00AM	17	CV Dism aft Settle;3 1385	Heard in part; Cont for Fur Hrg	C	07/13/09	None	08/07/2009	06/12/2009
6/12/2009	09:00AM	17	CV Mtn: Atty Fees	Vacated; Reset future month	C	06/05/09	None	07/10/2009	None
6/12/2009	09:00AM	17	CV Mtn: Other	Vacated; Reset future month	C	06/05/09	None	07/10/2009	None
6/12/2009	10:00AM	17	CV Dism aft Settle;3 1385	Vacated; Reset future month	C	06/05/09	None	07/10/2009	None
4/20/2009	09:00AM	17	CV Jury Trial - Long Cause	Vacated; settled	C	04/15/09	None	None	None
4/15/2009	09:00AM	17	CV Settlement Conf - Jury	Settled	C	04/15/09	None	None	None
3/27/2009	09:00AM	17	CV Mtn to Bifurcate	Denied	C	03/27/09	None	None	None
2/27/2009	10:00AM	17	CV Further CMC	Instructions Given	C	02/27/09	None	None	None
11/14/2008	10:00AM	17	CV Further CMC	Set for further CMC	C	11/14/08	None	None	None
10/24/2008	10:00AM	17	CV Further CMC	Set for S/C & Trial	C	10/24/08	None	None	10/17/2008
10/17/2008	10:00AM	17	CV Further CMC	Vacated; Reset current month	C	09/09/08	None	10/24/2008	None
9/19/2008	09:00AM	17	CV Mtn: Other	Denied	C	09/19/08	None	None	None
8/22/2008	10:00AM	17	CV Further CMC	Set for further CMC	C	08/22/08	None	None	None
6/13/2008	10:00AM	17	CV Further CMC	Set for further CMC	C	06/13/08	None	None	None
4/8/2008	10:00AM	10	CV Further CMC	Vacated; Reset future month	C	03/07/08	01/11/08	None	None
3/7/2008	09:00AM	17	CV Misc Motion	Granted	C	03/07/08	02/04/08	None	02/14/2008
2/14/2008	09:00AM	10	CV Misc Motion	Vacated; Reset future month	C	02/04/08	None	03/07/2008	None
1/18/2008	08:30AM	07	CV Mtn to Compel Answers	Tentative Decision	C	01/18/08	None	None	None
1/8/2008	10:00AM	19	CV Further CMC	Set for further CMC	C	01/08/08	12/03/07	None	None
11/27/2007	10:00AM	10	CV Further CMC	Set for further CMC	C	11/27/07	09/18/07	None	None
10/9/2007	10:00AM	02	CV Further CMC	Vacated by Court	C	10/09/07	08/08/07	None	None
9/18/2007	09:00AM	10	CV Mtn to Consolidate	Granted	C	09/18/07	None	None	None
9/4/2007	09:00AM	10	CV Mtn to Consolidate	Off Calendar	C	08/08/07	None	None	None
8/7/2007	10:00AM	10	CV Further CMC	Set for further CMC	C	08/07/07	07/05/07	None	None
7/3/2007	09:00AM	05	Mtn: Leave to File	Off Calendar	C	07/03/07	None	None	None
7/3/2007	10:00AM	05	CV Further CMC	Set for further CMC	C	07/03/07	06/19/07	None	None
6/19/2007	09:00AM	10	Reserved	Off Calendar	P	06/01/07	None	None	None
6/19/2007	10:00AM	10	CV Further CMC	Set for further CMC	C	06/19/07	06/01/07	None	None
5/22/2007	10:00AM	10	CV Further CMC	Set for further CMC	C	05/22/07	04/26/07	None	None
4/24/2007	11:00AM	10	CV Trial Setting Conference	Set for CMC	C	04/24/07	01/17/07	None	None
1/16/2007	09:00AM	10	Mtn: Leave to File	Granted	C	01/16/07	None	None	None
1/16/2007	10:00AM	10	CV Further CMC	Set For:	C	01/16/07	12/12/06	None	None
12/12/2006	10:00AM	10	CV Further CMC	Set for further CMC	C	12/12/06	10/24/06	None	None
10/31/2006	09:00AM	10	Reserved	Off Calendar	C	10/06/06	None	None	None
10/17/2006	10:00AM	10	CV Further CMC	Set for further CMC	C	10/17/06	08/17/06	None	None

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10/3/2006	09:00AM	20	Reserved	Off Calendar	C	09/13/06	None	None	None
8/15/2006	10:00AM	10	CV Further CMC	Set for further CMC	C	08/15/06	07/18/06	None	None
7/13/2006	10:30AM	10	CV Mediation Status Review	Set for further CMC	C	07/13/06	04/13/06	None	None
4/11/2006	04:00PM	10	CV CMC-Case Management Conf	Ref to Mediation/MSR set	C	04/11/06	None	None	None

Involved Parties

Documents

Calendared Events

For an explanation of the abbreviations used in the Document Description/Text columns, click [here](#)

Number-Sequence	Document Description	Document Text	Filed	Ruling	Date
0239-000	Cv Proof Of Svc/Regular Mail For: West Bay Builders, Inc / DEF	Click for text	12/18/2009	None	12/21/2009
0238-000	Cv Acknow/Satisf Of Jgmt Full For: Viracon Inc. / PLT Against: First National Insurance Company Of America / DEF	Click for text	12/02/2009	None	12/02/2009
0237-000	Cv Acknow/Satisf Of Jgmt Full For: Viracon Inc. / PLT Against: Safeco Insurance Company Of America / DEF	Click for text	12/02/2009	None	12/02/2009
0236-000	Cv Acknow/Satisf Of Jgmt Full For: Viracon Inc. / PLT Against: West Bay Builders, Inc. / DEF	Click for text	11/25/2009	None	11/25/2009
0235-000	Cv Ntc:Abandonment For: West Bay Builders, Inc. / DEF		11/19/2009	None	11/19/2009
0234-000	Cv Abandonment Of Appeal For: West Bay Builders, Inc. / DEF		11/19/2009	None	11/19/2009
0233-000	Cv Other For: West Bay Builders, Inc. / DEF	Click for text	11/19/2009	None	None
0232-000	Cv Respondent'S Default Ntc For: Viracon Inc. / PLT	Click for text	11/16/2009	None	11/16/2009
0231-000	Cv Designation Of Transcript On Appeal For: Viracon Inc. / PLT	Click for text	11/13/2009	None	11/13/2009
0230-000	Cv Designation Of Transcript On Appeal For: Viracon Inc. / PLT	Click for text	11/13/2009	None	11/13/2009
0230-001	Cv Proof Of Svc For: Viracon Inc. / PLT		11/13/2009	None	11/13/2009
0229-000	Cv Appellant'S Default Ntc For: West Bay Builders Inc. / DEF	Click for text	11/03/2009	None	11/03/2009
0228-000	Cv Clerk'S Certif Of Compliance For: West Bay Builders Inc. / DEF	Click for text	11/03/2009	None	11/03/2009
0227-000	Cv Designation Of Transcript On Appeal For: West Bay Builders, Inc. / DEF	Click for text	11/03/2009	None	11/03/2009
0226-000	Cv Appellant'S Default Ntc For: West Bay Builders Inc. / DEF	Click for text	10/19/2009	None	10/19/2009
0225-000	Cv Ntc Of Appeal/Unltd For: West Bay Builders Inc. / DXC	Click for text	10/05/2009	None	10/05/2009
0224-000	Cv Ntc:Entry Of Jgmt W/Proof Of Svc For: Viracon Inc. / PLT	Click for text	09/04/2009	None	09/04/2009
0223-000	Cv Ntc:Entry Of Order For: Viracon Inc. / PLT	Click for text	09/04/2009	None	09/04/2009
0222-000	Cv Judgment	Click for text	09/04/2009	None	09/04/2009
0221-000	Cv Order	Click for text	09/04/2009	None	09/04/2009

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0220-000	Cv Req:Dismissal, Partial For: Engineered Glass Walls Inc / DEF	Click for text	09/03/2009	None	09/03/2009
0219-000	Cv Req:Dismissal, Partial For: West Bay Builders Inc / DEF	Click for text	09/02/2009	None	09/02/2009
0218-000	Cv Clerk'S Notice	Click for text	09/01/2009	None	09/01/2009
0217-000	Cv Statement For: Viracon Inc. / PLT	Click for text	09/01/2009	None	09/01/2009
0216-000	Cv Clerk'S Notice	Click for text	07/31/2009	None	07/31/2009
0215-000	Cv Declaration For: West Bay Builders, Inc. / PLX	Click for text	07/30/2009	None	07/30/2009
0214-000	Cv Clerk'S Notice	Click for text	07/13/2009	None	07/13/2009
0213-000	Cv Reply Brief For: Viracon, Inc / OTH For: Viracon Inc. / PLT	Click for text	06/08/2009	None	06/08/2009
0212-000	Cv Supplemental Declaration For: Viracon, Inc. / OTH For: Viracon Inc. / PLT	Click for text	06/08/2009	None	06/08/2009
0211-000	Cv Supplemental Declaration For: Viracon, Inc. / OTH For: Viracon Inc. / PLT	Click for text	06/08/2009	None	06/08/2009
0210-000	Cv Reply Brief For: Viracon, Inc. / OTH For: Viracon Inc. / PLT	Click for text	06/08/2009	None	06/08/2009
0209-000	Cv Order	Click for text	06/05/2009	None	06/05/2009
0208-000	Cv Decl In Opposition For: Safeco Insurance Company Of America / DEF For: West Bay Builders, Inc. / DEF For: First National Insurance Company Of America / DEF	Click for text	06/01/2009	None	06/01/2009
0207-000	Cv Decl In Opposition For: Safeco Insurance Company Of America / DEF For: West Bay Builders, Inc. / DEF For: First National Insurance Company Of America / DEF	Click for text	06/01/2009	None	06/01/2009
0206-000	Cv Decl In Opposition For: Safeco Insurance Company Of America / DEF For: West Bay Builders, Inc. / DEF For: First National Insurance Company Of America / DEF	Click for text	06/01/2009	None	06/01/2009
0205-000	Cv Decl In Opposition For: Safeco Insurance Company Of America / DEF For: West Bay Builders, Inc. / DEF For: First National Insurance Company Of America / DEF	Click for text	06/01/2009	None	06/01/2009
0204-000	Cv Req:Judicial Ntc For: Safeco Insurance Company Of America / DEF For: West Bay Builders, Inc. / DEF For: First National Insurance Company Of America / DEF	Click for text	06/01/2009	None	06/01/2009
0203-000	Cv Memo:Ps & As/Opposn To Mtn For: Safeco Insurance Company Of America / DEF For: West Bay Builders, Inc. / DEF For: First National Insurance Company Of America / DEF	Click for text	06/01/2009	None	06/01/2009
0202-000	Cv Memo:Ps & As/Opposn To Mtn For: Safeco Insurance Company Of America / DEF For: West Bay Builders, Inc. / DEF For: First National Insurance Company Of America / DEF	Click for text	06/01/2009	None	06/01/2009
0201-000	Cv Ntc:Motion W/Fee For: Viracon Inc. / PLT	Click for text	05/05/2009	None	05/05/2009
0200-000	Cv Req:Judicial Ntc For: Viracon Inc. / PLT	Click for text	05/05/2009	None	05/05/2009

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0199-000	Cv Decl In Support For: Viracon Inc / PLT	Click for text	05/05/2009	None	05/05/2009
0198-000	Cv Decl In Support For: Viracon Inc. / PLT	Click for text	05/05/2009	None	05/05/2009
0197-000	Cv Decl In Support For: Viracon Inc / PLT	Click for text	05/05/2009	None	05/05/2009
0196-000	Cv Memo:Ps & As/Suppt Of Mtn For: Viracon Inc. / PLT	Click for text	05/05/2009	None	05/05/2009
0195-000	Cv Ntc:Mtn For Atty Fees For: Viracon Inc / PLT	Click for text	05/05/2009	None	05/05/2009
0194-000	Cv Ntc:Dismissal Review Hearing	Click for text	04/15/2009	None	04/15/2009
0193-000	Cv Stip/Order	Click for text	04/15/2009	None	04/15/2009
0192-000	Cv Statement:Settlement Conf For: West Bay Builders, Inc / DXC	Click for text	04/09/2009	None	04/09/2009
0191-000	Cv Statement:Settlement Conf For: Viracon Inc. / PLT	Click for text	04/08/2009	None	04/08/2009
0190-000	Cv Decl In Support For: Viracon Inc / PLT	Click for text	03/20/2009	None	03/20/2009
0189-000	Cv Reply For: Viracon Inc. / PLT	Click for text	03/20/2009	None	03/20/2009
0188-000	Cv Req:Judicial Ntc For: West Bay Builders, Inc. / DEF	Click for text	03/16/2009	None	03/16/2009
0187-000	Cv Decl In Opposition For: West Bay Builders, Inc. / DEF	Click for text	03/16/2009	None	03/16/2009
0186-000	Cv Memo:Ps & As/Opposn To Mtn For: West Bay Builders, Inc. / DEF	Click for text	03/16/2009	None	03/16/2009
0185-000	Cv Req:Dismissal, Partial W/O Prej For: Dependable Precision Manufacturing, Inc / XDF	Click for text	02/25/2009	None	02/26/2009
0184-000	Cv Decl In Support For: Viracon Inc. / PLT	Click for text	02/24/2009	None	02/25/2009
0183-000	Cv Ntc:Motion W/Fee For: Viracon Inc. / PLT	Click for text	02/24/2009	None	02/25/2009
0182-000	Cv Case Mgmt Statement For: Viracon Inc / PLT	Click for text	02/24/2009	None	02/24/2009
0181-000	Cv Case Mgmt Statement For: West Bay Builders, Inc. / DEF	Click for text	02/20/2009	None	02/20/2009
0180-000	Cv Case Mgmt Statement	Click for text	02/18/2009	None	02/18/2009
0179-000	Cv Case Mgmt Statement For: Engineered Glass Walls, Inc / PLX	Click for text	02/13/2009	None	02/13/2009
0178-000	Cv Clerk'S Notice	Click for text	11/18/2008	None	11/18/2008
0177-000	Cv Ord After Cmc:S/C & Jury Trial	Click for text	11/14/2008	None	11/14/2008
0176-000	Cv Case Mgmt Statement For: Engineered Glass Walls, Inc / PLX	Click for text	11/10/2008	None	11/10/2008
0175-000	Cv Case Mgmt Statement For: Viracon Inc. / OTH	Click for text	11/10/2008	None	11/10/2008
0174-000	Cv Case Mgmt Statement For: West Bay Builders, Inc. / PLX	Click for text	11/07/2008	None	11/07/2008
0173-000	Cv Stipulation For: Engineered Glass Walls Inc / PLX	Click for text	10/24/2008	None	10/24/2008

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0172-000	Cv Stipulation For: Engineered Glass Walls, Inc / PLX	Click for text	10/24/2008	None	10/24/2008
0171-000	Cv Clerk'S Notice	Click for text	10/24/2008	None	10/24/2008
0170-000	Cv Case Mgmt Statement For: Viracon Inc / PLT	Click for text	10/17/2008	None	10/17/2008
0169-000	Cv Case Mgmt Statement For: West Bay Builders Inc / PLX	Click for text	10/02/2008	None	10/02/2008
0168-000	Cv Case Mgmt Statement For: Engineered Glass Walls, Inc. / DEF	Click for text	10/02/2008	None	10/02/2008
0167-000	Cv Req:Dismissal, Partial W/O Prej For: Engineered Glass Walls, Inc / PLX	Click for text	10/01/2008	None	10/02/2008
0166-000	Cv Req:Dismissal, Partial For: Engineered Glass Walls, Inc / DXC Against: Eclipse Systems / XDF Against: Southern Stretch Forming / XDF Against: Torrance Aluminum / XDF	Click for text	07/31/2008	None	07/31/2008
0165-000	Cv Reply Brief	Click for text	09/12/2008	None	09/12/2008
0164-000	Cv Ntc:Continued Cmc	Click for text	09/09/2008	None	09/09/2008
0163-000	Cv Proof Of Svc/Express/Overnight For: West Bay Builders, Inc / DEF	Click for text	09/08/2008	None	09/08/2008
0162-000	Cv Req:Judicial Ntc For: West Bay Builders, Inc. / DEF	Click for text	09/08/2008	None	09/08/2008
0161-000	Cv Decl In Support For: West Bay Builders, Inc. / DEF	Click for text	09/08/2008	None	09/08/2008
0160-000	Cv Memo:Ps & As/Opposn To Mtn For: West Bay Builders, Inc. / DEF	Click for text	09/08/2008	None	09/08/2008
0159-000	Cv Req:Dismissal, Partial W/O Prej For: Engineered Glass Walls, Inc. / PLX Against: The Vistawall Group / LNC	Click for text	09/02/2008	None	09/02/2008
0158-000	Cv Req:Dismissal, Partial W/O Prej For: Engineered Glass Walls, Inc. / DEF Against: PDM Steel Service Center, Inc. / XDF	Click for text	08/29/2008	None	08/29/2008
0157-000	Cv Clerk'S Notice	Click for text	08/22/2008	None	08/22/2008
0156-000	Cv Declaration For: Viracon Inc / PLT	Click for text	08/14/2008	None	08/14/2008
0155-000	Cv Ntc:Motion W/Fee For: Viracon Inc. / PLT	Click for text	08/14/2008	None	08/14/2008
0154-000	Cv Case Mgmt Statement For: PDM Steel Service Center, Inc / XDF	Click for text	08/13/2008	None	08/13/2008
0153-000	Cv Req:Dismissal, Partial W/O Prej For: Engineered Glass Walls, Inc / DEF Against: Colorpro, LLC / XDF	Click for text	08/12/2008	None	08/13/2008
0152-000	Cv Case Mgmt Statement For: West Bay Builders Inc. / DEF	Click for text	08/12/2008	None	08/12/2008
0151-000	Cv Case Mgmt Statement For: Glaspro / XDF	Click for text	08/12/2008	None	08/12/2008
0150-000	Cv Case Mgmt Statement For: Oldcastle Windows Inc / XDF	Click for text	08/07/2008	None	08/07/2008
0149-000	Cv Case Mgmt Statement For: Viracon Inc / PLT	Click for text	08/07/2008	None	08/07/2008
0148-000	Cv Clerk'S Notice	Click for text	06/13/2008	None	06/13/2008
0147-000	Cv Substitution Of Attorney	Click for text	06/10/2008	None	06/10/2008

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	For: Glaspro / XDF				
0146-000	Cv Case Mgmt Statement	Click for text	06/02/2008	None	06/02/2008
	For: Viracon Inc. / PLT For: Engineered Glass Walls, Inc. / PLX For: West Bay Builders, Inc. / PLX				
0145-000	Cv Case Mgmt Statement	Click for text	06/02/2008	None	06/02/2008
	For: West Bay Builders, Inc. / DEF				
0144-000	Cv Case Mgmt Statement	Click for text	05/27/2008	None	05/27/2008
	For: PDM Steel Service Center, Inc. / XDF				
0143-000	Cv Case Mgmt Statement	Click for text	05/27/2008	None	05/27/2008
	For: Engineered Glass Walls, Inc. / DEF				
0142-000	Cv Case Mgmt Statement	Click for text	05/22/2008	None	05/22/2008
	For: Oldcastle Windows, Inc. / XDF				
0141-000	Cv Other	Click for text	05/13/2008	None	None
	For: Travelers Casualty & Surety Company / DEF For: West Bay Builders Inc. / DEF				
0140-000	Cv Other	Click for text	05/13/2008	None	None
	For: Safeco Insurance Company Of America / DEF For: West Bay Builders, Inc. / DEF For: First National Insurance Company Of America / DEF				
0139-000	Cv Other	Click for text	05/08/2008	None	None
	For: West Bay Builders, Inc. / DEF				
0138-000	Cv Case Mgmt Statement	Click for text	04/15/2008	None	04/15/2008
	For: Lowry's, Inc. / XDF				
0137-000	Cv Ntc:Lien Claimant	Click for text	04/08/2008	None	04/08/2008
	For: The Vistawall Group / LNC				
0136-000	Cv Case Mgmt Statement	Click for text	03/28/2008	None	04/01/2008
	For: PDM Steel Service Center, Inc. / XDF				
0135-000	Cv Order	Click for text	03/28/2008	None	03/28/2008
0134-000	Cv Ntc:Unavailability Of Counsel/No Fee	Click for text	03/28/2008	None	03/28/2008
	For: Oldcastle Windows, Inc. / XDF				
0133-000	Cv Case Mgmt Statement	Click for text	03/24/2008	None	03/24/2008
	For: Engineered Glass Walls, Inc. / DEF				
0132-000	Cv Req:Dismissal, Partial W/O Prej	Click for text	03/12/2008	None	03/13/2008
	For: Engineered Glass Walls, Inc. / DEF				
0131-000	Cv Ntc:Entry Of Dismissal W/Pos		03/12/2008	None	03/12/2008
	For: Engineered Glass Walls Inc. / PLX				
0130-000	Cv Clerk'S Notice	Click for text	03/11/2008	None	03/11/2008
0129-000	Cv Ntc:Entry Of Dismissal W/Pos		03/05/2008	None	03/05/2008
	For: Engineered Glass Walls, Inc. / DEF				
0128-000	Cv Req:Dismissal Partial W/O Prej	Click for text	03/04/2008	None	03/05/2008
	For: Engineered Glass Walls, Inc. / DEF Against: Tnemec Company, Inc. / XDF				
0127-000	Cv Req:Dismissal Partial W/O Prej	Click for text	02/20/2008	None	02/28/2008
	For: Engineered Glass Walls Inc. / DEF				
0126-000	Cv Ntc:Entry Of Dismissal W/Pos		02/21/2008	None	02/21/2008
	For: Engineered Glass Walls Inc. / DEF				
0125-000	Cv Response	Click for text	02/06/2008	None	02/06/2008
	For: Coast Aluminum And Architectural, Inc. / XDF				
0124-000	Cv Clerk'S Notice	Click for text	02/05/2008	None	02/05/2008
0123-000	Cv Stip & Order/\$20 Fee	Click for text	01/18/2008	Denied	01/18/2008
	For: West Bay Builders, Inc. / PLX				

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0122-000	Cv Order	Click for text	01/18/2008	None	01/18/2008
0121-000	Cv Ntc:Entry Of Dismissal W/Pos For: Engineered Glass Walls, Inc / DEF		01/15/2008	None	01/15/2008
0120-000	Cv Proof Of Svc/Regular Mail For: Viracon Inc / PLT		01/11/2008	None	01/11/2008
0119-000	Cv Reply Brief For: Viracon Inc / PLT	Click for text	01/11/2008	None	01/11/2008
0118-000	Cv Req:Dismissal, Partial W/O Prej For: Engineered Glass Walls, Inc / DXC Against: Coast Aluminum And Architectural, Inc / XDF	Click for text	01/10/2008	None	01/11/2008
0117-000	Cv Req:Judicial Ntc For: West Bay Builders, Inc. / DXC	Click for text	01/11/2008	None	01/11/2008
0116-000	Cv Declaration For: West Bay Builders, Inc. / DXC	Click for text	01/11/2008	None	01/11/2008
0115-000	Cv Declaration For: West Bay Builders, Inc. / PLX	Click for text	01/11/2008	None	01/11/2008
0114-000	Cv Memo:Ps & As/Suppt Of Mtn For: West Bay Builders, Inc. / PLX	Click for text	01/11/2008	None	01/11/2008
0113-000	Cv Ntc:Motion W/Fee For: West Bay Builders, Inc. / PLX	Click for text	01/11/2008	None	01/11/2008
0113-001	Cv Proof Of Svc For: West Bay Builders, Inc. / DXC	Click for text	01/11/2008	None	01/11/2008
0112-000	Cv Request For: West Bay Builders, Inc. / DEF	Click for text	01/07/2008	None	01/07/2008
0111-000	Cv Opposition For: West Bay Builders, Inc. / DEF	Click for text	01/07/2008	None	01/07/2008
0110-000	Cv Req:Dismissal, Partial W/O Prej For: Engineered Glass Walls, Inc / DXC Against: Southern Stretch Forming / XDF	Click for text	01/08/2008	None	01/09/2008
0109-000	Cv Req:Dismissal, Partial W/O Prej For: Engineered Glass Walls, Inc / DEF Against: Eclipse Systems / XDF	Click for text	01/09/2008	None	01/09/2008
0108-000	Cv Req:Dismissal Partial W/O Prej For: Engineered Glass Walls, Inc. / DEF Against: Torrance Aluminum / XDF	Click for text	01/08/2008	None	01/09/2008
0107-000	Cv Declaration For: West Bay Builders Inc / DEF	Click for text	01/07/2008	None	01/07/2008
0106-000	Cv Declaration For: Engineered Glass Walls Inc / DEF	Click for text	01/07/2008	None	01/07/2008
0105-000	Cv Case Mgmt Statement For: Lowry's, Inc / XDF	Click for text	01/08/2008	None	01/08/2008
0104-000	Cv Case Mgmt Statement For: Dependable Precision Manufacturing, Inc / XDF	Click for text	01/03/2008	None	01/03/2008
0103-000	Cv Case Mgmt Statement For: Engineered Glass Walls, Inc / DEF	Click for text	01/02/2008	None	01/02/2008
0102-000	Cv Case Mgmt Statement For: Oneto Metal / XDF	Click for text	01/02/2008	None	01/02/2008
0101-000	Cv Appl/Ord:Determining Of Gfs For: Engineered Glass Walls Inc / PLX	Click for text	01/02/2008	None	None
0100-000	Cv Case Mgmt Statement For: West Bay Builders Inc. / DEF	Click for text	12/28/2007	None	12/28/2007

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0099-000	Cv Case Mgmt Statement For: PDM Steel Service Center, Inc / XDF	Click for text	12/28/2007	None	12/28/2007
0098-000	Cv Case Mgmt Statement For: Sapa Profiles, Inc / XDF	Click for text	12/24/2007	None	12/24/2007
0097-000	Cv Case Mgmt Statement For: Coast Aluminum And Architectural, Inc / XDF	Click for text	12/21/2007	None	12/21/2007
0096-000	Cv Case Mgmt Statement For: Oldcastle Windows Inc / XDF	Click for text	12/21/2007	None	12/21/2007
0095-000	Cv Case Mgmt Statement For: Viracon Inc / PLT	Click for text	12/21/2007	None	12/21/2007
0094-000	Cv Case Mgmt Statement For: Tnemec Company, Inc / XDF	Click for text	12/18/2007	None	12/18/2007
0093-000	Cv Change Of Atty Address/Firm For: Sapa Profiles, Inc / XDF		12/17/2007	None	12/17/2007
0092-000	Cv Association Of Attys For: Coast Aluminum And Architectural, Inc / XDF	Click for text	12/10/2007	None	12/10/2007
0091-000	Cv Declaration For: Viracon Inc / PLT		12/07/2007	None	12/07/2007
0090-000	Cv Separate Statement For: Viracon Inc / PLT For: Engineered Glass Walls, Inc / PLX For: West Bay Builders, Inc / PLX		12/07/2007	None	12/07/2007
0089-000	Cv Ntc:Mtn To Compel For: Viracon Inc / PLT	Click for text	12/07/2007	None	12/07/2007
0089-001	Cv Proof Of Svc For: Viracon Inc / PLT		12/07/2007	None	12/07/2007
0088-000	Cv Case Mgmt Statement For: Coast Aluminum And Architectural, Inc / XDF	Click for text	11/27/2007	None	11/27/2007
0087-000	Cv Case Mgmt Statement For: PDM Steel Service Center, Inc / XDF	Click for text	11/26/2007	None	11/26/2007
0086-000	Cv Case Mgmt Statement For: Engineered Glass Walls, Inc / DEF	Click for text	11/19/2007	None	11/19/2007
0085-000	Cv Case Mgmt Statement For: Tnemec Company, Inc / XDF	Click for text	11/20/2007	None	11/20/2007
0084-000	Cv Case Mgmt Statement For: Oldcastle Windows, Inc / XDF	Click for text	11/13/2007	None	11/13/2007
0083-000	Cv Case Mgmt Statement For: Viracon Inc / PLT	Click for text	11/09/2007	None	11/09/2007
0082-000	Cv Summons Filed For: Tnemec Company, Inc / XDF	Click for text	11/06/2007	None	11/06/2007
0081-000	Cv Summons Issued For: Tnemec Company, Inc / XDF	Click for text	11/06/2007	None	11/06/2007
0080-000	Cv Cross-Complaint For: Tnemec Company, Inc / XDF	Click for text	11/06/2007	None	11/06/2007
0080-001	Cv Answer - No Fees Due! For: Engineered Glass Walls, Inc / DEF For: Engineered Glass Walls, Inc / DXC For: Engineered Glass Walls, Inc / PLX Against: Dependable Precision Manufacturing, Inc / XDF		12/11/2007	None	12/11/2007
0079-000	Cv Summons Filed For: Dependable Precision Manufacturing, Inc / XDF Against: Engineered Glass Walls, Inc / DEF		11/01/2007	None	11/01/2007

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0078-000	Cv Summons Issued For: Dependable Precision Manufacturing, Inc. / XDF Against: Engineered Glass Walls, Inc. / DXC	Click for text	11/01/2007	None	11/01/2007
0077-000	Cv Cross-Complaint For: Dependable Precision Manufacturing, Inc. / XDF Against: Engineered Glass Walls, Inc. / DXC		11/01/2007	None	11/01/2007
0076-000	Cv Proof Of Svc Compl/Pet/Summons For: Viracon Inc / PLT For: Engineered Glass Walls, Inc. / PLX For: West Bay Builders, Inc. / PLX Against: Torrance Aluminum / XDF	Click for text	10/29/2007	None	10/29/2007
0075-000	Cv Ntc:Entry Of Dismissal W/Pos For: Engineered Glass Walls, Inc. / DEF	Click for text	10/29/2007	None	10/29/2007
0074-000	Cv Proof Of Svc Compl/Pet/Summons For: Viracon Inc. / PLT For: Engineered Glass Walls, Inc. / PLX For: West Bay Builders, Inc. / PLX Against: Dependable Precision Manufacturing, Inc. / XDF	Click for text	10/23/2007	None	10/23/2007
0073-000	Cv Proof Of Svc Compl/Pet/Summons For: Viracon Inc. / PLT For: Engineered Glass Walls, Inc. / PLX For: West Bay Builders, Inc. / PLX Against: Eclipse Systems / XDF	Click for text	10/23/2007	None	10/23/2007
0072-000	Cv Proof Of Svc Compl/Pet/Summons For: Engineered Glass Walls, Inc. / DEF Against: Southern Stretch Forming / XDF		10/09/2007	None	10/09/2007
0071-000	Cv Proof Of Svc Compl/Pet/Summons For: Viracon Inc. / PLT For: Engineered Glass Walls, Inc. / PLX For: West Bay Builders, Inc. / PLX Against: Lowry's, Inc. / XDF		10/02/2007	None	10/02/2007
0070-000	Cv Proof Of Svc Compl/Pet/Summons For: Engineered Glass Walls, Inc. / PLX Against: Oldcastle Windows Inc. / XDF		09/26/2007	None	09/26/2007
0069-000	Cv Proof Of Svc Compl/Pet/Summons For: Engineered Glass Walls, Inc. / PLX Against: Tnemec Company, Inc. / XDF		09/26/2007	None	09/26/2007
0068-000	Cv Proof Of Svc Compl/Pet/Summons For: Engineered Glass Walls, Inc. / PLX Against: Sapa Profiles, Inc. / XDF		09/26/2007	None	09/26/2007
0067-000	Cv Proof Of Svc Compl/Pet/Summons For: Engineered Glass Walls, Inc. / PLX Against: PDM Steel Service Center, Inc. / XDF		09/26/2007	None	09/26/2007
0066-000	Cv Proof Of Svc Compl/Pet/Summons For: Engineered Glass Walls Inc. / PLX Against: Oneto Metal / XDF		09/26/2007	None	09/26/2007
0065-000	Cv Proof Of Svc Compl/Pet/Summons For: Viracon Inc. / PLT Against: Glaspro / XDF		09/26/2007	None	09/26/2007
0064-000	Cv Proof Of Svc Compl/Pet/Summons For: Engineered Glass Walls, Inc. / PLX Against: Colorpro LLC / XDF		09/26/2007	None	09/26/2007
0063-000	Cv Proof Of Svc Compl/Pet/Summons For: Engineered Glass Walls, Inc. / PLX Against: Coast Aluminum And Architectural, Inc. / XDF		09/26/2007	None	09/26/2007
0062-000	Cv Proof Of Svc Compl/Pet/Summons For: Engineered Glass Walls, Inc. / PLX Against: Oldcastle Windows, Inc. / XDF	Click for text	09/24/2007	None	09/24/2007

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0061-000	Cv Proof Of Svc/Fax For: Engineered Glass Walls, Inc / DEF	Click for text	09/20/2007	None	09/20/2007
0060-000	Cv Request For: West Bay Builders Inc / DXC	Click for text	09/10/2007	None	09/10/2007
0059-000	Cv Declaration For: West Bay Builders, Inc / DXC	Click for text	09/10/2007	None	09/10/2007
0058-000	Cv Reply For: West Bay Builders, Inc. / DXC	Click for text	09/10/2007	None	09/10/2007
0057-000	Cv Opposition For: Viracon, Inc. / OTH	Click for text	09/06/2007	None	09/06/2007
0057-001	Cv Proof Of Svc For: Viracon, Inc / OTH		09/06/2007	None	09/06/2007
0056-000	Cv First Paper Def - Unltd For: Viracon, Inc / OTH	Click for text	09/06/2007	None	09/06/2007
0055-000	Cv Ntc:Entry Of Dismissal W/Pos For: Engineered Glass Walls, Inc / PLX		08/30/2007	None	08/30/2007
0054-000	Cv Req:Dismissal, Partial W/O Prej For: Engineered Glass Walls, Inc. / PLX Against: Gillies Trucking, Inc. / XDF Against: Fastenal Company / XDF Against: Lumar Metals / XDF Against: SI Equipment Services, Inc. / XDF Against: Stockton Blue / XDF Against: United Rentals / XDF Against: White Cap / XDF Against: The Stanley Works / XDF	Click for text	08/29/2007	None	08/30/2007
0053-000	Cv Decl In Support For: West Bay Builders, Inc. / DXC	Click for text	08/13/2007	None	08/13/2007
0052-000	Cv Memo:Ps & As/Suppt Of Mtn For: West Bay Builders, Inc. / DXC	Click for text	08/13/2007	None	08/13/2007
0051-000	Cv Ntc:Motion W/Fee For: West Bay Builders, Inc. / DXC	Click for text	08/13/2007	None	08/13/2007
0051-001	Cv Proof Of Svc For: West Bay Builders, Inc. / DXC Against: City Of San Jose / DEF Against: Engineered Glass Walls, Inc / PLX		08/13/2007	None	08/13/2007
0050-000	Cv Case Mgmt Statement For: Engineered Glass Walls Inc / PLX	Click for text	08/07/2007	None	08/07/2007
0049-000	Cv Summons Filed For: Engineered Glass Walls, Inc / PLX Against: ACI Distribution / XDF Against: Aluma Wall Partition Company Inc. / XDF Against: Arch Aluminum Glass Co., Inc. / XDF Against: California High Reach & Equipment Rental, Inc / XDF Against: Cesar Color, Inc. / XDF Against: C R Laurence International, Inc. / XDF Against: Carmel Steel Products, Inc. / XDF Against: Coast Aluminum And Architectural, Inc. / XDF Against: Colorpro, LLC / XDF Against: Dependable Precision Manufacturing, Inc / XDF Against: Eclipse Systems / XDF Against: Gerard Homer & Associates / XDF Against: Gillies Trucking Inc / XDF Against: Glaspro / XDF Against: Fastenal Company / XDF Against: Lowry's, Inc. / XDF Against: Lumar Metals / XDF Against: Oneto Metal / XDF Against: Sapa Profiles, Inc / XDF Against: PDM Steel Service Center, Inc. / XDF	Click for text	08/07/2007	None	08/07/2007

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Against: SI Equipment Services, Inc. / XDF
Against: Southern Stretch Forming / XDF
Against: Stockton Blue / XDF
Against: Tnemec Company, Inc. / XDF
Against: Torrance Aluminum / XDF
Against: United Rentals / XDF
Against: Oldcastle Windows, Inc. / XDF
Against: White Cap / XDF
Against: The Stanley Works / XDF

0048-000

Cv Summons Issued

[Click for text](#)

08/07/2007

None

08/07/2007

For: Engineered Glass Walls, Inc. / PLX
Against: ACI Distribution / XDF
Against: Aluma Wall Partition Company, Inc. / XDF
Against: Arch Aluminum Glass Co., Inc. / XDF
Against: California High Reach & Equipment Rental, Inc. / XDF
Against: Cesar Color, Inc. / XDF
Against: C R. Laurence International, Inc. / XDF
Against: Carmel Steel Products, Inc. / XDF
Against: Coast Aluminum And Architectural, Inc. / XDF
Against: Colorpro, LLC / XDF
Against: Dependable Precision Manufacturing, Inc. / XDF
Against: Eclipse Systems / XDF
Against: Gerard Homer & Associates / XDF
Against: Gillies Trucking, Inc. / XDF
Against: Glaspro / XDF
Against: Fastenal Company / XDF
Against: Lowry's, Inc. / XDF
Against: Lumar Metals / XDF
Against: Oneto Metal / XDF
Against: Sapa Profiles, Inc. / XDF
Against: PDM Steel Service Center, Inc. / XDF
Against: SI Equipment Services, Inc. / XDF
Against: Southern Stretch Forming / XDF
Against: Stockton Blue / XDF
Against: Tnemec Company, Inc. / XDF
Against: Torrance Aluminum / XDF
Against: United Rentals / XDF
Against: Oldcastle Windows, Inc. / XDF
Against: White Cap / XDF
Against: The Stanley Works / XDF

0047-000

Cv Cross-Complaint

08/07/2007

None

08/07/2007

For: Engineered Glass Walls, Inc. / PLX
Against: ACI Distribution / XDF
Against: Aluma Wall Partition Company, Inc. / XDF
Against: Arch Aluminum Glass Co., Inc. / XDF
Against: California High Reach & Equipment Rental, Inc. / XDF
Against: Cesar Color, Inc. / XDF
Against: C R. Laurence International, Inc. / XDF
Against: Carmel Steel Products, Inc. / XDF
Against: Coast Aluminum And Architectural, Inc. / XDF
Against: Colorpro, LLC / XDF
Against: Dependable Precision Manufacturing, Inc. / XDF
Against: Eclipse Systems / XDF
Against: Gerard Homer & Associates / XDF
Against: Gillies Trucking, Inc. / XDF
Against: Glaspro / XDF
Against: Fastenal Company / XDF
Against: Lowry's, Inc. / XDF
Against: Lumar Metals / XDF
Against: Oneto Metal / XDF
Against: Sapa Profiles, Inc. / XDF
Against: PDM Steel Service Center, Inc. / XDF
Against: SI Equipment Services, Inc. / XDF
Against: Southern Stretch Forming / XDF
Against: Stockton Blue / XDF
Against: Tnemec Company, Inc. / XDF
Against: Torrance Aluminum / XDF
Against: United Rentals / XDF
Against: Oldcastle Windows, Inc. / XDF
Against: White Cap / XDF
Against: The Stanley Works / XDF

0047-001

Cv Answer, Unidt, W/Fees

[Click for text](#)

10/12/2007

None

10/15/2007

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0047-002	For: PDM Steel Service Center, Inc / XDF Against: Engineered Glass Walls, Inc / DEF Cv Answer, Unltd, W/Fees	Click for text	10/19/2007	None	10/19/2007
0047-003	For: Oldcastle Windows, Inc / XDF Against: Engineered Glass Walls, Inc / DEF Cv Answer, Unltd, W/Fees	Click for text	10/26/2007	None	10/26/2007
0047-004	For: Sapa Profiles, Inc / XDF Cv Answer, Unltd, W/Fees	Click for text	11/01/2007	None	11/01/2007
0047-005	For: Dependable Precision Manufacturing, Inc / XDF Against: Engineered Glass Walls, Inc / DXC Cv Answer, Unltd, W/Fees	Click for text	11/06/2007	None	11/06/2007
0047-006	For: Tnemec Company, Inc / XDF Against: Engineered Glass Walls, Inc / DXC Cv Answer, Unltd, W/Fees	Click for text	11/07/2007	None	11/07/2007
0047-007	For: Lowry's, Inc / XDF Against: Engineered Glass Walls, Inc / PLX Cv Answer Unltd, W/Fees	Click for text	11/13/2007	None	11/13/2007
0047-008	For: Oneto Metal / XDF Against: Engineered Glass Walls, Inc / DEF Cv Answer Unltd, W/Fees	Click for text	11/27/2007	None	11/27/2007
0047-009	For: Coast Aluminum And Architectural, Inc / XDF Against: Engineered Glass Walls, Inc / PLX Cv Answer Unltd, W/Fees	Click for text	12/14/2007	None	12/14/2007
0046-000	For: Colorpro, LLC / XDF For: Glaspro / XDF Cv Decl In Support	Click for text	08/02/2007	None	08/02/2007
0045-000	For: West Bay Builders, Inc / DXC Cv Memo:Ps & As/Supt Of Mtn	Click for text	08/02/2007	None	08/02/2007
0044-000	For: West Bay Builders, Inc / DXC Cv Ntc:Motion W/Fee	Click for text	08/02/2007	None	08/02/2007
0043-000	For: West Bay Builders, Inc / DXC Cv First Paper Def - Unltd	Click for text	07/30/2007	None	07/30/2007
0042-000	For: Travelers Casualty & Surety Company / DEF Cv Case Mgmt Statement	Click for text	07/30/2007	None	07/30/2007
0041-000	For: Travelers Casualty & Surety Company / DEF For: West Bay Builders, Inc / DXC Cv Case Mgmt Statement	Click for text	07/27/2007	None	07/27/2007
0040-000	For: Engineered Glass Walls, Inc / PLX Cv Decl In Support	Click for text	06/25/2007	None	06/25/2007
0039-000	For: Engineered Glass Walls, Inc / PLX Cv Reply	Click for text	06/25/2007	None	06/25/2007
0038-000	For: Engineered Glass Walls, Inc / PLX Cv Req:Judicial Ntc	Click for text	06/20/2007	None	06/20/2007
0037-000	For: West Bay Builders, Inc / DXC Cv Objection ..	Click for text	06/20/2007	None	06/20/2007
0036-000	For: West Bay Builders, Inc / DXC Cv Opposition	Click for text	06/20/2007	None	06/20/2007
0035-000	For: West Bay Builders, Inc / DXC Cv Declaration	Click for text	06/07/2007	None	06/07/2007
0034-000	For: Engineered Glass Walls, Inc / PLX Cv Ntc:Motion W/Fee	Click for text	06/07/2007	None	06/07/2007
0034-001	For: Engineered Glass Walls, Inc / PLX Cv Proof Of Svc	Click for text	06/07/2007	None	06/07/2007

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0033-000	For: Engineered Glass Walls, Inc / PLX Cv Case Mgmt Statement	Click for text	05/18/2007	None	05/18/2007
0032-000	For: Engineered Glass Walls, Inc. / PLX For: Surety Company Of The Pacific / XDF Cv Case Mgmt Statement	Click for text	05/11/2007	None	05/11/2007
0031-000	For: West Bay Builders, Inc. / DXC Cv Association Of Attys	Click for text	05/02/2007	None	05/02/2007
0030-000	For: Engineered Glass Walls, Inc / PLX Cv Case Mgmt Statement	Click for text	04/10/2007	None	04/10/2007
0029-000	For: West Bay Builders, Inc / DXC Cv 1st Amended Complaint	Click for text	02/27/2007	None	02/27/2007
0028-000	For: Engineered Glass Walls, Inc. / PLX Against: Safeco Insurance Company Of America / DEF Against: Travelers Casualty & Surety Company / DEF Against: West Bay Builders, Inc. / DXC Cv Order	Click for text	02/13/2007	None	02/13/2007
0027-000	For: Engineered Glass Walls, Inc / PLX Cv Case Mgmt Statement	Click for text	01/19/2007	None	01/22/2007
0026-000	For: Engineered Glass Walls Inc / PLX Cv Case Mgmt Statement	Click for text	01/02/2007	None	01/02/2007
0025-000	For: West Bay Builders, Inc / DXC Cv Association Of Attys	Click for text	12/06/2006	None	12/06/2006
0024-000	For: West Bay Builders, Inc. / DXC Cv Amended Pleading	Click for text	12/01/2006	None	12/01/2006
0023-000	Cv Case Mgmt Statement	Click for text	11/29/2006	None	11/29/2006
0022-000	For: Engineered Glass Walls, Inc. / PLX Cv Case Mgmt Statement	Click for text	11/28/2006	None	11/28/2006
0021-000	For: West Bay Builders, Inc. / DXC Cv Decl In Support		11/27/2006	None	11/27/2006
0020-000	For: Engineered Glass Walls, Inc. / PLX Cv Memo:Ps & As/Suppt Of Mtn		11/27/2006	None	11/27/2006
0019-000	For: Engineered Glass Walls, Inc / PLX Cv Ntc:Motion W/Fee	Click for text	11/27/2006	None	11/27/2006
0018-000	For: Engineered Glass Walls, Inc / PLX Cv Case Mgmt Statement	Click for text	10/02/2006	None	10/02/2006
0017-000	For: West Bay Builders Inc. / DXC Cv Case Mgmt Statement	Click for text	09/25/2006	None	09/25/2006
0016-000	For: Engineered Glass Walls, Inc / PLX For: Surety Company Of The Pacific / XDF Cv Case Mgmt Statement	Click for text	08/07/2006	None	08/07/2006
0015-000	For: West Bay Builders, Inc. / DXC Cv Req:Dismissal, Partial W/O Prej	Click for text	07/18/2006	None	07/19/2006
0014-000	For: Engineered Glass Walls, Inc / PLX Against: City Of San Jose / DEF Cv Case Mgmt Statement	Click for text	07/11/2006	None	07/11/2006
0013-000	For: West Bay Builders Inc. / DXC Arb-Ntc Of Mediation Status Conf		04/13/2006	None	04/13/2006
0012-000	Cv Case Mgmt Statement	Click for text	03/29/2006	None	03/29/2006
0011-000	For: City Of San Jose / DEF Cv Case Mgmt Statement	Click for text	03/28/2006	None	03/28/2006
0010-000	For: West Bay Builders, Inc. / DXC Cv Case Mgmt Statement	Click for text	03/28/2006	None	03/28/2006

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0009-000	<p>For: Engineered Glass Walls, Inc / PLX Cv Proof Of Svc Compl/Pet/Summons</p>	Click for text	02/21/2006	None	02/21/2006
0008-000	<p>For: West Bay Builders, Inc / DXC Against: Surety Company Of The Pacific / XDF Cv Summons Filed</p>	Click for text	02/08/2006	None	02/08/2006
0007-000	<p>For: West Bay Builders, Inc / DXC Against: Engineered Glass Walls, Inc / PLX Against: Surety Company Of The Pacific / XDF Cv Cross-Complaint</p>	Click for text	02/08/2006	None	02/08/2006
0007-001	<p>For: West Bay Builders, Inc / DXC Against: Engineered Glass Walls, Inc / PLX Against: Surety Company Of The Pacific / XDF Cv Answer - No Fees Due!</p>	Click for text	03/13/2006	None	03/13/2006
0007-002	<p>For: Engineered Glass Walls, Inc / PLX Against: West Bay Builders, Inc / DXC Cv Answer, Unltd, W/Fees</p>	Click for text	03/29/2006	None	03/29/2006
0006-000	<p>For: Surety Company Of The Pacific / XDF Against: West Bay Builders, Inc / DXC Cv Proof Of Svc Compl/Pet/Summons</p>		02/02/2006	None	02/02/2006
0004-000	<p>For: Engineered Glass Walls, Inc / PLX Against: City Of San Jose / DEF Cv Proof Of Svc Compl/Pet/Summons</p>		02/02/2006	None	02/02/2006
0003-000	<p>For: Engineered Glass Walls, Inc / PLX Against: West Bay Builders, Inc / DXC Cv Summons W/Proof Of Svc</p>		02/02/2006	None	02/02/2006
0002-000	<p>For: Engineered Glass Walls, Inc / PLX Against: City Of San Jose / DEF Against: West Bay Builders, Inc / DXC Cv Complaint Filed/Summs Issued</p>	Click for text	11/30/2005	None	11/30/2005
0002-001	<p>For: Engineered Glass Walls, Inc / PLX Against: City Of San Jose / DEF Against: West Bay Builders, Inc / DXC Cv Answer, Unltd, W/Fees</p>	Click for text	01/27/2006	None	01/27/2006
0002-002	<p>For: City Of San Jose / DEF Against: Engineered Glass Walls, Inc / PLX Cv Answer, Unltd, W/Fees</p>		02/08/2006	None	02/08/2006
0001-000	<p>For: West Bay Builders, Inc / DXC Against: Engineered Glass Walls, Inc / PLX Cv Case Cover Sheet</p>		11/30/2005	None	11/30/2005
	<p>For: Engineered Glass Walls, Inc / PLX Against: City Of San Jose / DEF Against: West Bay Builders, Inc / DXC</p>				

For an explanation of the abbreviations used in the Document Description/Text columns, click [here](#)

[RETURN](#)

Attachment B6

Approved as to Form and Legality


Oakland City Attorney's Office

06 JAN 19 11 4: 23

OAKLAND CITY COUNCIL

REVISED

RESOLUTION No: 79653 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

A RESOLUTION TO 1) REJECT ALL BIDS, AUTHORIZE THE CITY ADMINISTRATOR TO NEGOTIATE, AWARD AND EXECUTE A CONSTRUCTION CONTRACT, WITHOUT RETURN TO THE COUNCIL, FOR THE CONSTRUCTION OF STUDIO ONE ART CENTER REHABILITATION PROJECT (NO. C244710) IN AN AMOUNT NOT-TO-EXCEED EIGHT MILLION TWO HUNDRED THOUSAND DOLLARS (\$8,200,000.00); 2) WAIVE FURTHER COMPETITIVE BIDDING, AND 3) APPROPRIATE UP TO TWO MILLION DOLLARS (\$2,000,000.00) FROM UNAPPROPRIATED MEASURE DD FUNDS TO THE STUDIO ONE ART CENTER REHABILITATION PROJECT (NO. C244710)

WHEREAS, Studio One Art Center is an existing facility identified for renovation and rehabilitation under Capital Improvement Plan for FY2003-2005 budget and in accordance with Measure DD passed by the Voters on November 5, 2003; and

WHEREAS, on October 10, 2005, five bids were received by the Office of the City Clerk of the City of Oakland for the Studio One Art Center Rehabilitation Project (No. C244710) and all bids exceeded project estimate; and

WHEREAS, it came to the City's attention that although the City required bidders to disclose whether they had been debarred within the past five years in the pre-qualification phase, the lowest bidder had not disclosed a debarment within the past five years in a nearby jurisdiction which disqualified the firm from the process; and

WHEREAS, reference check for the next low bidder disclosed a recent default in a nearby jurisdiction the fact of which rendered the firm ineligible for the pre-qualified pool or to participate in the bidding process for the Studio One project; and

WHEREAS, the next two bidders in line did not meet City's Compliance Programs in Local Business Enterprise/Small Local Business Enterprise; and

WHEREAS, BBI Construction is the lowest responsive, responsible bidder for the project and has met the Local Business Enterprise/Small Local Business Enterprise requirements but is over budget; and

WHEREAS, project funding exists in Measure DD General Obligation Bond Fund (5320) - Oakland Trust for Clean Water and Safe Parks, Project No. C244710, Capital Projects - Director's Unit (Organization #92110), Capital Acquisitions, Buildings Additions and Improvement Account (#57212); in Proposition 12, 2000, State of California Parks and Recreation Fund (2134), Park

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Attachment B6

Bond Act – Murray Hayden Urban Youth Services Program, Project No. C196810, Capital Projects – Director's Unit (Organization #92110), Capital Acquisitions, Buildings Additions and Improvement Account (#57212); in Municipal Capital Improvement Program Fund (5500), Project No. C71910, Director's Unit (Organization #92110), Capital Acquisitions, Building Additions and Improvement Account (#57212); and

WHEREAS, additional funding is required to award the construction contract; and

WHEREAS, the City lacks the equipment and qualified personnel to perform the necessary work; and

WHEREAS, the City Council finds and determines that the performance of this contract is in the public interest because of economy and that the performance of this contract shall not result in the loss of employment or salary by any person having permanent status in the competitive services; now, therefore, be it

RESOLVED: That the Council rejects all bids submitted on October 10, 2005 for the Studio One Art Center Rehabilitation Project as over the engineer's estimated cost and budget; and, be it

FURTHER RESOLVED: That the City Council finds and determines that it is in the best interests of the City to waive further competitive bidding pursuant to Oakland Municipal Code Title 2, Chapter 2.04, Article 2.04.050.1.2 and 5 and hereby does so because the first bid process did not render any responsible and responsive bids within budget and further competitive bidding would delay the project which may cause the City to miss the deadlines for expenditure of Measure DD funding; and be it

FURTHER RESOLVED: That the City Administrator, or her designee, is hereby authorized to negotiate and award a construction contract based on plans and specifications for the Studio One Art Center Rehabilitation Project in an amount not-to-exceed eight million two hundred thousand (\$8,200,000.00), without return to Council; and, be it

FURTHER RESOLVED: That the plans and specifications prepared by the Director of Public Works for this project are hereby approved; and, be it

FURTHER RESOLVED: That pursuant to Oakland Municipal Code Section 2.04.060.B, C, and D, the Studio One Art Center Rehabilitation Project (No. C244710) bid from West Bay Builders, Inc. is hereby rejected as non-responsible due to their failure to disclose information concerning debarment within the past five year that was required in the pre-qualification application for that project; and, be it

FURTHER RESOLVED: That the Studio One Art Center Rehabilitation Project (No. C244710) bid from Arntz Builders, Inc. is hereby rejected because Arntz did not have the project experience necessary to become a pre-qualified bidder for the project; and, be it

FURTHER RESOLVED: That, pursuant to Oakland Municipal Code Chapter 2.04, Section 2.04.050 1.5, the City Council finds and determines that it would be in the City's best interests to waive further competitive bidding and hereby does so in order to meet the funding expenditure closing date; and, be it

Attachment B6

FURTHER RESOLVED: That up to two million dollars (\$2,000,000.00) from unappropriated Measure DD, Series A, funds are appropriated to the Studio One Art Center Rehabilitation Project (No. C244710) and the funds are placed in Measure DD Fund 5320, Capital Projects -- Director's Unit (Organization #92110), Capital Acquisitions, Buildings Additions and Improvement Account (#57212); and, be it

FURTHER RESOLVED: That the contractor shall provide faithful performance bond and payment bond to guarantee payment of all claims for labor and materials furnished and for the amount due under the Unemployment Insurance Act, for one hundred percent (100%) of the contract amount prior to execution of the contract; and, be it

FURTHER RESOLVED: That the City Administrator, or her designated representative, is hereby authorized to approve any subsequent amendments, modifications, or extensions of said agreement, provided that such amendments or extensions shall be approved as to form and legality by the City Attorney's Office and filed with the Office of the City Clerk; and, be it

FURTHER RESOLVED: That project completion is estimated to be approximately fifteen months after issuance of Notice-to-Proceed; and, be it

FURTHER RESOLVED: That the contract shall be reviewed and approved by the Office of the City Attorney and filed with the Office of the City Clerk; and, be it

FURTHER RESOLVED: That the approval of this Resolution requires a two-thirds vote of the Council members.

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 20 2005 2005

PASSED BY THE FOLLOWING VOTE:

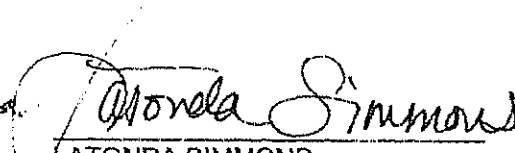
AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND PRESIDENT OF THE COUNCIL DE LA FUENTE - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:


LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

Attachment B7

5a

Joan Jeffries

From: Joyce Frye [jfrye@pleasanton.k12.ca.us]
Sent: Thursday, October 04, 2012 12:58 PM
To: Joan Jeffries
Cc: Erron Alvey
Subject: Re: Hearst Elementary mold lawsuit

Hi Joan,

You cannot find a case number in that PUSD did not file a lawsuit. PUSD settled the issue in mediation.

Joyce Frye
Business Services
Pleasanton USD
925-426-4307

Attachment B7

SETTLEMENT AGREEMENT AND

RELEASE OF CLAIMS

A. PARTIES AND PURPOSE:

This Settlement Agreement and Release of Claims ("AGREEMENT") is made between PLEASANTON UNIFIED SCHOOL DISTRICT (hereinafter "CLAIMANT"); WEST BAY BUILDERS, INC, (hereinafter "DEFENDANT"); and DASCO CONSTRUCTION & DRYWALL, DOLAN CONCRETE CONSTRUCTION, HENLEY & COMPANY, OWR MECHANICAL, INC DBA MONARCH MECHANICAL, INC, PINNACLE GLASS CO., S&S CUMMINS CORPORATION, SACRAMENTO A-1 DOOR, and WESTECH ROOFING, INC. (hereinafter the "SETTLING DEFENDANTS"). All of the foregoing parties to this AGREEMENT are hereinafter referred to collectively as the "SETTLING PARTIES."

B. RECITALS:

1. Disputed Claims

WHEREAS, CLAIMANT owns the Phoebe Apperson Hearst Elementary School located at 5301 Case Avenue, in the City of Pleasanton, County of Alameda, State of California (hereinafter "SUBJECT PROPERTY"). By letter dated October 5, 2009, CLAIMANT instituted notice to DEFENDANT concerning certain construction claims relating to worked performed at the SUBJECT PROPERTY

WHEREAS, DEFENDANT, in turn, notified SETTLING DEFENDANTS of CLAIMANT'S alleged claims on or about November 2009 (hereinafter referred to collectively as the "ACTION").

WHEREAS, it is the intent of the SETTLING PARTIES to settle and release all claims arising out of and related to the ACTION and the SUBJECT PROPERTY that have previously existed or may now exist.

NOW, THEREFORE, in consideration of the covenants contained herein, the SETTLING PARTIES do hereby agree as follows:

2. WHEREAS, the subject matter of this dispute is alleged construction defects more fully set out in CLAIMANT'S report with attached exhibits and photographs dated October 25, 2010, authored by CLAIMANT'S retained consultant, Eugene Nesbit, and,

3. When referred to herein "CLAIMANT" includes its employees, agents, principals, owners, officers, directors, insurers, predecessors, successors in interest, assigns, subsidiaries, affiliates and/or related entities and/or representatives; and

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4. When referred to herein "DEFENDANT" includes its employees, agents, principals, owners, officers, directors, insurers, predecessors, successors in interest, assigns, subsidiaries, affiliates and/or related entities and/or representatives; and

5. When referred to herein "SETTLING DEFENDANTS" includes their employees, agents, principals, owners, officers, directors, insurers, predecessors, successors in interest, assigns, subsidiaries, affiliates and/or related entities and/or representatives

C. SETTLEMENT TERMS:

1. (a) The DEFENDANT AND SETTLING DEFENDANTS shall pay to CLAIMANT an aggregate sum of \$610,000.00 for settlement of this ACTION as follows:

PARTY	CONTRIBUTION
Dasco Construction & Drywall	\$10,000.00
Dolan Concrete Construction	\$35,000.00
Henley & Company	\$55,000.00
OWR Mechanical, Inc. dba Monarch Mechanical, Inc.	\$30,000.00
Pinnacle Glass Co.	\$25,000.00
S&S Cummins Corporation	\$200,000.00
Sacramento A-1 Door	\$26,000.00
Westech Roofing, Inc.	\$15,000.00
West Bay Builders, Inc	\$214,000.00
TOTAL	\$610,000.00

The DEFENDANTS and SETTLING DEFENDANTS shall tender the settlement checks to CLAIMANT, payable to "Pleasanton Unified School District" Tax ID: 94-3062524 no later than July 29, 2011.

(b) All settlement amounts to be paid herein expressly do not include additional insured obligations, if any, owed by SETTLING DEFENDANTS' insurance carriers to DEFENDANT. It is agreed that any such obligations are separate and distinct from this AGREEMENT and any amounts paid herein. Notwithstanding anything in this Agreement, to the contrary, it is understood and agreed that DEFENDANT and their primary insurers, do not release and shall retain any and all claims and rights to enforce the additional insured obligations owed to them by the additional insured carriers from the respective dates of tender to the insurance carriers for all SETTLING DEFENDANTS.

(c) Each carrier, Ace Westchester Fire Insurance Company, Arch Insurance Company and Travelers Insurance reserves their rights against each other for a share of defense fees and costs in defending the ACTION

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(d) The funding obligation of the DEFENDANT AND THE SETTLING DEFENDANTS is several only and if any said party defaults, no other party is responsible to fund the amount and CLAIMANT will have to pursue its breach of contract remedies only against said defaulting party or parties

2. The Recitals above are incorporated by reference as though set forth in full at this place.

3. The CLAIMANT hereby releases DEFENDANT and SETTLING DEFENDANTS from all claims, demands, causes of action, attorney's fees and/or costs and any other liability or asserted liability asserted in the dispute between them arising out of the SUBJECT PROPERTY, the ACTION, or obligations, or asserted obligations of any nature whatsoever that now exist, or that may have previously existed, or have been asserted, or any claims known or unknown, existing from the beginning of time to the date hereof, by and between the SETTLING PARTIES hereto, including property damage, economic loss, loss of business, business interruption, or any resulting damage therefrom, attorneys' fees, defamation, slander, libel, and malicious prosecution, as related to the SUBJECT PROPERTY and the ACTION.

4. DEFENDANT and SETTLING DEFENDANTS, and each of them, do hereby release one another from all claims, demands, causes of action, attorney's fees and/or costs and any other liability or asserted liability asserted in the dispute between them arising out of the SUBJECT PROPERTY, the ACTION, or obligations, or asserted obligations of any nature whatsoever that now exist, or that may have previously existed, or have been asserted, or any claims known or unknown, existing from the beginning of time to the date hereof, by and between the SETTLING PARTIES hereto, including property damage, defamation, slander, libel, malicious prosecution, economic loss, emotional distress and/or loss of business as related to the SUBJECT PROPERTY and the ACTION.

5. In consideration for the full and timely performance of all terms and conditions of this AGREEMENT, in the manner prescribed herein, the CLAIMANT, on behalf of itself, and its respective heirs, administrators, trustees, beneficiaries, predecessors, successors and assigns, officers, directors, and insurers, hereby release and forever discharge the DEFENDANT and SETTLING DEFENDANTS, their agents, employees, officers, directors, partners, trustees, fiduciaries, administrators, subsidiaries, affiliated entities, predecessors, successors, assigns, attorneys, and insurers of and from any and all claims, matters, or causes, arising or resulting from the ACTION, and or damages, whether of a general or specific nature, arising therefrom, including but not limited to costs incurred or to be incurred in repairing damages, investigation expenses, loss of use expenses, attorneys' fees, litigation costs and expert costs arising or resulting from the ACTION

6. The SETTLING PARTIES expressly acknowledge that they have been advised to seek legal counsel concerning, the provisions of California Civil Code Section 1542

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Furthermore, the SETTLING PARTIES expressly acknowledge, and are familiar with, the provisions of California Civil Code Section 1542 which provide that:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

In connection therewith, the SETTLING PARTIES further acknowledge that they may have sustained damage, loss, cost or expense that is presently unknown or unsuspected, and that such damage, loss, cost, or expense as may have been sustained may give rise to additional damage, loss, cost, or expense in the future. Nevertheless, the SETTLING PARTIES acknowledge that this AGREEMENT has been negotiated and agreed upon in light of this situation, and they hereby expressly waive any and all rights that they have under California Civil Code Section 1542, or under any other state or federal statutes or common law principle of similar effect

7. Each of the SETTLING PARTIES hereto executes this AGREEMENT, acting upon their independent judgment and/or upon the advice of their respective counsel without any representations or inducements, express or implied, of any kind or nature, from each to the other, except as specifically set forth herein.

8. All signatories warrant that they have authority to release one another from the claims being released under this AGREEMENT. Signatories represent and warrant that they are the sole and rightful owner of all rights, title and interest in every claim or other matter which they release herein on their own behalf and have not heretofore assigned or otherwise transferred any interest in any claim which they may have against one another. It is agreed that this provision is a material part of the AGREEMENT.

9. It is further understood and agreed that in reaching this settlement and signing this AGREEMENT, all parties have been counseled and recommended to seek the advice of an attorney to discuss the facts and circumstances of this claim and settlement reached, and the terms and conditions of this AGREEMENT.

10. The SETTLING PARTIES agree that this AGREEMENT was negotiated and entered into in good faith. Further, the DEFENDANT and SETTLING DEFENDANTS reserve their right to make an application of good faith settlement

D. GENERAL PROVISIONS:

1. This AGREEMENT shall be binding upon the SETTLING PARTIES' successors, heirs, assigns, lien claimants, personal representatives and all others including, but not limited to: individuals, partnerships and corporations connected with the subject matter previously mentioned herein in this AGREEMENT.

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2. The SETTLING PARTIES shall each bear their own costs, including attorney's fees incurred in defending or prosecuting the ACTION, including attorneys' fees for the preparation, drafting and execution of this AGREEMENT and to the compliance with their respective obligations as set forth herein, notwithstanding any additional insured obligations, if any.

3. It is understood by the SETTLING PARTIES hereto that this AGREEMENT is entered into solely for purposes of compromise of doubtful and disputed claims, and each party expressly agrees and acknowledges that the other parties hereto have not admitted, and by execution and performance of this AGREEMENT, do not admit, any liability or obligation to the other parties, or any of them.

4. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this AGREEMENT.

5. This AGREEMENT, its validity, the construction of its terms and the interpretation of rights and duties of the parties hereto, shall be governed and construed under the laws of the State of California.

6. This AGREEMENT may be executed in one or more counterparts, each of which, after each party has signed and delivered at least one such counterpart to each other party, shall have the same force and effect as an original executed by all parties. A copy of a SETTLING PARTIES' execution of this AGREEMENT sent by mail, e-mail or facsimile shall have the same force and effect as an original executed by all parties.

7. If any dispute shall arise among the parties regarding the enforcement of the terms and conditions of this AGREEMENT, the "prevailing party" shall be entitled to be reimbursed for all costs, including reasonable attorney's fees, and the Alameda County Superior Court shall retain jurisdiction to enforce the terms of the settlement, under Code of Civil Procedure Section 664.7.

8. Whenever in this instrument the context requires the masculine, feminine, and neutral gender, each shall be deemed to include the other and the singular and plural are each deemed to refer to the other.

9. This release contains the entire AGREEMENT of the parties, and the terms of this release are contractual. The recitals set forth above are intended to be agreements of the parties and not merely recitals, and are hereby expressly incorporated into the AGREEMENT by this reference.

10. The SETTLING PARTIES shall each cause the original of this AGREEMENT to be fully executed in counterparts and delivered to David S. Henningsen, Esq. of the law firm Robinson & Wood, Inc., counsel for Defendant West Bay Builders, Inc. A copy of such fully executed AGREEMENT will be provided to the remaining SETTLING PARTIES' counsel.

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11. No modification, amendment, or waiver of any of the provisions contained in this AGREEMENT shall be binding unless made in writing and signed by all of the SETTLING PARTIES and/or by their duly authorized officers or agents.

12. This AGREEMENT is not intended to, nor shall it be construed to create or confer any rights or benefits in anyone not a party hereto except as expressly provided herein.

13. The SETTLING PARTIES hereby acknowledge and agree that the drafting and finalizing of this AGREEMENT is the product of a joint effort by their respective legal counsel, and that as a result, any ambiguity in this AGREEMENT shall not be interpreted to the detriment of any party to this AGREEMENT on any basis, including an application of the common law or statutory rule which may interpret ambiguity against the drafting party.

14. The SETTLING PARTIES hereby acknowledge that each may hereafter discover facts different from and in addition to those which each now knows or believes to be true with respect to the Claims herein released, and each agrees that this AGREEMENT shall be and remain in full force and effect in all respects, notwithstanding such different or additional facts.

14. The effective date of this AGREEMENT is June 14, 2011.

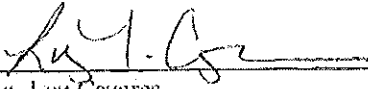
IN WITNESS WHEREOF the SETTLING PARTIES hereto have accepted this Settlement AGREEMENT and Release of All Claims.

Signatures commence on the next page

Attachment B7

DATED: 6/27/11

PLEASANTON UNIFIED SCHOOL
DISTRICT


By: Luz Cazares
Its: Assistant Superintendent, Business
Services

APPROVED AS TO FORM:

DATED: 6-28-11

McCORMICK BARSTOW LLP

By: 
JEFFREY R. OLSON

Attachment B7

DATED: _____

WEST DAY BUILDERS, INC

By: 
Its: Paul Morrison
President

APPROVED AS TO FORM:

DATED: June 29, 2011

ROBINSON & WOOD, INC

By: 
DAVID S. HENNINGSEN
KARTIKA KUPPALI

APPROVED AS TO FORM:

DATED: _____

LORBER, GREENFIELD & POLITO, LLP

By: _____
BRUCE W. LORBER
SHERYL A. TRAUM

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Attachment B7

JUN-27-2011 14:01

P.11/19

DATED: _____

WEST BAY BUILDERS, INC.

By: _____
Its: _____

APPROVED AS TO FORM:

DATED: _____

ROBINSON & WOOD, INC

By: _____
DAVID S. HENNINGSEN
KARTIKA KUPPALLI

APPROVED AS TO FORM:

DATED: June 29, 2011

LORBER, GREENFIELD & POLITO, LLP

By: Jim M. Coppello / for
BRUCE W. LORBER
SHERYL A. TRAUM

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Pleasanton Unified School District
Settlement Agreement and Release of Claims
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Attachment B7

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DASCO CONST AND DW


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JUN-27-2011 14:04

P.12/19

DATED: 6/28/11


DASCO CONSTRUCTION & DRYWALL


By: Michael Cook
Its: President

APPROVED AS TO FORM:

DATED: 6.24.11

MIDDLEBROOK, KAISER, HENGESBACH
& DAWSON


By: MARK L. DAWSON

670121

Pleasanton Unified School District
Settlement Agreement and Release of Claims
1733540.v1

- 9 -

6b7.11

Attachment B7

06/24/2011 14:06 IFAX

→ Ben Newsom


001/001

JAN-01-1996 23:53

P.13/19

DATED: June 24, 2011

DOLAN CONCRETE CONSTRUCTION


By: Benjamin G. Newsom
Its: Secretary-Treasurer

APPROVED AS TO FORM:

DATED: June 27, 2011

JOSEPH COSTELLA & ASSOCIATES

By: 
WILLIAM P. SCHNEIDER

670171

Pleasanton Unified School District
Settlement Agreement and Release of Claims
1753340.v1

- 10 -

6b7.12

Attachment B7

JUN-27-2011 14:33 Received:

Jun 27 2011 02:29pm

P 14/19

DATED: 7/15/11

HENLEY & COMPANY

By: HENLEY & CO
Its: R. Henley, Jr.
PRESIDENT
R. HENLEY, JR.

APPROVED AS TO FORM:

DATED: _____

BRADLEY CURLEY ASIANO BARRABEE,
ABEL & KOWALSKI, P C

By: _____
ROBERT W. MARCHI

APPROVED AS TO FORM:

DATED: 6/30/2011

PORTER SCOTT

By: Chad S Tapp for
CHAD S TAPP

670121

Pleasanton Unified School District
Settlement Agreement and Release of Claims
1753540 v1

- 11 -

6b7.13

Attachment B7

06/28/11 09:36 FAX

BCAB&C

003

DATED: _____

HENLEY & COMPANY

By: _____

Its: _____

APPROVED AS TO FORM:

DATED: 6/28/11

BRADLEY CURLEY ASIANO BARRABEE,
ABEL & KOWALSKI, P.C.

By: 

ROBERT W. MARCHI

APPROVED AS TO FORM:

DATED: _____

PORTER SCOTT

By: _____

CHAD S. TAPP

670121

Plaquemont Unified School District
Settlement Agreement and Release of Claims
1753540.v1

- 11 -

6b7.14

Attachment B7

JUN-27-2011 14:14

P 15/19

DATED: 6/28/11

OWR MECHANICAL, INC. DBA
MONARCH MECHANICAL, INC. *Bm.*

Barry Murray
By: *Barry Murray*
Its: *President*

APPROVED AS TO FORM:

DATED: _____

NORTON & MELNIK

By: _____
JOEL WITZMAN

APPROVED AS TO FORM:

DATED: _____

KENNEDY & SOUZA

By: _____
KEVIN P. KENNEDY
ERIKA L. SANDLER

670127

Pleasanton Unified School District
Settlement Agreement and Release of Claims
1232560 v3

- 12 -

6b7.15

Attachment B7

06/28/2011 09:49 FAX 6192338593

Kennedy & Souza

0003/0003

JUN-27-2011 16:00

P.12/16

DATED: _____

OWR MECHANICAL, INC. DBA
MONARCH MECHANICAL, INC.

By: _____
Its: _____

APPROVED AS TO FORM:

DATED: _____

NORTON & MELNIK

By: _____
JOEL WITZMAN

APPROVED AS TO FORM:

DATED: 6/28/11 _____

KENNEDY & SOUZA

By: 
KEVIN P. KENNEDY
ERIKA L. SANDLER

670121

Pleasanton Unified School District
Settlement Agreement and Release of Claims
1753440.v1

- 12 -

6b7.16

Attachment B7

JUN-27-2011 14:19

P.16/19

DATED: 6/29/11

PINNACLE GLASS CO.

The Pinnacle Glass Company, Inc.

By: Nick Tsirolas
Its: NICK TSIROLAS

APPROVED AS TO FORM:

DATED: 6/29/11

DRYDEN, MARGOLES SCHIMANECK &
WERTZ

By: 
R. RANDY WERTZ

670121

Pleasanton Unified School District
Settlement Agreement and Release of Claims
1753540.v1

- 13 -

6b7.17

Attachment B7

06/27/2011 14:22 010709433

S & S CUMMINS CORP

PAGE 02/02

L/O HELEN SANTANA
JUN-27-2011 14:22

Fax: 415-296-8201

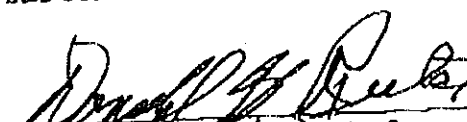
Jun 20 2011 11:16

P 18

P 17/19

DATE: June 29, 2011

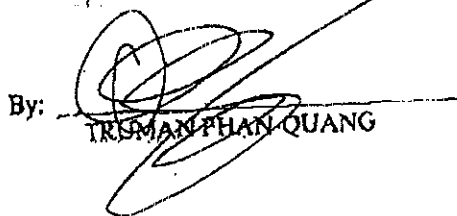
S&S CUMMINS CORPORATION


By: DONALD H. REITER
Its: PRESIDENT

APPROVED AS TO FORM:

DATE: 6/29/11

LAW OFFICES OF SANTANA & HART


By: TRUMAN PHAN QUANG

67011

Pleasanton Unified School District
Settlement Agreement and Release of Claims
1753340 41

- 14 -

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Attachment B7


JUN-27-2011 14:24 Received:

Jun 27 2011 02:19pm

P. 18/19

DATED: JUN 29 2011

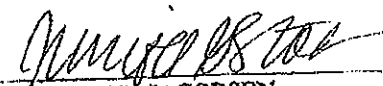
SACRAMENTO A-1 DOOR


By: Jeffery S. Wilson
Title: CEO

APPROVED AS TO FORM:

DATED: 6/29/11

JACOBSEN & MC ELROY PC

By: 
KAREN L. JACOBSEN
JENNIFER G STOECKLEIN

670121

Pleasanton Unified School District
Settlement Agreement and Release of Claims
1753540.v1

- 15 -

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Attachment B7

JAN-02-1996 08:13

P.19/19

DATED: 6/30/11

WESTECH ROOFING, INC.

By: *Christopher Chapman*
Its: Counsel of Record pursuant to CCP Section 604.7

APPROVED AS TO FORM:

DATED: _____

FORD, WALKER, HAGGERTY & BEHAR,
LLP

By: _____
CHRISTOFER CHAPMAN

670121

Pleasanton Unified School District
Settlement Agreement and Release of Claims
1753540.v1

- 16 -

TOTAL P.19

6b7.20

Attachment B7

06/30/2011 09:02 Ford, Walker, Haggerty & Behar

(FAX) 15625903582

P 002/002

JUN-27-2011 14:27

P.19/19

DATED: _____

WESTECH ROOFING, INC.

By: _____
Its: _____

APPROVED AS TO FORM:

DATED: 6/30/11

FORD, WALKER, HAGGERTY & BEHAR,
LLP

By: *Christopher Chapman*
CHRISTOPHER CHAPMAN

610121

Piawanton Unified School District
Settlement Agreement and Release of Claims
1733540.v1

- 16 -

TOTAL P.19

6b7.21

Attachment B8



6a

LABOR COMMISSIONER, STATE OF CALIFORNIA Department of Industrial Relations Division of Labor Standards Enforcement By: DAVID D. CROSS, SBN 97203 2031 Howe Avenue, Suite 100 Sacramento, CA 95825 Telephone: (916) 263-2915		For Court Use Only FILED ALAMEDA COUNTY AUG 29 2012 CLERK OF THE SUPERIOR COURT By <u>Ashe</u> Deputy	
SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ALAMEDA		No filing Fee Per Labor Code Section 101 et seq.	
PLAINTIFF DIVISION OF LABOR STANDARDS ENFORCEMENT		Case No. RG12645959	
DEFENDANT: West Bay Builders, Inc., a California Corporation and Titan Electrical Construction, Inc. a California Corporation			
State Case No : 40-27539/259	REQUEST THAT CLERK ENTER JUDGMENT AND JUDGMENT ON THE FINAL CIVIL AND WAGE PENALTY ASSESSMENT		
<i>REQUEST THAT CLERK ENTER JUDGMENT</i>			
The civil Wage and Penalty Assessment of the Labor Commissioner has become final and the clerk is requested to enter judgment immediately in conformity with the accompanying certified copies.			
Dated: <u>8/17/12</u>	By <u>David D. Cross</u> David D. Cross, Attorney for the Labor Commissioner of the State of California		
JUDGMENT			
A copy of the Civil Wage and Penalty Assessment of the Labor Commissioner has been filed with this court Judgment is hereby entered as follows: \$32,069.75 as Wages; \$14,050.00 as Penalties under Labor Code section 1775 and 1813; \$32,069.75 as Liquidated damages			
Plaintiff shall recover from defendant the sum of \$78,189.50			
I certify this to be a true copy of the judgment entered on _____; in Judgment Book _____ at page _____ or microfilm, pursuant to Code of Civil Procedure section 668.5			
Clerk, by _____, Deputy Clerk			

REQUEST THAT CLERK ENTER JUDGMENT AND JUDGMENT ON THE FINAL CIVIL AND WAGE PENALTY ASSESSMENT

6b8.1

E-FILED

Apr 8, 2009 5:00 PM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
Case #1-05-CV-053450 Filing #G-14889
By R. Walker, Deputy

1 SHEPPARD MULLIN RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
EDWARD B. LOZOWICKI, Cal. Bar No. 45536
3 BRIAN R. BLACKMAN, Cal. Bar No. 196996
Four Embarcadero Center, 17th Floor
4 San Francisco, California 94111-4106
Telephone: 415-434-9100
5 Facsimile: 415-434-3947

6 Attorneys for Plaintiff VIRACON, INC.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA

10
11 ENGINEERED GLASS WALLS, INC.,

12 Plaintiff,

13 v.

14 WEST BAY BUILDERS, INC., CITY OF
SAN JOSE, and DOES 1 through 25,
inclusive,

15 Defendants.

16 WEST BAY BUILDERS, INC.,

17 Plaintiff,

18 v.

19 ENGINEERED GLASS WALLS, INC., and
DOES 1 through 20, inclusive,

20 Defendants

21 VIRACON INC.,

22 Plaintiff,

23 v.

24 ENGINEERED GLASS WALLS, INC.;
WEST BAY BUILDERS, INC.; SAFECO
25 INSURANCE COMPANY OF AMERICA;
CITY OF SAN JOSE; and DOES 1 through
26 100, inclusive,

27 Defendants

Case No. 105CV053450

[Consolidated with Case Nos. 106CV064387
and 106CV071242]

**VIRACON INC.'S MANDATORY
SETTLEMENT CONFERENCE
STATEMENT**

Date: April 15, 2009

Time: 9:00 a.m.

Dept.: 17

The Honorable Jack Komar

Attachment B9

I. INTRODUCTION

1
2 This is a collection action.¹ Plaintiff Viracon, Inc. ("Viracon") designs, fabricates and
3 supplies specialty glass products. Viracon furnished \$121,870.56 worth of specialty glass for the
4 construction of the Almaden Community Center and Branch Library, located at 6445 Camden
5 Avenue, San Jose, California (the "Project"). Viracon was only paid \$11,159.22 and is still owed
6 \$110,711.34 for this specialty glass. Defendant Engineered Glass Walls, Inc. ("EGW") has a
7 contractual obligation to pay Viracon for the specialty glass it order and installed at the project, as
8 well as Viracon's attorney's fees and costs incurred in pursuing this obligation. Defendant West
9 Bay Builders, Inc. ("West Bay"), together with its sureties, has a statutory obligation to pay
10 Viracon for the specialty glass it furnished to the Project, as well as Viracon's attorney's fees and
11 costs for having to sue to enforce this obligation.

12 Neither EGW nor West Bay or its sureties has a valid excuse for not paying Viracon the
13 \$110,711.34 it is owed. Indeed, both West Bay and EGW have admitted that: (1) EGW ordered
14 the subject glass from Viracon for the Project; (2) Viracon furnished the glass to the Project; (3)
15 Viracon provided the appropriate 20-day Preliminary Notice to the City, EGW and West Bay; (4)
16 EGW did not pay for all of the glass that Viracon furnished to the Project; (4) EGW installed all
17 of the Viracon glass at the Project; and (5) Viracon is owed more than \$109,000 for this glass. In
18 short, both main defendants admit the glass was ordered, furnished and installed at the Project,
19 but have failed and refused to pay for it.

20 It is almost three years since Viracon furnished its last shipment of specialty glass to the
21 Project. Only now, on the verge of trial, do the defendants offer to resolve this collection action.
22 As set forth in greater detail below, defendant EGW has Stipulated to Judgment on all of
23 Viracon's claims, which stipulation Viracon will file with the Court in short order. Defendant

24
25 ¹ There are three consolidated actions before the Court. Two of those actions are solely
26 between defendants West Bay Builders, Inc. and Engineered Glass Walls, Inc. over their
27 subcontract for two separate public construction projects. The third action – and the one
28 addressed in this Settlement Conference Statement – was brought by Viracon against West
29 Bay, its sureties and EGW to recover the amounts due and owing for specialty glass that
30 Viracon furnished to one of those public construction projects, plus its attorney's fees,
31 costs and interest.

Attachment B9

1 West Bay and its sureties have also agreed, through their counsel, to a proposal that will pay
2 Viracon the principle balance owed and allow the Court to resolve by motion the remaining issues
3 over the amount of attorney's fees, costs, and interest that Viracon shall be entitled to collect as
4 the prevailing party on its payment bond claim. Although this proposal has been agreed to via
5 counsel, Viracon still awaits an executed copy of the proposed Stipulated Settlement that it can
6 submit to the Court for approval.

7 II. SUMMARY OF FACTUAL AND PROCEDURAL BACKGROUND

8 A. Factual History

9 1. The Parties and Project

10 On or about May 5, 2004, the City of San Jose (the "City") and defendant West Bay
11 entered into a prime contract (the "Prime Contract") for the construction and completion of the
12 Project. West Bay thereafter entered into a subcontract with EGW for the furnishing and
13 installation of curtain walls, entrance doors and glazing for the Project. EGW contracted with
14 plaintiff Viracon, through a preexisting credit agreement, purchase orders and invoices, for the
15 design, manufacture and delivery of specialty glass needed for the Project and its subcontract with
16 West Bay.

17 Because the Project qualifies as a public work project with expenditures of more than
18 \$25,000, West Bay was required by statute to provide the City with a payment bond. Defendant
19 Safeco Insurance Company of America ("Safeco") is the surety on West Bay's payment bond.

20 After Viracon served its Stop Notice to Withhold Construction Funds, as described in
21 greater detail below, West Bay provided the City with a Stop Notice Release Bond in order to
22 obtain release of the remaining construction funds owed to it on the Project. Defendant First
23 National Insurance Company of America ("First National") is the surety on West Bay's stop
24 notice release bond.

25 2. Viracon Is Owed \$110,711.34 For Specialty Glass It Furnished To The 26 Project.

27 On September 8, 2005, Viracon served a Preliminary 20-Day Notice on the City, West
28 Bay, and EGW, identifying Viracon as a glass supplier for the Project. **Exhibit A** attached.

Attachment B9

1 Viracon was also expressly identified as a glass supplier in the Project's specifications. Viracon
2 designed and manufactured the glass for the Project according to specification provided to it by
3 EGW. Viracon designed and manufactured \$123,104.08 worth of specialty glass for the Project.

4 Viracon shipped the majority of this specialty glass – totaling \$109,059.86 – directly to
5 the Project site. At EGW's request, Viracon delivered two shipments with a total value of
6 \$12,810.70 to EGW's warehouse in Stockton, California.² Viracon retained and refused to deliver
7 eight (8) pieces of specialty glass with a total value of \$1,233.52 because it had not been paid for
8 its prior shipments. Viracon, therefore, furnished \$121,870.56 [*\$123,104.80 minus \$1,233.52*
9 *equals \$121,870.56*] worth of specialty glass to the Project. **Exhibit B** attached. EGW has only
10 paid Viracon \$11,159.22 for this material. Viracon is owed \$111,944.86 for the glass it designed
11 and manufactured for the Project. Excluding the glass items it retained for non-payment, Viracon
12 is owe \$110,711.34 for the material it actually furnished to the Project.

13 3. Viracon Served A Valid Stop Notice

14 When Viracon did not receive payment for the glass it had furnished to the Project, it
15 served a Stop Notice to Withhold Construction Funds dated May 2, 2006 on the City, West Bay
16 and EGW. This initial Stop Notice stated Viracon was owed \$106,523.25 for materials furnished
17 to the Project. Viracon, however, served an Amended Stop Notice to Withhold Construction
18 Funds on June 27, 2006, reflecting the correct amount – \$110,711.34 – owed for the glass it
19 furnished to the Project. **Exhibit C** attached.

20 On September 28, 2006, West Bay provided a Stop Notice Release Bond through First
21 National to the City. In response to the Stop Notice Release Bond, the City released the more
22 than \$138,000 it still owed West Bay on the Project.

23 B. Procedural Background

24 1. Viracon Action

25 On or about September 15, 2006, Viracon filed suit against the City, West Bay, EGW and
26 Safeco for (i) breach of contract, (ii) enforcement of stop notice, (iii) recovery on stop notice

27 ² West Bay later obtained a court order, forcing EGW to release this glass to West Bay.
28

Attachment B9

E-FILED: Apr 8, 2009 5:00 PM, Superior Court of CA, County of Santa Clara, Case #1-05-CV-053450 Filing #G-14889

1 release bond, (iv) recovery on payment bond, (v) goods sold and delivered, and (vi) account
2 stated. The City, West Bay and Safeco answered the complaint. EGW defaulted. Viracon
3 entered EGW's default and obtained a Court Judgment on or about December 14, 2006. EGW
4 later moved to set aside the Judgment, which the Court granted on or about February 5, 2007.

5 Because West Bay provided a Stop Notice Release Bond, Viracon dismissed its second
6 cause of action for enforcement of stop notice. Viracon also dismissed the City since it was only
7 named as a defendant on Viracon's second cause of action. Viracon thereafter filed an
8 amendment to its complaint, naming First National as a Doe defendant in its third cause of action
9 for recovery on the stop notice release bond. First National failed to answer the complaint and
10 Viracon entered its default on March 1, 2007. Viracon later stipulated to setting the default aside.

11 2. The West Bay and EGW Actions.

12 There are two additional cases pending between West Bay and EGW. The first matter –
13 *Engineered Glass Walls, Inc. v. West Bay Builders, Inc., et al.*, Santa Clara Case No.
14 105CV053450 (the "EGW Action") – involves the work of construction commonly known as the
15 Alum Rock Branch Library, located at 3090 Alum Rock Avenue, San Jose, California (the "Alum
16 Rock Project"). In that case, West Bay and EGW contracted for EGW to provide curtain walls,
17 windows, and glazing for the Alum Rock Project. Viracon did not furnish any glass to the Alum
18 Rock Project. EGW has sued West Bay for breach of contract and enforcement of stop notice,
19 claiming it is owed \$333,108.99. West Bay has cross-complained against EGW for breach of
20 contract, negligence, and indemnity.

21 The second action – *West Bay Builders, Inc. v. Engineered Glass Walls, Inc., et al.*, Santa
22 Clara Case No. 106CV064387 (the "West Bay Action") – involves a dispute over the subcontract
23 for this Project (the Almaden Community Center and Branch Library). West Bay sued EGW for,
24 among other things, breach of contract, negligence, and indemnity, claiming EGW failed to
25 complete the Project and performed defective work. EGW cross-complained against West Bay
26 for breach of contract, enforcement of stop notice, and recovery on the stop notice release bond
27 and payment bond. As part of this action, West Bay obtained a temporary restraining order
28 against EGW, requiring EGW to release the glass held at EGW's warehouse for the Project.

Attachment B9

1 **3. Consolidation**

2 In August 2007, West Bay moved to consolidate the Viracon, West Bay and EGW
3 Actions for all purposes. The Court granted West Bay's motion to consolidate on September 18,
4 2007 over Viracon's objection. Viracon subsequently move to sever its claims from the
5 consolidated action and later bifurcate its claims for separate trial. Both motions were denied.

6 **III. DISCUSSION OF VIRACON'S LEGAL POSITION**

7 **A. Viracon's Breach of Contract And Common Counts Against EGW.**

8 There is no longer any dispute over whether or not EGW breached its contracts with
9 Viracon for the design, manufacture and supply of specialty glass for the Project. EGW has
10 Stipulated to Judgment, which stipulation Viracon will submit to the Court for entry of Judgment
11 once it receives all of the original signatures. Both the Stipulation to Judgment and EGW's
12 verified admissions resolve several issues of fact. EGW admits that:

- 13 1. It ordered the glass items from Viracon for the Project;
- 14 2. It provided Viracon with the specifications and drawings for
15 the design and manufacture of the glass items for the
16 Project;
- 17 3. The glass items supplied by Viracon conformed with the
18 drawings and specifications for the Project;
- 19 4. Viracon's glass items were delivered to the Project;
- 20 5. Viracon's glass items were installed at the Project;
- 21 6. It has not paid Viracon for all of the glass items it ordered
22 for the Project; and
- 23 7. Viracon is owed \$110,711.34 in principal balance for the
24 glass items EGW ordered for the Project.

25 These admissions and EGW's stipulation to judgment establish these issues for purposes of
26 Viracon's claims. Viracon, therefore, should be compensated for the full \$110,711.34 that it is
27 owed for the specialty glass it furnished to the Project, plus its attorney's fees, costs and statutory
28 interest at 10% per annum.

Attachment B9

1 **B. Recovery On Payment Bond**

2 California law requires every prime contractor, who is awarded a contract by a public
3 entity involving expenditure of more than \$25,000 for any public work, to obtain and file a
4 payment bond. Civ. Code § 3247. The payment bond is required to provide that if the prime
5 contractor or subcontractor fail to pay anyone furnishing supplies to the public work, then the
6 surety will pay the supplier for those supplies and, in the event of suit upon the bond, reasonable
7 attorneys' fees to be fixed by the court. Civ. Code § 3248. Moreover, the only conditions for
8 recovery on a payment bond is that claimant has furnished materials for the project and has not
9 been paid for those materials. Civ. Code §§ 3226, 3110. In addition, the claimant must have
10 provided a Preliminary 20-Day Notice in accordance with Section 3098 of the Civil Code. Civ.
11 Code § 3252.

12 As detailed above, Viracon furnished specialty glass to the Project for which it is owed
13 \$110,711.34. It also served a valid Preliminary 20-Day Notice on September 8, 2005. Viracon,
14 therefore, is entitled by statute to recover the full value of the glass it furnished to the Project --
15 \$110,711.34 -- and its reasonable attorney's fees, costs and interest from the payment bond.
16 Viracon has incurred attorneys' fees totaling more than \$177,000.00 in prosecuting this case over
17 the last two and a half years.

18 **C. Recovery On Stop Notice Release Bond**

19 A stop notice is a remedy available on public work projects. Civ. Code §§ 3179-3214. It
20 is a notice to the public entity responsible for the project to withhold construction funds to satisfy
21 the claim. It creates a lien in favor of the claimant that attaches to the construction funds in
22 existence at the time the notice is filed. A public entity who receives a valid stop notice is
23 required to withhold from available funds an amount sufficient to satisfy the claim. Civ. Code
24 § 3186.

25 Material suppliers, like Viracon, are entitled to assert stop notices on public works. Civ.
26 Code § 3181. To create a valid stop notice, the supplier must: (i) have given a Preliminary 20-
27 Day Notice in accordance with Section 3098 of the Civil Code, and (ii) served the stop notice
28 either thirty days after recording of a notice of completion or cessation or, if none, then ninety

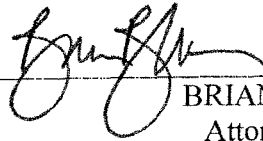
Attachment B9

1 agreed -- through their counsel -- that Viracon may accept and negotiate the check without
2 prejudice, all rights reserved, to its claims for attorneys fees, costs and interest under the payment
3 bond. In order to resolve the remaining issues, the parties stipulated -- again through counsel -- to
4 having the issue over the amount of attorney's fees, costs and interest that Viracon should be
5 awarded as the prevailing party on its claim against the payment bond submitted by motion to the
6 Court for determination. Because the parties themselves must sign any proposed settlement in
7 order for it to be binding, Viracon provided West Bay, Safeco and First National with a proposed
8 Stipulated Settlement and [Proposed] Order. Viracon expects they will execute the Stipulation,
9 but has not yet received it.

10 DATED: August 8, 2007

11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

12
13 By



14 BRIAN R. BLACKMAN
15 Attorneys for Plaintiff
16 VIRACON, INC.
17
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Attachment B9

E-FILED

Sep 4, 2009 1:46 PM

David H. Yamasaki

Chief Executive Officer/Clerk

Superior Court of CA, County of Santa Clara

Case #1-05-CV-053450 Filing #G-17997

By C. Fujihara, Deputy

1 SHEPPARD MULLIN RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
EDWARD B. LOZOWICKI, Cal. Bar No. 45536
3 BRIAN R. BLACKMAN, Cal. Bar No. 196996
Four Embarcadero Center, 17th Floor
4 San Francisco, California 94111-4106
Telephone: 415-434-9100
5 Facsimile: 415-434-3947

6 Attorneys for Plaintiff VIRACON, INC.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA CLARA

10
11 ENGINEERED GLASS WALLS, INC.,

12 Plaintiff,

13 v.

14 WEST BAY BUILDERS, INC., CITY OF
SAN JOSE, and DOES 1 through 25,
inclusive,

15 Defendants.

16 WEST BAY BUILDERS, INC.,

17 Plaintiff,

18 v.

19 ENGINEERED GLASS WALLS, INC., and
DOES 1 through 20, inclusive,

20 Defendants

21 VIRACON INC.,

22 Plaintiff,

23 v.

24 ENGINEERED GLASS WALLS, INC.;
WEST BAY BUILDERS, INC.; SAFECO
25 INSURANCE COMPANY OF AMERICA;
CITY OF SAN JOSE; and DOES 1 through
26 100, inclusive,

27 Defendants

Case No. 105CV053450

[Consolidated with Case Nos. 106CV064387
and 106CV071242]

NOTICE OF ENTRY OF JUDGMENT

The Honorable Jack Komar

Attachment B9

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 4, 2009, the Court entered Judgment in favor of plaintiff Viracon, Inc. and against defendants West Bay Builders, Inc., Safeco Insurance Company of America, First National Insurance Company of America and Engineered Glass Walls, Inc. in this action. A copy of the judgment is attached as Exhibit A.

DATED: September 4, 2009

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



BRIAN R. BLACKMAN
Attorneys for Plaintiff
VIRACON, INC.

Attachment B9

EXHIBIT A

TO NOTICE OF ENTRY OF JUDGMENT

Attachment B9

E-FILED

Sep 4, 2009 11:20 AM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
Case #1-05-CV-053450 Filing #G-17992
By R. Walker, Deputy

1 SHEPPARD MULLIN RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
EDWARD B. LOZOWICKI, Cal. Bar No. 45536
3 BRIAN R. BLACKMAN, Cal. Bar No. 196996
Four Embarcadero Center, 17th Floor
4 San Francisco, California 94111-4106
Telephone: 415-434-9100
5 Facsimile: 415-434-3947
6 Attorneys for Plaintiff VIRACON, INC.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA CLARA

10
11 ENGINEERED GLASS WALLS, INC.,
12 Plaintiff,
13 v.

Case No. 105CV053450
[Consolidated with Case Nos. 106CV064387
and 106CV071242]

14 WEST BAY BUILDERS, INC., CITY OF
SAN JOSE, and DOES 1 through 25,
15 inclusive,
16 Defendants.

JUDGMENT

17 WEST BAY BUILDERS, INC.,
18 Plaintiff,
19 v.

20 ENGINEERED GLASS WALLS, INC., and
DOES 1 through 20, inclusive,
21 Defendants

22 VIRACON INC.,
23 Plaintiff,
24 v.

25 ENGINEERED GLASS WALLS, INC.;
WEST BAY BUILDERS, INC.; SAFECO
INSURANCE COMPANY OF AMERICA;
26 CITY OF SAN JOSE; and DOES 1 through
100, inclusive,
27 Defendants
28

Attachment B9

1 In accordance with the Court's July 10, 2009 ruling and order and the parties Stipulated
2 Settlement and Order, and good cause appearing in support thereof, IT IS HEREBY ORDERED
3 that judgment be and hereby is entered in favor of plaintiff Viracon, Inc. as follows:

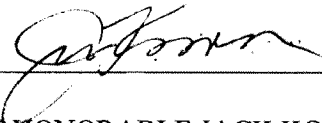
4 1. As against defendants West Bay Builders, Inc. and Safeco Insurance
5 Company of America, jointly and severally, in the amount of \$200,000.00 as a reasonable
6 attorneys fee under Civil Code § 3250; and

7 2. As against defendants West Bay Builders, Inc., Safeco Insurance Company
8 of America, and First National Insurance Company of America, jointly and severally, in the
9 amount of \$33,273.33 in prejudgment interest.

10 In accordance with the stipulated judgment between plaintiff Viracon, Inc. and defendant
11 Engineered Glass Walls, Inc., IT IS FURTHER ORDERED that judgment be and hereby is
12 entered in favor of plaintiff Viracon, Inc. and against defendant Engineered Glass Walls, Inc. in
13 the principal amount of \$110,711.34.

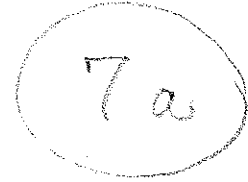
14 Dated: July 23, 2009

15 *Sept 7, 2009*

16 
17 _____
18 THE HONORABLE JACK KOMAR

19
20
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27
28

Attachment B10



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Sep-12-2012 1:16 pm

Case Number: CGC-07-466727

Filing Date: Sep-12-2012 1:10

Filed by: GINA GONZALES

Juke Box: 001 Image: 03760416

TEXT JUDGMENT

**CLEVELAND WRECKING COMPANY, A DELAWARE CORPORATION VS. WEST
BAY BUILDERS, A CALIFORNIA CORPORATION et al**

001C03760416

Instructions:

Please place this sheet on top of the document to be scanned.

6b10.1

Attachment B10

1 HANSON BRIDGETT LLP
 2 ANDREW G. GIACOMINI, SBN154377
 3 agiacomini@hansonbridgett.com
 4 MICHAEL B. McNAUGHTON, SBN168244
 5 mmcnaughton@hansonbridgett.com
 425 Market Street, 26th Floor
 San Francisco, California 94105
 Telephone: (415) 777-3200
 Facsimile: (415) 541-9366

FILED
 San Francisco County Superior Court

SEP 12 2012

CLERK OF THE COURT

BY: *Jana Gonzales*
 Deputy Clerk

6 Attorneys for Plaintiff CLEVELAND
 7 WRECKING COMPANY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **CITY AND COUNTY OF SAN FRANCISCO**

11 CLEVELAND WRECKING COMPANY,
 12 a Delaware corporation,

No. CGC 07 466727

13 Plaintiff,

^{HK}
 14 **[PROPOSED] THIRD AMENDED
 15 JUDGMENT**

14 v.

15 WEST BAY BUILDERS, INC., a
 16 California corporation; CITY AND
 17 COUNTY OF SAN FRANCISCO, a
 18 municipal corporation; FIRST
 NATIONAL INSURANCE COMPANY
 OF AMERICA; and DOES 1 through
 50, inclusive,

19 Defendants.

20
 21 This case came on regularly for court trial on October 28, 2008, continuing
 22 through to November 6, 2008, in Department 501 of the above-entitled Court, the
 23 Honorable Ronald E. Quidachay presiding. Plaintiff Cleveland Wrecking Company
 24 ("Cleveland Wrecking") appeared by and through its attorney, Andrew G. Giacomini of
 25 Hanson Bridgett LLP. Defendants West Bay Builders Inc. ("West Bay") and First
 26 National Insurance Company of America ("First National") appeared by and through their
 27 attorney, Neil H. Bui of McInerney & Dillon, PC. Cleveland Wrecking, West Bay, and
 28 First National presented witnesses and documentary evidence. At the conclusion of the

Attachment B10

1 trial, the jury reached a verdict in favor of Cleveland Wrecking as to its causes of action
2 for Breach of Contract and Open Book Account, and found that West Bay had violated
3 the California prompt payment statute as to progress payments owed to Cleveland
4 Wrecking. The Court has reached a judgment in favor of Cleveland Wrecking in
5 connection with its cause of action on First National's stop notice release bond issued in
6 connection with the litigation. The parties appealed certain portions of the judgment.
7 The case was remanded by the Court of Appeal, with instructions to make additional
8 findings and amend the judgment accordingly, as reflected in this Third Amended
9 Judgment.

10 **GOOD CAUSE APPEARING THEREFOR, IT IS ORDERED, ADJUDGED AND**
11 **DECREED AS FOLLOWS:**

12 Judgment shall be, and hereby is, entered as follows:

- 13 1. Judgment is entered in favor of Cleveland Wrecking and against West Bay
14 as follows:
- 15 a. On the first cause of action for breach of contract in the principal
16 amount of \$124,250, together with interest at the legal rate of 10% per
17 annum from November 5, 2007 to November 21, 2008 (the date of the
18 original judgment) for a total of \$13,037.74 in interest;
 - 19 b. On the fourth cause of action for an open book account in the principal
20 amount of \$107,000;
 - 21 c. On the second cause of action for violation of prompt payment statutes,
22 West Bay improperly withheld payment of \$87,000.00 owed to
23 Cleveland Wrecking in violation of California Business & Professions
24 Code §7108.5 ("the Prompt Payment Statute"), thus entitling Cleveland
25 Wrecking to a charge of 2% per month on the amount due from and
26 after November 5, 2007. Said interest comes to \$21,051.62 through
27 November 21, 2008 (the date of the original judgment) and will continue
28 to accrue at the rate of \$57.21 per day until entry of judgment; and

Attachment B10

1 d. The principal amount of damages awarded on each cause of action are
2 not cumulative; therefore, the total principal amount recoverable on the
3 judgment, before adding interest (including the prompt payment interest
4 set forth in paragraph 1.b, above) and costs, shall be limited to
5 \$124,250.

6 2. Judgment is entered in favor of Cleveland Wrecking and against First
7 National on the fifth cause of action for enforcement of the stop notice release bond in
8 the principal amount of \$87,000, together with interest of 2% per month under the
9 Prompt Payment Statute, totaling \$21,051.62 through November 21, 2008, plus
10 penalties at the rate \$57.21 per day until entry of judgment. The total judgment against
11 First National shall not exceed \$255,332.50 (125% of the stated \$204,266.00 bond
12 value).

13 3. Pursuant to California Code of Civil Procedure §§1032 and 1033.5 and
14 California Rule of Court 8.278, and as detailed in Cleveland Wrecking's Memoranda of
15 Costs dated December 5, 2008 and November 21, 2011, Cleveland Wrecking is
16 awarded costs against West Bay and First National in the amount of \$13,934.30;

17 4. Pursuant to California Business & Professions Code §7108.5 and the Court
18 of Appeal decision filed on August 9, 2011 in this matter, Cleveland Wrecking is entitled
19 to an award of its reasonable attorneys' fees against West Bay and First National, in an
20 amount to be determined by post-judgment motion. This judgment shall be amended to
21 reflect the amount of attorneys' fees awarded.

22 5. Interest shall continue to accrue at the legal rate on the judgments until
23 paid in full.

24 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

25
26 DATED: 9/11/12

27
28 
JUDGE OF THE SUPERIOR COURT
HAROLD KAHN

Attachment B11

Letter No: 00002



Harris & Associates

Program Managers

Construction Managers

Civil Engineers

June 17, 2010

Metro Maintenance Bldg
Maintenance Bldg. Subcontractor

**Re: MetroBase Maintenance Building
Document Request**

To Whom it May Concern:

The METRO recently received a forwarded copy of Chris Van Tiem's June 15, 2010 letter "Document Number GEN-038, SCMTD-METROBASE Maintenance Building – WBB job #275" re "Federal Transit Administration Document Request". We note that Chris's letter urges "All Subcontractors" to "...do NOT send the requested documents."

We understand that you may be reluctant to comply with our document request in light of Chris's request that you "do NOT send the requested documents." because "we have a contract with your firm."

This letter is to advise you of the following Contract Language that may inform your response:

- **Part I. Instructions to Bidders, Section 1.26 Subcontracting, Paragraph "B"**
"The contractor will require, by written Contract, each subcontractor to be bound to the contractor by the terms of the contract documents, and to assume toward the contractor, all the obligations and responsibilities which the contractor, by the contract documents, assumes toward METRO, to the extent of the work to be performed by the subcontractor. Each subcontract shall preserve and protect the rights of METRO under the contract documents with respect to the work to be performed by the subcontractor so that subcontracting will not prejudice such rights."

6b11.1

Attachment B11

- **Part I, Instructions to Bidders, Section 1.03 Coordination, Interpretation, and Examination of Contract Documents, Paragraph A** *“All contractual provisions required by DOT, as set forth in Part VI and FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms (Part VI) shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any METRO requests, which would cause METRO or contractor to be in violation of the FTA terms and conditions.”*
- **Part VI, Federal Transit Administration (FTA) Requirements for Construction Contracts, Section 1.03 Access to Records and Reports, Paragraph “A”** *“In accordance with 49 C.F.R. 18.36(i), Contractor agrees to provide METRO, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or authorized representative including any PMO Contractor access to Contractor’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through programs described at 49 U.S.C. 5307, 5309 or 531.”*
- **Paragraph “B”:** *“The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.”*
- **Section 1.04 Federal Changes** *“Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between METRO and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.”*

6b11.2



Harris & Associates

Attachment B11

The METRO's Document Request, dated June 4, 2010 is in response to the FTA's Triannual Review that was held in March of this year. West Bay Builders, Inc. refused to honor or comply with our document request, and we have turned to you for your help. It is the METRO's position that you, the subcontractor, are required to comply with the FTA's request (in spite of West Bay Builders refusal to comply) due to the language that binds you to the contract, in **Part I, Instructions to Bidders, Section 1.26 Subcontracting, Paragraph "B"**.

Please respond, in writing, for the record; and thank you to those who have already complied with our request.

Sincerely,

Harris & Associates



Steve Kelly
Construction Manager

cc: Frank Cheng, METRO

6b11.3



Harris & Associates

Attachment B11



250 Bel Marin Keys Blvd.
Building A
Novato, CA 94949
Phone: (415) 456-8972
Fax: (415) 459-0665
General Contractor
License Number 626859

Tuesday, June 15, 2010

All Subcontractors

**RE: Federal Transit Administration Document Request
Document Number GEN-038
SCMTD- METROBASE Maintenance Building-WBB Job # 275**

All Subcontractors,

It has come to West Bay Builders' attention that the Harris & Associates (the Construction Management Firm for the above-referenced project) have requested documents be provided under the Federal Transit Administration Requirements (FTA) per a letter titled "Document Request" dated 6/4/10.

Please do NOI send the requested documents.

West Bay Builders would like to remind you that we have a contract with your firm.

West Bay Builders intends to send the requested documents WHEN the Santa Cruz Metropolitan District provides the name and contact information for the FTA. West Bay Builders intends to file a complaint about Metro's prompt payment violations for this project; however Metro has refused to provide the FTA contact information.

Again, please do NOI send the requested information.

If you have any questions or concerns regarding this issue please contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Chris Van Tiem".

Chris Van Tiem
Project Manager

Via: E-mail

Cc: PT, JH, BE - WBB

6b11.4

Attachment B11

FILE COPY



250 Bel Marin Keys Blvd.
Building A
Novato, CA 94949
Phone: (415) 456-8972
Fax: (415) 459-0665
General Contractor
License Number 626859

Wednesday, March 24, 2010

Steve Kelly
Harris & Associates
1217 River Street
Santa Cruz, CA 95060

RE: Federal Audit / Overdue Payments
Document Number GEN-033
SCMTD- METROBASE Maintenance Building-WBB Job # 275

Dear Steve,

West Bay Builders (WBB) will happily comply with the Federal Transit District audit and make our documents available for your photocopy service.

WBB, however, will only make these documents available after the Santa Cruz Metropolitan Transit District fulfills their contractual obligations with regards to payment. Currently WBB has not been paid for December, January and February. The current amount past due and owing is \$745,034.91, and our March billing will be submitted in a week thereby increasing this amount.

WBB has yet to receive a detailed written response regarding the Metro's failure to make payment which is in violation of Public Contract Code. WBB has sent several e-mails, voice messages without any response from Metro.

WBB would be happy to meet with the Federal Transit District Authority and the City to discuss these issues.

If you have any questions or concerns regarding this issue please contact me.

Respectfully,

A handwritten signature in black ink that reads "Chris Van Tiem".

Chris Van Tiem
Project Manager

Via: Skelly@harris-assoc.com

Cc: PT, JH - WBB
FC - Metro.

6b11.5

Attachment B12

Questions	Job Location	Job Location	Job Location	Job Location	Job Location
	Powell Street BART Station	BART Station (East Contra Costa Extension Platform and Guideway Improvement) (Ashby)	Union City BART Station	BART Earthquake Safety Program Ariel Structures - West Oakland Pier	BART Yards & Shops (5 sites)
Project Cost	\$ 4,475,000	\$ 26,097,000		\$ 9,147,122	
Project Status	Estimated Sept 2012	Estimated Jan 2013	Per web search, completed Summer 2007	Estimated Jan 2013	
Contractor Performance	Challenging experience	Challenging experience		Just okay	Just okay
Delays/Close Out	WBB had a 4 month delay at the start of the job, not sure why? Stop Notices more than usual/ indicated that they were not paying their Subs.	Had one Sub that took 1 year to release retention.	Sub Delay Solar Panels	Yes- Not on contractor's side mostly due to site conditions	Yes- Not on contractor's side mostly due to site conditions
Liquidated Damages	None	None	**Not a Litigation Case-Mediation / Currently \$1 million	None	None
Change Order Requests (Owner initiated)	On Par with others 7%	On Par with others 5-6%		Plenty due to site conditions	Plenty due to site conditions
RFI(How proactive was Contractor to help with Project)	80 RFI's, response okay	50 RFI'S, response okay		On Par with others	On Par with others
Submittals Complete	On Par with other jobs, all complete. As Builts were late -not good.	On Par with other jobs, all complete. As Builts were late -not good.		Early on in job, difficult, but as job progressed they got better.	Early on in job, difficult, but as job progressed they got better.
Subcontractor Complaints/Problems /Substitutions	Late payments to Sub's, Had many of the Sub's replaced	Late payments to Sub's, Had many of the Sub's replaced		Preliminary Notices, Stop Notices, 1-2 complaints on Subcontractor payment.	Preliminary Notices, Stop Notices, 4-5 complaints on Subcontractor payment.
Additional Information Provided / Percentage of Work Performed by GC	\$4Mil project will come in under because BART doing some of the work. WBB doing 5 other jobs for BART. Contractor self perform 71.7%	\$2 Mil project came in on budget. Contractor self perform 50.4%		Only complaint was on the subcontractors dropping out due to economy or disqualification.	Only complaint was on the subcontractors dropping out due to economy or disqualification.
Who Contacted	Carol	Carol	Carol	Carol	Carol
Persons Name	John Gee	John Gee	Bill O'Hair	Tom Horton	Tom Horton
Position(PM=Project Manager)	PM (510)287-4928	PM (510)287-4928	PM (510) 464-6455	PM (510)287-4978	PM (510)287-4978
Comments	Would Not Hire Again. Believes WBB has cash flow issues. Late to pay Subs, hasn't experienced this with other GC's.	Would Not Hire Again. Believes WBB has cash flow issues. Late to pay Subs, hasn't experienced this with other GC's.	Left phone message	Would hire again- problems on the first couple of jobs but in the end worked out good.	If they haven't worked with your agency before they would need long lead time to adjust, you need time to educate them on your system.
Observations from Bid			PROJECT NOT LISTED	WRONG # PROVIDED	6b12.1

Attachment B12

Questions	Job Location	Job Location	Job Location	Job Location	Job Location
	BART - Parking Structures (6) Locations	City of Berkeley Berkeley Library	Monterey Peninsula College Theater Renovation	San Jose Water Company (3) Jobs(Prospect Road+More Avenue+Overlook Reservoir)	Enhanced Outpatient Program General Population - Salinas Valley State Prison
Project Cost		\$ 5,495,000	\$ 7,783,055	\$ 4,614,722	\$ 10,255,000
Project Status		Estimated June 2013	Estimated Feb 2013	Estimated Jan 2013	Estimated Aug 2013
Contractor Performance	Average Contractor performance	Average Contractor performance	Not happy with everything to date gives them about 8-8.5 on a scale of 1-10		
Delays/Close Out	Yes - resolved	Yes- There were issues at start with soils Abatement, who's financial responsibility, Contractor push back.	Not on target subcontractor/owner Stop Work Notices filed all but one have been released.		
Liquidated Damages	no	None	Yes both ways		
Change Order Requests (Owner initiated)	Plenty due to site conditions	Owner - Typical number, not resolved, waiting for pricing from Subcontractors	Long lead time on cost proposal/outcome good		
RFI(How proactive was Contractor to help with Project)	on Par	20-25 so far, weekly meetings to address	130 RFI's in 12 months		
Submittals Complete	on Par	Some complete, when there are R/R there is push back from Contractor	Time between submittals too spread out the Agency needed to impose a 45 day turnaround.		
Subcontractor Complaints/Problems /Substitutions	no	Concerns with some of the subs, slow in making decisions	6 Subcontractors changed/ dropped out rate high/ there are payment issues to Sbucontractors.		
Additional Information Provided / Percentage of Work Performed by GC	6 BART locations in one contract	Need good CMC to monitor the job. WBB is an Average Contractor.	Inspections going well, production good, Lacking in processing paperwork- slow		
Who Contacted	Carol	Carol	Carol	Carol	Carol
Persons Name	Tom Horton	John Rosenbroch	Mike Carson	Frank Do	Adrian Menares
Position(PM=Project Manager)	PM (510) 287-4978	PM (510) 589-9573	PM -Kitcel(831)646-4297	408-279-07880	916-255-3049
Comments	Almost closed out okay with job.	CM stated that WBB is claims oriented. Owner stated too early for complete opinion just started 7/1/12	They (PM) don't allow progress payment to be paid until Stop Notice is released.	He's on vacation until 10- 11-12	No answer-left message
Observations from Bid	WRONG # PROVIDED		WRONG # PROVIDED		6b12.2

Attachment B12

Questions	Job Location	Job Location	Job Location	Job Location	Job Location
	Pier 50- Port of San Francisco	Marine Structural Project (Pier 33, 35, 50 Port of San Francisco)	Chabot College Hayward, CA	YMCA Bayview Hunter's Point Teen Center	BART Security Access Grills, Various locations
Project Cost	\$ 1,333,640	\$ 1,325,000	\$ 8,692,000	\$ 185,429	\$ 2,545,957
Project Status	ONGOING (May 2012 - January 2013)	Estimated Jan 2013	Estimated Sept 2012	Estimated Dec 2012	Estimated Dec 2012
Contractor Performance	Separate review into two: Office has problems Field was good				
Delays/Close Out	Just started and they have a 3 month delay. Slow start and are on recovery schedule				
Liquidated Damages	Project still ongoing				
Change Order Requests (Owner initiated)	Late starting so none at the moment				
RFI(How proactive was Contractor to help with Project)	Fair. Not proactive on asking RFI all the time				
Submittals Complete	Slow				
Subcontractor Complaints/Problems /Substitutions	None				
Additional Information Provided / Percentage of Work Performed by GC	No Progress Payment for first 3 months				
Who Contacted	Frank	Carol	Carol	Carol	Carol
Persons Name	Jim Leong / Evelyn	Jim Leong	Doug Horner	Bill Worthington	Bruce King
Position(PM=Project Manager)	PM (415)274-0566	PM (415)274-0566	PM (925) 485-5287	PM (415) 281-6763	PM (510)464-6378
Comments	Spoke with Evelyn	No answer left message	No answer left message	No answer left message	No answer left message
Observations from Bid			WRONG # PROVIDED		6b12.3 WRONG # PROVIDED

Attachment B12

Questions	Job Location	Job Location	Job Location
	YMCA San Francisco Camp Jones Music Hall	FOOTHILL COLLEGE CASE#74-459-1050-08	CHARACTER REFERENCE-CHRIS VAN TIEM City of San Jose Almaden Community Center & Library
Project Cost	\$ 500,000		\$ 17,500,000
Project Status	Estimated Dec 2012	COMPLETE (Claims)	Completed Approx. 2008
Contractor Performance		Extremely poor. Private mediation (Confidential)	Partnering Contract (required by City Council on all jobs over \$10 million) with City so there were no issues. Required to have weekly conversations, meetings, weekly site visits. City staff on site to handle issues.
Delays/Close Out		one year late on a two year project.	
Liquidated Damages		LDs were assessed. (confidential document)	Paid out 97% of the 10% contingencies to WBB, but he was ok with that.
Change Order Requests (Owner initiated)		Poor. Vast extent of Change Orders. WBB did not agree to conditions on change orders.	No more than usual
RFI(How proactive was Contractor to help with Project)		Poor. Vast extent of RFI	No more than usual
Submittals Complete		Poor	
Subcontractor Complaints/Problems /Substitutions		A lot of subcontractor problems.	
Additional Information Provided / Percentage of Work Performed by GC		Over scheduled and over budget. WBB PM was Paul Pietry	Some issues, but due to Sub's availability
Who Contacted	Carol	Carol/Frank	Carol
Persons Name	Bill Worthington	Amy in Pres. Office / Charles Allen(Exec Director of Facilities)	Rodney Rapson
Position(PM=Project Manager)	PM (415) 281-6763	650-949-7200	Senior Architect-PM
Comments	No answer left message	Will never recommend WBB to any Public agency. Paul Thompson has been in depositions at least 50 times. Recommended other litigations such as City of SF debarment, Oakland disqualification, Stockton Unified School District lawsuit, and Santa Clara County Court House in Morgan Hill	He felt that Chris Van Tiem was very qualified for the position. Was a good communicator, verified and coordinated issues well.
Observations from Bid	WRONG # PROVIDED	No # PROVIDED	

6b12.4

Attachment B12

Questions	Job Location
	Happy Hallow Park&Zoo (City of San Jose, Dept of Public Works)
Project Cost	\$ 39,255,000
Project Status	COMPLETE
Contractor Performance	City of San Jose - Happy Hallow Park, \$40 million Amusement Park renovation with some conventional construction of buildings done by WBB. Sub-Contractors hired to do Concrete work, paving, sidewalks, MEP, rides. WBB bid on project based on Conventional construction. They had no experience with Amusement Parks. Construction period 2yrs, City Agreement was that they were to be finished by Grand Opening. They opened but had many Punch List items which took over 1 year to complete (The City did not grant acceptance until the Punch List was done). Feels that the CM onsite was not able to make the Subs finish in a timely manner.
Delays/Close Out	Yes- at the beginning of the project w/PG&E not contractor related.WBB CM Chris Van Tiem sent multiple communications to the City stating that the delays were not Contractor caused and that the City was responsible and would be accessed additional time. City tried to address this issue with Chris and stress that they were aware and that things could be worked out without the need for the defensive posture. Once the City decided to have Chris removed and replaced the new PM was cooperative.
Liquidated Damages	
Change Order Requests (Owner initiated)	Believes that WBB is a Change Order Company, because they were lowest bidder they feel that WBB was going to make up profit margin through Change Orders.
RFI(How proactive was Contractor to help with Project)	700-800 RFI's, because WBB didn't verify those coming from the sub's and there were many useless RFI's. WBB did a poor job of controlling the RFI's, no checks & balances.
Submittals Complete	Submittals were fine, WBB was not able to provide an approved complete set for all submittals. Shop Drawings were provided.
Subcontractor Complaints/Problems /Substitutions	Yes, City received a subpoena from Calhoun Brothers for not receiving payment from WBB until 1-1/2 years after job complete . Others contacted City regarding no payments, Fencing Sub., Landscape Sub. City directed them to file Stop Work, they did and then they were paid by WBB.
Additional Information Provided / Percentage of Work Performed by GC	Approximately \$4-5 million of the \$40 million contract was self performed by WBB
Who Contacted	Carol
Persons Name	Ron Cheung
Position(PM=Project Manager)	PM (510)464-6378
Comments	WBB CM -Chris Van Tiem was asked to be removed from the jobsite for being difficult to deal with after approximatly 3 months, his Admin. Assistant Brooke was also removed.
Observations from Bid	WRONG # PROVIDED

6b12.5

Attachment B12

Questions	Job Location	Job Location	Job Location
	Napa County 5th Street Parking Garage(County of Napa)	City of Walnut Creek Library	Oakland High School Modernization and Health Clinic
Project Cost	\$ 12,100,000	\$ 25,759,000	\$ 21,110,000
Project Status	COMPLETE. OPENED EARLY 2009	Estimated Summer 2010	Estimated April 2011
Contractor Performance	County Of Napa Parking Garage. Contractor had good team and good Architect support. Contractor was responsive and willing to work with other agencies involved in the project. Coordinated well with the County Staff. The contractor accomodated the County on additional items added to scope of work.	City Library and 2 story, 1 level surface parking & underground parking. Project came in on time and under budget. Contractor good performance. City applied for Silver LEED and awarded Gold.	
Delays/Close Out	Some delays due to added work. Owner initiated	Some delays with Steel Sub & delivery	
Liquidated Damages	No	No	
Change Order Requests (Owner initiated)	Owner initiated	Some-didn't remember, not bad.	
RFI(How proactive was Contractor to help with Project)	Went well responsive due to good sonsultants on contractor end.	Good CM- not high volume their were some communication issues, but worked together to resolve.	
Submittals Complete	Yes	They worked through the issues.	
Subcontractor Complaints/Problems /Substitutions	No issues	1 - Went out of business 1- Steel Sub. Stop Work due to lack of payment, was due to Sub. lack of delivery.	
Additional Information Provided / Percentage of Work Performed by GC	Contractor self-performed approx. 5-10% of work. Had many subs.	Not sure on % of work performed by GC.	
Who Contacted	Carol		
Persons Name	Juan Arias	Lorie Tinfow	Tadashi Nakadegawa
Position(PM=Project Manager)	Engineering Manager, Design & Construction Dept. (707)253-4351	(925)943-5810	(510)879-2962
Comments	Schedule went well. Suggested that if the owner is wanting to add scope to project that it be added at the beginning of bid. Harder and more expensive to add work during construction.	During Bid Process there was concernation because of WBB's reputation. WBB made a decision to perform better and made a sincere shift in business. They contacted the International Partnering Institute, submitted job site and City won Saphire Award	
Observations from Bid			6b12.6

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TIMOTHY L. MCINERNEY

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November 20, 2012

Mr. Erron Alvey
Purchasing Agent
Santa Cruz Metro
110 Vernon Street
Santa Cruz, CA 95060

Re: Construction of the Judy K. Souza Operations Facility
Parking Structure and Related Site Work

Dear Mr. Alvey:

The following is West Bay Builders, Inc. (“West Bay”) rebuttal to the allegations contained in the Bid Analysis Spreadsheet provided by Santa Cruz METRO (“Metro”). Initially, the information relied on by Metro to reject West Bay’s bid is wrong or completely out of context. West Bay also learned that some of the misinformation was provided to Metro by a representative of Foothill – De Anza Community College School District (“Foothill”).

West Bay was forced to sue Foothill to collect its contract balance and damages resulting from deficient drawings. Foothill retaliated with numerous false claims. The matter was arbitrated over 44 days and Foothill was found by a three person arbitration panel to have filed “frivolous” claims against West Bay, made claims for the sole purpose to “harass” West Bay and ultimately made to pay West Bay damages including substantial legal fees as a result thereof. Exhibit 1. This award was confirmed in Santa Clara Superior court and judgment was entered against Foothill. This background is important because the information Metro was provided was wrong and Foothill’s motivation to fabricate allegations is obvious. Unfortunately, West Bay’s character and ability was put into question.

The specific deficient items on the spread sheet reference actions or documents that do not support the conclusion that West Bay’s responses were deficient. Item No. 4 asks if the bidder has ever been “disbarred”. Metro indicated that there was documentation that established West Bay had been disbarred. The document was a resolution from the City of Oakland referencing a job with the City of San Francisco (“City”). West Bay and its owners have NEVER been disbarred by a public entity. The Oakland resolution is referencing the City’s HRC’s erroneous letter indicating West Bay was disbarred, however it was not. The settlement agreement from 2000 accurately reflects the details.¹ The Oakland City resolution is wrong and Metro offers no resolution, finding or otherwise from any public entity disbaring West Bay.

¹ The Settlement Agreement is confidential but can be provided to Ms. Gallagher for review to verify that West Bay’s response was accurate.

6b13.1

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Item No. 5 alleges that West Bay did not list every lawsuit or mediation completed within the last 7 years. As evidence, a settlement agreement with the Pleasanton Unified School District is offered. However, a review of the settlement agreement indicates that there was no lawsuit filed. Furthermore, there is no evidence of mediation; only that a dispute was settled. The issue involved a water leak that was resolve without litigation. The matter was handled by West Bay's insurance company without involvement of outside legal counsel or West Bay personnel. No officer or employee of West Bay attended a mediation. The absence of litigation, made the issue moot as related to the question posed.

Item no. 6 requested if West Bay paid liquidated damages or failed to complete a project on time. Metro challenges West Bay's response based on a State of California Division of Labor and Standards judgment in which a subcontractor and West Bay were responsible for "liquidated damages". Again, on the face of this document it is evident that it relates to wage violations of one of West Bay's subcontractors and not liquidated damages for failing to finish a project on time. Titian Electric failed to pay fringe benefits and filed Chapter 7 Bankruptcy. The law in California makes the general contractor jointly responsible for a subcontractor's failure to pay prevailing wages, or union trust fund contributions. Labor Code section 1775 et seq. The document does not reflect an owner assessing liquidated damages for a delay in completing a project. West Bay's response was accurate.

Item No. 7 asks if a surety ever "paid or satisfied any claim against bidder". West Bay correctly answered in the negative. Metro challenged the response and provided two judgments in which a surety was named. However, neither document contradicts West Bay's response. In both actions, a surety has not paid any funds toward the claim. Furthermore, West Bay has never had any of its sureties pay funds to satisfy a claim of any type. As is typical, a surety will not pay claims, unless the principal is insolvent or unable to satisfy a valid claim.

Due to the statutory time frames in which subcontractors are required to file lawsuits, sometimes subcontractor actions get filed before West Bay can receive final payment from the owner. All issues regarding West Bay's last project for Metro, were resolved through negotiation. West Bay plans to use the same project manager, Chris Van Tiem, who had a good working relationship with Steve Kelly.

Finally, Metro deemed three general contractors not qualified. The result is a waste of \$164,000. A clear general consensus in most of the interviews of owners is that West Bay performs quality work, on time and on budget. See attached letters of recommendation from numerous owners. Exhibit 2. West Bay is the lowest responsible bidder and must be awarded the contract.

Very truly yours,



Timothy L. McInerney

TLM/sjf

6b13.2

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Attachments

Cc: West Bay Builders, Inc.
Margaret Gallagher

6b13.3

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EXHIBIT 1

6b13.4

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BEFORE THE AMERICAN ARBITRATION ASSOCIATION

WEST BAY BUILDERS, INC.,)	
Claimant and Counter-Respondent,)	
and	)	No. 74 110 Y 01050 08
EDWARD W. SCOTT ELECTRIC CO., INC.,)	
Claimant,)	
vs.	)	MEMORANDUM
FOOTHILL-DE ANZA COMMUNITY	)	OF DECISION
COLLEGE DISTRICT,)	
Respondent and Counter-Claimant.)	

This arbitration arose out of a contract between Claimant and Counter-Respondent West Bay Builders, Inc. ("West Bay") and Respondent and Counter-Claimant Foothill-De Anza Community College District ("Foothill") for the construction by West Bay of a project at the Foothill College campus of Foothill commonly known as the Campus Center Project (the "Project"). Claimant Edward W. Scott Electric Co., Inc. ("Scott"), was a subcontractor to West Bay and prosecuted claims both against West Bay and as pass-through claims against Foothill.

The arbitration was consolidated for hearing with Phase One of a separate arbitration which arose out of a contract between Perkins & Will Architects ("P+W") and Foothill by which P+W furnished design and construction administration services on the Project.

Timothy L. McInerney and William J. McGahan of McInerney & Dillon represented West Bay in the consolidated hearings. Patricia Walsh of Leonidou & Rosin represented Scott. Phil Jaret and Rob Jaret of Jaret & Jaret represented Foothill. James P. Castles initially of Robles & Castles and later of Robles, Castles & Meredith represented P+W. Peter J. Ippolito, Bernard S. Kamine and James R. Madison served as arbitrators.

A total of 44 days of evidentiary hearings were held on October 13-15 and 19-22, 2009; April 19-22 and 27-29, 2010; May 3-6, 10-12 and 24-25, 2010; June 8-10 and 29-30, 2010; July 1 and 26-29, 2010; August 23-26,

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2010; and October 11-14 and 18-20, 2010; followed by oral responses on December 20, 2010 to post-hearing briefs.

Oral testimony was given, documentary evidence was admitted and written and oral argument was made. After study of the matter submitted, the arbitrators have reached the decision set forth below with respect to the claims and counterclaims. In setting forth their decision, the arbitrators have not attempted to describe all of the contentions they have considered. To do so would have required a book-length document. Instead, they have limited their discussion to the elements which appeared to them to be most significant to their factual and legal conclusions.

After the preparation by P+W of plans and specifications for the Project, competitive bids were received by Foothill in December 2004. Foothill awarded a fixed-price construction contract to West Bay on January 12, 2005. The contract price was based on West Bay's low bid of \$20,085,000. Contract change orders in the amount of \$2,604,832 increased the total contract price to \$22,689,832. .

Foothill issued a notice to West Bay on January 12, 2005 to proceed with the work. The construction contract called for completion in 605 calendar days after the notice to proceed, or by September 15, 2006. The work required by the contract, including the contract change orders, was substantially completed on September 5, 2007, which was 355 days after the original contract completion date.

West Bay Claims. West Bay asserted an array of claims against Foothill, including the following:

West Bay CPE 404 Claim. West Bay contended by its Change Proposal Estimate ("CPE") 404 that Foothill was responsible for 330 days of the delay in completion and that it should compensate West Bay \$1,245,914 in damages for such delay.

Foothill denied that it was responsible for any delay in completion. It contended, among other matters, that, contrary to the requirements of Article 7.4.1 of the General Conditions of the Contract, West Bay's never submitted a timely request for delay supported by a written time impact analysis ("TIA") illustrating the impact of delaying events on the contract completion date. Foothill argued that, pursuant to Article 7.4.3, West Bay's failure to

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comply with Article 7.4.1 precluded it from recovering for Foothill-caused delay.

The evidence showed that West Bay did not comply literally with Article 7.4 and, in particular, with Article 7.4.1. However, the arbitrators believe West Bay was excused from literal compliance with Article 7.4.1. They reach this conclusion in part because West Bay attempted to incorporate in construction schedule updates delays for which Foothill was responsible, but Foothill rejected this effort.

The arbitrators note in this connection that, as they understand the contract, the time impact analysis requirement of Article 7.4.1 conflicts with the prohibition in Article 7.3.5 against incorporating the impact of delaying factors in construction schedule updates. This prohibition appears to have assumed that delaying factors invariably were not the responsibility of Foothill and that corrective action to compensate for any delay was feasible. West Bay cannot reasonably have been expected to generate a TIA for a delay claim if they were prevented from incorporating that delay into their construction schedule or for which no corrective action was feasible.

The arbitrators also believe that literal compliance with the TIA requirement in Article 7.4.1 should be excused in part, because, as the delaying events for which Foothill was responsible multiplied in frequency over the course of work on the Project, it became futile to prepare a time impact analysis for each delaying event. Changes often arose so frequently that schedule updates became outdated by the time the computer "print" button was hit.

Foothill also contended that West Bay was precluded by Articles 9.4 and 9.5 of the General Conditions from seeking compensation for delay in that (i) no compensable time was included in any of the formal Contract Change Orders, (ii) Article 9.4 provides that the change orders constituted "final settlement" of costs of delays and (iii) the process specified in Article 9.5 for requesting time was not followed. West Bay countered this argument by noting that Foothill agreed to change orders providing that time issues were "TBD," *i.e.*, to be determined. The arbitrators believe that such written agreement to have time considered independently of the contract change orders was effective to supersede the restrictions cited by Foothill. Thus, they have considered West Bay's delay claim on its merits.

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Extent of Compensable Delay. Both West Bay and Foothill submitted expert evidence on the issue of responsibility for the delay in completion. West Bay's expert divided the delay for which it sought compensation into seven separate segments or "windows." Foothill's experts were critical of the work of West Bay's expert, contending, among other matters, that he did not analyze the critical path correctly and, based on evidence from Foothill's construction management staff, that he did not take appropriate account of weather-related and self-imposed delays. The credibility of the Foothill construction management staff was, however, affected both by their aggressively adversarial management style and also by correspondence during the period of the contract that they directed to Perkins +Will, which was on Foothill's side of the table, so to speak. After study of the evidence pertaining to delay, the arbitrators have concluded that West Bay's claim should be credited as follows:

a. Asbestos Abatement. The first window consisted of the period from the beginning of work through the completion of asbestos abatement in the pre-existing structures on the Project site on February 23, 2005. According to West Bay's expert this work was completed on schedule. The evidence showed that Foothill did not dispute this analysis.

b. Demolition. The next window consisted of the period from February 23 through April 27. West Bay's expert testified that it fell 34 days behind its critical path schedule during this period. West Bay accepted responsibility for 25 days of this delay, including some because of delay by its building demolition subcontractor and 14 days because of delay by Scott Electric in establishing temporary utility connections. On the other hand, West Bay contended that Foothill was responsible for the remaining 9 days; they allegedly resulted from West Bay being required to remove underground piers and concrete mechanical duct not shown on the drawings.

Foothill's expert contended that West Bay was responsible for all 34 days of delay and more because its delay in a non-expansive soil submittal delayed excavation for the two buildings---Building 2000 and Building 2200---whose construction made up most of the work on the Project. However, he was compelled to acknowledge that the material was not required for footing backfill, but only for the top 12" of the building pads and that the submittal for this purpose was timely and did not delay completion of the building pads.

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Based on the arbitrators' understanding of the evidence, they believe West Bay should be responsible for 25 days of liquidated damages, of which Scott should be responsible for 14, and that Foothill should be responsible for 9 days of compensable delay.

c. Drilled Concrete Piers. West Bay contended that Foothill was responsible for 18 days of delay associated with 49 drilled reinforced concrete piers or caissons required by the plans and specifications as part of the foundations for Building 2200. Foothill contended that West Bay was responsible for any delay associated with the drilled piers.

The plans for the building provided that the piers were to be embedded a specified depth into a Franciscan Layer. Because the existing buildings prevented test borings from being made within the footprint of the new building to determine the depth at which the Franciscan Layer would be encountered, the contract estimated that the depth of the cover would be 10 feet and provided that the contractor would be paid extra at unit prices for extra pile length.

West Bay could have waited to order the right length of reinforcing steel cage needed for each pier when drilling for the pier revealed the actual length that was required. However, this was not practical. It would have significantly increased the cost of installing the piers and lengthened the time required for their completion. It would have required moving away from and protecting each drilled hole while the rebar cage was fabricated and then setting up again to set the cage in the hole and pour the concrete. The customary sequence is to fabricate cages in advance of their being needed on site, then drill a hole, set the prefabricated cage in the hole and pour the concrete all in one set-up. The challenge on the Project was to provide for the actual lengths of cage sufficiently in advance of their being needed on site so that the caisson work could have been done in the customary manner.

Foothill contended that West Bay should have allowed in its bid for a certain amount of extra length and ordered extra reinforcing steel cage from its rebar subcontractor, either in the form of extra long cages with any excess to be torched off or in the form of extra lengths of cage that could be spliced on if necessary. The problem with this argument is there was no way for a contractor to have estimated how much extra reasonably to allow in its bid.

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When West Bay raised the issue by a Request for Information (“RFI”), the simple solution would have been for Foothill to authorize West Bay to order extra length of rebar cage and agree to pay for the cost of any extra length that ultimately was not used and paid for as part of the unit price for extra pier length. This would have avoided any delay, as well as the extra cost that Foothill incurred when it went about making its point the hard way, as the boys in Las Vegas would say. Initially it disputed the legitimacy of an RFI. Then it arranged for additional borings to be made to better define the elevation of the Franciscan Layer. Only then was West Bay enabled to order rebar cages in time to have them on site as needed.

Based on their understanding of the evidence, the arbitrators believe Foothill is responsible for 18 days of compensable delay related to the drilled piers.

d. Concrete Walls. The next window involved the construction of concrete walls and columns, including the second floor slabs and the second level walls for Building 2200. West Bay contended that Foothill was responsible for 21 days of compensable delay resulting from errors in the plans relating to these elements.

The evidence was essentially undisputed that West Bay discovered errors in the plans with respect to elevations of the wall and column heights that would have prevented construction of the roof structure and that required correction by the structural engineer.

Based on their understanding of the evidence relevant to this window, the arbitrators believe Foothill is responsible for 21 days of compensable delay as sought.

e. Roof Framing. The next and longest window identified by West Bay’s expert involved the roof framing, including hip and intermediate glu-lam beams or rafters, joists, connectors and sheathing. West Bay contended that 189 days of compensable delay were caused by errors in the roof structure plans in combination with design errors at the M gridline, as discussed below.

The roof structures for both buildings were exceedingly complex or, as Perkins + Will characterized them, “extremely complicated.” The key structural components for the Building 2200 roof consisted of four glu-lam

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hip beams which met at a peak. The peak was not at the center of the building either laterally or longitudinally. Moreover, the landings for the hip beams were not all at the same elevation. An array of glu-lam rafters connected to the hip beams, and lumber joists spanned the spaces between the rafters. The roof of Building 2000 similarly featured four glu-lam hip beams. However, instead of meeting at a peak, the two on the east end came together at one end of a glu-lam ridge beam and the two on the west end came together at the other end of the ridge beam. Similar to the case of Building 2200, the ridge beam was located off the lateral center line of the building, and the center of the beam was off the longitudinal center line.

The evidence was clear that the plans for the roof structure were fraught with error. As above, West Bay's superintendent called attention to errors in the elevations of the concrete walls on which roofing members were supposed to land. West Bay also called attention to errors in the dimensions of roofing members themselves that, if not corrected, would have resulted in problems at the eaves. More than \$800,000 in contract change orders ultimately were issued for changes in the roof structure.

Given the complexity of the roof, it was to be expected that extra care would have been taken in the design phase. Instead it became necessary to do significant engineering during construction.

Three types of connectors for the glu-lams---hangers---were specified. Some were standard "off the shelf" items. Others were semi-custom pieces in that, although the slopes and skews were within ranges that had been pre-engineered by Simpson, the hangers themselves needed to be fabricated specially for this job. Still others were fully custom in that the structural engineer of record needed to design them before they could be fabricated. In many instances, the slopes or skews or both turned out to be wrong. The first step was to correct the configurations. Once the correct configuration of the hangers had been established, some of them remained standard "off the shelf" items from the Simpson catalog. In some cases where standard items had been specified, semi-custom hangers turned out to be necessary. In other cases, specified standard or semi-custom hangers needed to be combined into fully-custom pieces. In general, the fully-custom hangers were the largest pieces.

The need to engineer changes in the design of the fully custom hangers or to engineer hangers that became fully custom pieces as the result

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of combining standard or semi-custom pieces or both caused delay. The wait for engineering delayed the initiation of fabrication from the original orders. If the additional custom hangers were to be fabricated by Simpson, it needed to acquire the requisite heavy steel plate. West Bay's alternative was to have them fabricated by National Metal Fabricators, which needed to create shop drawings and then fit the fabrication into its plant schedule. Faced with what was in essence a Hobson's choice, West Bay cannot be criticized for going with National Metal. It also became necessary for West Bay to have certain semi-custom hangers fabricated by National Metal, because they were outside Simpson's pre-engineered range and, given this circumstance, Simpson was unwilling to guarantee them even with the aid of sketches stamped by the structural engineer of record.

Foothill contended that West Bay breached the contract by not preparing coordination shop drawings for the roof structure, showing how each of the glu-lam members and connectors fit together. West Bay disputed this contention, pointing out the roof structure was not among the items for which coordination drawings were required according to Section 1.3(H) of the specifications.

Foothill contended that, if coordination shop drawings for the roof structure had been prepared by West Bay, as allegedly required by the contract, the errors would have been detected sooner than they were and remedial action would have been taken sooner so that delay would have been avoided.

Even assuming that coordination shop drawings for the roof structure were a requirement of the contract, the arbitrators believe that, given the delays in responding to RFIs, as shown by the evidence, and the need eventually to prepare revised plans for the roof structure, it is questionable whether any time on the critical path would have been saved by the preparation of coordination shop drawings.

On the other hand, the arbitrators believe that some of the delay in framing the roof structure was the responsibility of West Bay. Photographs were introduced in evidence showing connector installations---both between glu-lams and also between columns and glu-lams---that, although accepted, appear not to have been well-planned, but instead "jury-rigged."

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Any effort on the part of the arbitrators to quantify the extent of self-imposed delay resulting from such marginal workmanship and its impact on the overall progress of the work, i.e., the critical path, must necessarily be subjective, particularly since neither the West Bay presentation nor the Foothill presentation was particularly helpful on the point.

Given, however, that West Bay has the burden of proof, the arbitrators believe Foothill should have the benefit of the doubt, and they intend, accordingly, to include in their award only 2/3 or 126 days of compensable delay for the roof structure. They believe that the parties share responsibility for the remainder, i.e., that it should be regarded as concurrent delay, for which neither compensation, on the one hand, nor liquidated damages, on the other, should be awarded.

f. M-Line. The “M” line refers to a lateral gridline in the design of Building 2200. It was the line at which a “great hall” to be used for student dining was to be divided from the food preparation and serving areas. As understood by the arbitrators, the evidence showed that, according to the plans, elements of the HVAC system and its support structure were to protrude into the great hall contrary to the design intent. This work was done, at least in part, before the error was uncovered. However, the necessary corrective work did not delay the Project. Other problems arose with respect to the interior walls and roof system at the M-line. Resolving the errors in the plans took time. The question is whether the delay in solving the problems posed by these conflicts impacted the critical path. Although it was not clear they did not, West Bay ultimately did not claim and the arbitrators intend not to allow any compensable delay in their award in addition to that allowed for the roof structure.

g. Work to Finish. The final window extended from August 26, 2006 through the substantial completion date of September 5, 2007. West Bay claimed 96 days of compensable delay during this period. By and large, the delay after August 2006 was the result of numerous changes in each of the buildings in everything from interior finishes to light fixtures to kitchen equipment to the auxiliary generators. The contract change orders in this period totaled some \$1.4 million. As West Bay argued, “every aspect of the Project was being changed” during this period. Most of the changes were initiated by Foothill. Some resulted from health and life safety regulatory requirements that had not been anticipated in the design.

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P+W contended on behalf of Foothill that, to the extent the changes affected work in the great hall in Building 2200, the delay was the responsibility of West Bay and that the associated contract change orders were not justified in that West Bay should have built out the great hall in accordance with a design intent reflected on an architectural rendering regardless of what the plans or approved shop drawings showed. P+W contended that work had already proceeded contrary to the design intent before any inconsistency was discovered. Given that Foothill's construction management personnel were on-site every day, that there was a full-time inspector of record, that P+W's project architect was on-site every week and that representatives of its consultants also made frequent visits, it boggles the mind to suppose that one or more Foothill-related individuals were not aware of virtually every nail that was driven before it was. If they were not, they had every reason to be.

Based on their understanding of the evidence, the arbitrators intend to allow West Bay 96 days of delay during the final window, as claimed.

Overall, except as set forth above, the arbitrators believe that the analysis of West Bay's expert corresponds with the evidence. They intend, accordingly, to provide that West Bay is responsible for the 25 days of delay in completion that it conceded, 14 days of which will be made the responsibility of Scott Electric; that it should be compensated for 270 days of delay, and that the remaining 60 days represented concurrent delay for which West Bay is not entitled to compensation, but for which Foothill may not assess liquidated damages.

Amount of Damages for Compensable Delay. As described more particularly in West Bay's CPE 404, the damages sought included (i) \$732,285 at the rate of \$2,398 per day of delay minus certain adjustments and plus 5% markup on compensable time; (ii) \$242,285 for subcontractor labor and material escalation (other than for Scott Electric), consultant and project manager costs, plus markups; (iii) \$259,008 for unabsorbed home office overhead minus adjustments; and (iv) \$12,336 for 1% bond premium on the resulting additional contract-related revenue.

The first component of CPE 404 was for jobsite overhead at the rate of \$2,398 per day. This consisted of (i) labor costs for West Bay's job superintendent, project engineer, assistant superintendent (for part of the period of work on the contract, averaged over the entire period) and project

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manager (assuming one-half time); (ii) miscellaneous overhead related costs, such as the office trailer, telephone, temporary fencing, storm water protection measures; interim clean-up and debris boxes; and (iii) equipment costs, all averaged over the period of work.

Foothill objected to averaging such costs over the entire period of work on the contract, contending that only costs incurred during the delay period, *i.e.*, the period after the initial contract completion date should be considered by the arbitrators. The arbitrators believe, however, that averaging the costs over the entire period is appropriate for two reasons. One is that the delay was spread over the entire period of work and not concentrated in the period after the initial completion date. The other is that, to the extent the daily costs decreased during the “wind down” phase at the of a job, there would have been a wind down phase if the job had been completed by the initial contract completion date; thus, it would have the same effect on the average regardless of whether the wind down phase occurred as it would have originally or as it ultimately did.

Foothill also objected to West Bay being compensated for the delay based on its actual jobsite overhead costs instead of the lower estimated costs included in its bid. However, the arbitrators believe that, as damages for the delay for which Foothill was responsible, West Bay is entitled to recover the full amount of the costs which the evidence showed it was compelled to incur.

In one respect, however, the arbitrators differ with the per day costs claimed by West Bay. The evidence showed that the equipment rates were billing rates, which include profit. Thus, in determining the amount ultimately to be awarded for delay damages, the arbitrators intend not to allow markup on the equipment component of the per day rate.

Based on the foregoing, the per day rate will be broken in two---a rate of \$1,836 per day for (i) labor and (ii) miscellaneous costs on which 10% field overhead and profit will be allowed and a rate of \$562 per day for (iii) equipment on which the markup will not be allowed.

In addition to the foregoing, the arbitrators believe the evidence was minimally sufficient to support recovery of the following:

- a. Dasco Labor Escalation Claim. \$10,602 for increases in the

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rates Dasco was required by union contract to pay its workers as a result of the delay.

b. Egan Plumbing Escalation Claim. \$12,452 for increases in the rates Egan Plumbing was required by union contract to pay its workers and \$27,521 for increases in the costs of steel, copper and brass valves, piping, tubing and fittings and also trim items as a result of the delay, or a total of \$39,973.

c. Shooter & Butts Escalation Claim. \$2,048 for increases in the costs of Shooter & Butts, the landscaping subcontractor, because of the delay. Camelia plants that Shooter & Butts had ordered had "overgrown" by the time the site was ready for planting had to be replaced at an increased cost.

The arbitrators believe there was no provision in the contract that would justify them in allowing the claims for consultant costs or for extended project manager costs. As for the former, see the general discussion below related to the recovery of consultant costs. As for the latter, the arbitrators believe this is an element of home office overhead.

The arbitrators recognize that, under California law, West Bay may also recover damages in the form of home office overhead incurred during the period of delay that should have been, but was not, covered by the revenue stream from the contract and that the so-called Eichleay formula may be applied in determining such damages. However, proof of such damages requires evidence both of the home office overhead expense for the relevant time period and also justification for the proposed allocation of home office expense to the particular job during the relevant time period. The arbitrators believe the evidence did not meet this standard. Instead they believe an allowance of 5% for home office overhead, as in the case of change orders in general, is appropriate.

Thus, based on 284 days of compensable delay, the arbitrators believe the evidence supported the following award of damages:

\$1,836 x 270	=	\$495,720
562 x 270	=	<u>151,740</u>
Subtotal	=	\$647,460
Minus		<u>76,049</u> *

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Subtotal	=	\$571,411
field OH & profit markup on labor @ 10%	=	<u>49,572</u>
Subtotal	=	\$620,983
Home office overhead @5%	=	31,042
Subcontractors:		
Dasco	=	\$10,602
Egan	=	39,973
Shooter	=	<u>2,048</u>
Subtotal	=	\$52,623
Mark-up @ 5%	=	<u>2,631</u>
Subtotal	=	\$55,254 <u>55,254</u>
Subtotal	=	\$707,279
Bond @ 1%	=	<u>7,452</u>
Total	=	\$714,731

* Credit for field overhead portion of the markup on approved CPEs and insurance claims

West Bay CPE 405 Claim. By CPE 405, West Bay contended that it should recover \$415,258 because of labor inefficiencies in constructing the roof systems caused by deficiencies in the plans and specifications and delays in responding to RFIs for which Foothill was responsible.

The evidence was overwhelming that errors in the plans for the roof structure resulted in the need to make changes in the work and that the changes required additional labor or resulted in increased material costs. A total of 92 separate proposed change orders related to the roof structure led to West Bay being compensated by contract change orders totaling more than \$800,000.

The issue raised by CPE 405 is whether the contract change orders compensated West Bay fully because of the errors in the roof structure plans or whether the roof structure errors and alleged errors with respect to embeds to be placed in the concrete walls also caused inefficiencies in performing the work for which West Bay should be compensated separately.

As the arbitrators understand the evidence, the amount sought by CPE 405 constitutes a total cost claim. In other words, the claim represents the total labor costs incurred by West Bay for framing the roofs and placing the

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embeds minus the sum of (i) its bid for roof framing and embed placement plus (ii) the contract change orders related to these items.

Two questions are raised by the total cost approach. One is the validity of the bid. The other has to do with the change orders.

West Bay contended that its bid was validated by its framing experience and by the fact it exceeded the engineer's estimate for the work involved. Foothill disputed the validity of West Bay's bid in that it was significantly less than the sub-bid of a contractor that specialized in roof framing. West Bay rejoined that, since it is well known in the trade for doing its own framing, the sub-bid was likely in the nature of what the arbitrators understand to have been a courtesy bid.

As for the framing change orders, West Bay's project manager testified that, although the amounts in many of them, if not most, were negotiated after the work had been done, they were negotiated on a forward looking "as if" basis; that is, the amounts were based on estimating in advance of doing the work what it reasonably should cost. This was at least in part because the number and timing of the changes made it difficult for West Bay to capture the actual costs of particular changes.

The representative of Foothill's construction manager who was responsible for negotiating the roof structure changes on its behalf testified on the other hand that, since the changes were negotiated after the fact, the amounts to which he agreed reflected his perception of the actual costs involved.

Overall, the arbitrators are not unsympathetic to West Bay's contention that it experienced labor inefficiencies in addition to delay in constructing the roof systems. The number of issues that required RFIs and the timing of responses in addition to the eventual issuance of revised structural drawings precluded prosecuting the work in any manner resembling that planned.

However, the arbitrators believe the evidentiary efforts to quantify West Bay's inefficiencies were not sufficiently reliable to meet its burden of proving its damages with reasonable certainty, and they intend, accordingly, to deny this element of its claim

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West Bay Prompt Payment Penalties Claim. West Bay contended that it should recover penalties pursuant to Public Contract Code Section 7107 because of alleged wrongful conduct of Foothill in withholding approximately \$1.37 million in retention after substantial completion of the Project.

West Bay relied on a December 2008 letter in which Foothill said it was withholding \$1,270,536, including \$220,000 for liquidated damages, \$125,536 for ASRs related to RFIs and \$724,000 because of a stop notice filed by Scott Electric.

West Bay argued that Foothill was not in good faith in asserting the claims on which its withhold was based. West Bay also argued that it had already become entitled to prompt payment penalties when Foothill later revised its position with respect to the amounts in dispute to increase the amounts claimed for liquidated damages and for ASRs related to RFIs to more than offset a reduction in the amount sought by Scott.

Foothill contended that, although the withhold justified by its December 2008 letter was only 125% of the claims it described, it was legally entitled pursuant to the provisions of Section 7107 to hold 150% of the disputed amounts. In this case, 150% of the claims described by Foothill in its December 2008 letter was \$1,605,000.

The arbitrators believe that Section 7107 supports Foothill's position. Thus, without regard to whether Foothill was or was not entitled to revise its position by increasing the amounts claimed for liquidated damages and ASRs related to RFIs, they intend not to award West Bay any prompt payment penalties.

West Bay Loss of Bonding Capacity Claim. In addition to prompt payment penalties, West Bay claimed that Foothill's wrongful withholding of \$1 million of retention caused it damages from lost bonding capacity in the amount of \$3.325 million. Foothill contended, as above, that its withholding of West Bay's retention was proper, but that, even if that were not so, the case of Lewis Jorge Construction Management, Inc. v. Pomona Unified School Dist., 34 Cal. 4th 960 (2004), holds that, as a matter of law, a claim for lost bonding capacity may not be asserted against a public entity.

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The arbitrators believe that the Lewis Jorge case does not support Foothill's contention. As the arbitrators understand the Lewis Jorge decision, the court did not rule that, as a matter of law, a claim for loss of bonding capacity may not be asserted against a public entity. Instead, the court relied on S.C. Anderson, Inc. v. Bank of America, 24 Cal. App. 4th 529 (1994), to acknowledge that a claim for loss of bonding capacity may be asserted, but that, since such a claim seeks recovery of special or consequential damages, the claimant must prove that a loss was anticipated or reasonably foreseeable by the breaching party, that a loss was incurred and the extent of the loss.

Just as the claim was rejected in S.C. Anderson on the ground that the loss of one bid was not sufficient to prove lost profits, so also was the claim rejected in Lewis Jorge, because the contractor failed to prove that the school district knew or reasonably should have known that its breach would impair the contractor's bonding capacity.

Assuming wrongful withholding of retention, the arbitrators understand S.C. Anderson and Lewis Jorge to require specific evidence of a contractor's bonding capacity and the effect thereon of wrongful delay in paying retention; of bidding opportunities that were open to the contractor during the period of wrongful retention, but foregone because of lack of bonding capacity; of the extent of its bidding success during the same period; and of its record of success on work obtained, i.e., earnings during the same period.

West Bay attempted to remedy the deficiencies in proof that led to the failures of the contractors to recover in S.C. Anderson and also in Lewis Jorge. To show foreseeability, it obtained an admission from the Foothill's Executive Director of Facilities and Operations on the last day of hearings that withholding retention would affect West Bay's bonding capacity.

In its effort to prove damages, West Bay offered the testimony of its insurance broker supported by an opinion letter from the broker. The broker testified that, as he wrote in his opinion letter, a contractor's bonding capacity "generally is a function of the overall analysis" of the contractor's net worth and working capital. In the case of West Bay, its bonding capacity was "approximately" 15-20 times whatever this analysis showed. Thus, a reduction of \$1 million in its net worth and working capital would result in a reduction of \$15-20 million in its bonding capacity. The broker also

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testified that on several occasions during the period in question, West Bay passed up bidding opportunities because of lack of bonding capacity. West Bay's president testified generally to West Bay's bidding opportunities and success record, to the gross margins included in its bids and to its past earnings.

As above, the arbitrators are not persuaded that Foothill's withholding of retention from West Bay was wrongful. However, even if Foothill's retention was wrongful and Foothill was aware through its Director of Facilities that West Bay would suffer damage as a result, the arbitrators believe that the evidence submitted did not carry West Bay's burden of proving that it suffered damage or the amount thereof.

The arbitrators intend, accordingly, to deny West Bay's claim for lost bonding capacity.

Facility Systems Claim. As assignee for collection, West Bay presented a compensable delay claim as a "pass through" claim on behalf of its subcontractor Facility Systems Mechanical Contractors, Inc.

Facility Systems claimed that its bid was based on the contract being completed in the 605 calendar days provided in the bid documents and that substantial completion of its work required 371 calendar days beyond what it had planned.

Initially Facility Systems claimed that it included 20% in its bid price, or \$294,098, for overhead, including "supervision, general office and accounting, estimating, insurance, vehicles, shop and office rent, utilities and expendable tools." In formulating the initial amount of its claim, Facility Systems divided the overhead amount in its bid by 605 days to arrive at an overhead of \$486.12 per contract day. It then multiplied the per day overhead by 371 days to produce a claimed amount of \$180,351.

Facility Systems revised its claim to state that its bid price included \$223,160 for overhead plus \$190,471 for profit, including markup on subcontracts, expendable tools and miscellaneous equipment rentals, for a total of \$413,631. Dividing this total by a contract period of 605 days yielded \$683.69 per day for overhead and profit. Multiplying this by 371 days produced a revised claim amount of \$253,649.

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The revised overhead omitted some of the items included in the original claim, but, except for the omission of expendable tools, it was not clear from the evidence what was omitted. The profit figure claimed to have been in its bid price included markups on subcontracts and also on expendable tools and miscellaneous equipment rental.

The evidence did not show that the work of Facility Systems extended over the entire initial contract period or for how much of it. Moreover, evidence did not show how much of the overhead included in its bid estimate consisted of jobsite overhead, let alone how much job site overhead expense it actually incurred. Thus, the evidence did not show how much by way of jobsite overhead costs Facility Systems incurred on a per day basis or, accordingly, how much to add per day by way of allowance for home office overhead.

Moreover, even assuming that the work of Facility Systems was “dragged along” as Foothill delayed the work of West Bay, the evidence did not show how much Foothill delayed Facility Systems. It certainly was not 371 days, because the substantial completion for the contract as a whole was only 355 days after the initial completion date.

In short, the evidence did not show how much damage Facility Systems suffered from delay on a per day basis or how many days of delay damages it was entitled to. In other words, its claim failed of proof.

In addition to defending against Facility Systems claim on the merits, Foothill contended that it need not consider the claim because no Government Code claim was ever made on behalf of Facility Systems, either by itself or by inclusion in the Government Code claim submitted by West Bay.

It is not clear to the arbitrators that a Government Code claim was made that covered the claim of Facility Systems. Even if such a claim was made, however, the arbitrators believe that, as discussed above, the proof did not support the Facility Systems claim, and they intend, accordingly, to deny its claim.

Scott Electric Claims. Scott Electric, which, as a subcontractor to West Bay, was entitled by Article 15.4.2 of the General Conditions to join in the

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arbitration, asserted an array of claims against either Foothill or West Bay, including the following:

Scott Delay Claim. Scott sought recovery of \$65,072 for extended field overhead because completion of its work was delayed beyond its planned completion date.

Scott's claim was based on being entitled to 307 days of compensable delay and compensable damages amounting to \$192.69 per day for field overhead, plus 10% for home office overhead and profit.

Scott in particular, like West Bay in general, was delayed by problems with the plans, in Scott's case consisting in large part of inconsistencies between the architectural and electrical plans, by the number of RFIs it was compelled as a result to initiate, by delays in receiving responses to some of its RFIs, and by having to work off 8-1/2 x 11 sketches instead of revised plans. In 2007, as the work moved toward completion, Scott was also delayed by changes initiated by Foothill and by the fire marshal. Scott was also affected by the adversarial style of Foothill's construction management staff and the hostility of its director of construction. This led to delays on the part of Foothill in negotiating changes in the work, some of which were necessitated by the responses to Scott's RFIs and others of which consisted of Foothill initiated changes. Overall, Scott's project manager echoed West Bay's case by characterizing the work as a "nightmare project."

Because of other delays in the work for which Foothill was responsible, the delays Scott experienced did not become completion critical. Instead, Scott was in a sense "dragged along" by delays for which Foothill was responsible that affected completion of the contract as a whole.

The evidence showed that Scott incurred a total of \$185,540.20 in field overhead costs and that, in calculating its field overhead cost per day, it properly excluded the period before it began under-building work on June 6, 2005 and after substantial completion on September 5, 2007. This resulted in a net field overhead cost of \$158,389.77 and a job duration of 822 days for a per day cost of \$192.69, as claimed.

Multiplying the per day cost of \$192.69 by the delay period of 260 days, for which the arbitrators believe Scott should recover and Foothill should pay, the remainder of the delay being concurrent, yields \$50,099.40.

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Adding 10% to this, or \$5,009.94, for home office overhead and profit equals \$55,109.34.

Scott Inefficiency Claim. Scott sought \$302,579 for labor inefficiencies.

Among other matters, Scott's subcontract called for it to perform several different types of work apart from the data and communications ("teledata") installation for which it did not make any inefficiency claim. Part of its work consisted of temporary and outside utilities, part consisted generally of under-building and interior rough-in, and the final phase consisted largely of interior finish work. The initial rough-in work, which was on the first floors of the two buildings, could proceed relatively smoothly under the second floor slabs. The rough-in work on the second floors required "jumping around" because of delays in completion of the roof structures. Similarly, the numerous changes in the finish work phase resulted in a lot of jumping around and working on top of other trades.

The problems for which Foothill was responsible undoubtedly caused Scott, like West Bay, to experience labor inefficiencies. Just as in the case of West Bay, however, the challenge for Scott was to meet its burden of quantifying them.

Scott's work, as described above, did not involve a series of repetitive steps in which one that proceeded smoothly could be used as a yardstick for measuring inefficiencies in others that allegedly were rendered inefficient. Moreover, Scott did not establish job cost codes for tracking either the costs involved in particular changes to its work or for such inefficiencies as moving from one work site and setting up in another.

Instead, Scott sought to meet the challenge with expert testimony based on a set of studies of labor inefficiencies associated with change orders (the "Leonard Study"). In the opinion of Scott's expert, the number of labor hours required by change orders (in this case, paid for by change orders) as a percentage of Scott's total labor hours on the contract except for the change order hours exceeded a threshold necessary to use the studies as a guideline for determining the extent of Scott's labor inefficiencies caused by Foothill. Based on the studies, Scott's expert initially calculated that its "lost production" hours caused by Foothill totaled 4,706. Multiplying these hours by what he calculated to be Scott's "composite non-escalated labor

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rate” yielded \$263,112 to which he applied 15% for overhead and profit to produce its labor inefficiency claim of \$302,579.

In an effort to validate the number based on the Leonard Study, Scott’s expert graphed its labor hours against its payment applications, starting with a period he believed was not impacted and continuing into a period he believed was impacted. He then established a trend line in the former period and extended it as “projected performance” over the latter period. In his opinion, the cumulative difference between the actual performance and the actual performance over the latter period was 4,846 hours.

Scott’s expert testified that his opinion allowed sufficiently for inefficiencies of Scott’s own making. In this connection, Scott’s president testified that its claim for 4,700 hours equaled its total labor hours expended on the work less the sum of (i) its teledata hours plus (ii) the hours paid for by change orders and (iii) 3,000 hours he thought Scott should, in effect, absorb. The 3,000 hours represented approximately 20% of the labor hours in Scott’s base bid plus 1,000 hours omitted for “stuff.”

Foothill’s expert criticized the analysis of Scott’s expert in several respects, ranging from whether the Leonard Study was applicable to a case like that presented by Scott’s situation and whether Scott’s expert had selected the appropriate “trend line” from the Leonard Study to apply in Scott’s situation to whether Scott’s expert had utilized the correct labor hours data. In rebuttal to the critique, Scott’s expert came up with one alternate calculation showing a labor inefficiency of 4,409 hours and another of 4,388 hours, which he said showed “similar results” to the 4,706 hours on which his calculation of its inefficiency claim was based.

The arbitrators have been left with uncertainty as to the validity of applying the Leonard Study to Scott’s subcontract and with concern about the reliability of the labor hour data applied, both with respect to the time actually required to perform change order work and also with respect to the performance of base contract work. Uncertainties were shown to have been involved in selecting and plotting the data used in the graphic conclusion as to lost production hours. One was determining the onset of impacted performance. Scott’s expert associated this with the second floor rough-ins, which were impacted by the roof structure problems. A second was establishing the slope of the projected performance trend line; relatively

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small increases in its slope would result in significant reductions in the indicated lost productivity.

On balance, while sympathetic to Scott's labor inefficiency claim, the arbitrators believe that Scott did not meet its burden of proving the amount of damages with reasonable certainty, and they intend, accordingly, to deny this claim.

Scott Escalation Claims.

a. Labor. Scott claimed \$36,909 in extra labor costs because the date to which it was delayed by Foothill in performing its work carried it into a period when, by virtue of its collective bargaining agreement, it was obligated to pay its electricians at a greater rate than would have been the case if the same work had been performed by the scheduled completion date.

The exhibit offered in evidence to support of this claim compared the planned labor hours and wage rates for foremen, journeymen and apprentices, respectively, with the actual hours and rates. As offered in evidence, however, the comparison was flawed was that, in addition to seeking compensation for the escalation in wage rates for planned labor hours, it sought compensation for labor hours in excess of the planned labor hours at the escalated rates.

The arbitrators believe that labor hours in excess of the planned hours represent either time that was paid for in change orders at rates that were applicable at the time the changed work was performed or represent inefficiencies for which, as above, the arbitrators intend to deny Scott's claim.

The arbitrators have, accordingly, have attempted to analyze the exhibit offered in support of Scott's labor escalation claim to limit the claim to the escalation in wage rates for planned labor hours. In making this analysis, they have calculated the savings in actual labor costs in the base period over the planned labor costs in such period and offset them against the increase in labor costs during the escalation period for the planned labor time that was not utilized in the base period.

As a result of this analysis, the arbitrators believe that, instead of the amount sought, Scott should be awarded \$14,499 for labor escalation.

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b. Material. Scott claimed \$28,426 in extra material costs because, as a result of delay for which Foothill is responsible, the price of various types of wire required for its performance had increased beyond its bid price by the time the materials were required. The arbitrators believe the evidence supported recovery of this claim as a consequence of Foothill being responsible for the delay.

Other Scott Claims.

a. Scott PCO 161. Scott sought an award of \$12,081 based on its PCO 161, which was West Bay's PCE 166. This proposed change order sought compensation for increases in the price of 500 MCM wire over the price anticipated in Scott's bid. The premise of this escalation claim is the same as for the types of wire covered by the material escalation claim above, i.e., delay in the work for which Foothill is responsible delayed the point in time when it was reasonable to purchase the wire and, when it came time to buy the wire, the price anticipated in Scott's bid had increased. Foothill agreed to 60% of this escalation claim in contract change order no. 29. The arbitrators believe that, based on delays in the work for which Foothill is responsible, Scott should recover the remaining 40% of this material escalation, as claimed.

b. Scott PCO 170. Scott sought an award of \$3,869 based on its PCO 170, which was West Bay's PCE 342. This proposed change order sought compensation for increases in the price of 1.0 15KV cable on the same basis as for 500 MCM wire above. As in the case of the 500 MCM wire, Foothill agreed to 60% of this escalation claim in contract change order no. 29, and the arbitrators believe that Scott should also recover the remaining 40%.

In addition to its other defenses to the claims of Scott Electric, Foothill contended (i) that Scott did not have standing to assert a claim against Foothill in this arbitration and (ii) that no Government Code claim was ever submitted on its behalf, as required if it was to be entitled to pursue its claims. As for the first of these defenses, the arbitrators believe that Article 15.4.2 of the General Conditions of the Contract entitled to participate; and, as for the second, the arbitrators believe that the Government Code claim submitted by West Bay sufficiently incorporated by

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reference a claim on behalf of Scott to satisfy the requirement for submission of a Government Code claim.

Scott Credit for Settlement with West Bay. The evidence showed that, when the arbitration began, disputes existed between Scott and West Bay with respect to certain claims by Scott for extra work and certain claimed back charges by West Bay against Scott. Before the hearings concluded, however, Scott and West Bay informed the arbitrators that they had reached agreement to compromise and settle this dispute with Scott to be credited with \$34,000 to be paid by West Bay from its retention.

West Bay's Claim for Retention, Including Retention Due Scott. It was not disputed that West Bay is entitled to credit in this arbitration for \$1,367,420 in retention withheld by Foothill and that Scott's share of such retention is \$196,464. Adding the \$34,000 makes Scott's share total \$230,464. West Bay and Foothill agreed that the retention has been held in an interest bearing account with the interest being paid to West Bay.

Foothill Counterclaims. For its part, in addition to defending against the claims of West Bay and Scott, Foothill asserted an array of counterclaims against West Bay, including the following:

Foothill Counterclaim for Delayed Completion Liquidated Damages. By its Counterclaim and Amended Counterclaim, Foothill contended it should be awarded \$710,000 in liquidated damages based on 355 days of delay in completion times the rate of \$2,000 liquidated damages specified in the contract for each day of delayed completion.

Foothill contended that it was presumptively entitled to liquidated damages during the entire period of delayed completion. In other words, it was up to West Bay to justify the time during which liquidated damages were not to imposed. As discussed above, the arbitrators are persuaded that, except for a residual period of 25 days of delay for which West Bay concedes responsibility, the delay in completion was either the responsibility of Foothill or the parties shared concurrent responsibility.

Foothill is not entitled to recover liquidated damages for the period of concurrent delay. See Tom Gogo v. Los Angeles County Flood Control Dist., 45 Cal. App. 2d 334 (1941).

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The arbitrators are not unaware of authority that, by initiating changes in the work to be performed after the original contract completion date, an owner is precluded from recovering liquidated damages. See, e.g., Aetna Cas. & Surety Co. v. Board of Trustees, 223 Cal. App. 2nd 337 (1963).

In this case, however, since West Bay conceded responsibility for 25 days of delay, of which the evidence showed that Scott was responsible for 14, the arbitrators intend to allow Foothill's counterclaim for delayed completion liquidated damages, or \$50,000, with 11 days x \$2,000 per day, or \$22,000, to be credited against West Bay and 14 days x \$2,000 per day, or \$28,000, to be credited against Scott.

Foothill Counterclaim for Punchlist Liquidated Damages. By its Amended Counterclaim, Foothill sought \$976,500 by way of liquidated damages, as provided in the contract, at the rate of \$100 per day per item for punchlist items that were not completed within 30 days after substantial completion of the Project.

In its post-hearing brief, Foothill argued for an award of at least \$880,400 or in the alternative for as much as \$1,980,900.

The smaller number was based on 31 punchlist items times 284 days times \$100 per day. The number of items was the number of disputed punchlist items---items for which Foothill claimed West Bay was responsible and for which West Bay denied responsibility--- that were open when Foothill and West Bay agreed to Foothill being entitled to a credit of \$35,850 in exchange for it releasing its claims that West Bay had any remaining obligation to perform punchlist work. The period of 284 days extended from 30 days after substantial completion of the project to the date when the parties reached the compromise agreement resolving their dispute.

The larger number was based on \$100 per day times the number of open punchlist items listed by Paul Petri of West Bay on October 2007 times an assumed number of days per item to reduce that number to a list of claimed punchlist items compiled by Todd Leicht for Foothill on January 4, 2008 plus an assumed number of days per item until the latter list was reduced to 31 plus the number of additional days for the 31 items until the agreement was reached to compromise the punchlist dispute.

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It is questionable whether the arbitrators have the power to award more to Foothill by way of punchlist liquidated damages than sought by its amended counterclaim. Be that as it may, three different provisions of the contract are relevant to determining Foothill's counterclaim for punchlist liquidated damages.

First, Article 7.2.3.2 of the General Conditions of the contract provides in pertinent part that:

. . . the Program Manager, Contractor and Architect shall, after the joint inspection, establish a reasonable time for Contractor's completion of all Punchlist items. If mutual agreement is not reached for the Contractor's completion of Punchlist items, the Program Manager and District in consultation with the Architect shall determine such time, and in such event, the time determined by the Architect shall be final and binding upon the District and Contractor so long as the Architect's determination is made in good faith. . . . In the event that the Contractor shall fail or refuse, for any reason, to complete all Punchlist items within the time established, Contractor shall be subject to assessment of Liquidated Damages in accordance with Article 7.5 hereof. (emphasis added).

In addition, Article 7.5 of the General Conditions provides in pertinent part that:

Notwithstanding achievement of Substantial Completion of the Work, if the Contractor fails or refuses, for any reason, to promptly and diligently commence performance of all Punchlist items noted upon Substantial Completion and to complete the same within a reasonable time, as established in accordance with the Contract Documents, the Contractor shall be liable to the District for the per diem Liquidated Damages set forth in the Special Conditions from the date that such items should have been corrected or completed until the due date that all such items are actually corrected or completed. (emphasis added).

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Finally, Section 00510(5) of the Special Conditions provides in pertinent part that:

The per diem assessment of Liquidated Damages for delayed completion of Punchlist items noted as applicable 30 days after Substantial Completion is ***One hundred Dollars (\$100.00)*** per item until all Punchlist items are completed. (emphasis in second line added; italics, boldface and emphasis on third and fourth lines in original).

The evidence on behalf of Foothill showed that liquidated damages for failure to complete punchlist items were not to begin in any event until 30 days after substantial completion. The evidence failed to show that any date later than 30 days after substantial completion was ever set, whether by mutual agreement or by Foothill or P+W, as a deadline for the completion of punchlist items, *i.e.*, as the date pursuant to Articles 7.2.3.2 and 7.5 of the General Conditions after which liquidated damages could be assessed for not completing punchlist items. Moreover, the evidence failed to show that the assessment of liquidated damages was ever noted as applicable to any punchlist item that was not completed by an established deadline.

Based on the foregoing, the arbitrators are compelled to conclude that the conditions precedent established by the Contract for an assessment of liquidated damages for delay on the part of West Bay in the completion of items of punchlist work were not satisfied. The arbitrators intend, accordingly, to deny Foothill's claim for punchlist liquidated damages.

Based, however, on the agreement between West Bay and Foothill to compromise the dispute between them regarding disputed punchlist items, Foothill will be entitled to a credit of \$35,850 against the amount otherwise determined by the arbitrators to be due from it to West Bay.

Foothill Counterclaim for P+W ASRs. By its Amended Counterclaim, Foothill sought to recover \$1,321,683 from West Bay on account of charges to Foothill by P+W allegedly because of malfeasance on the part of West Bay and delay in completion of the Project for which West Bay is responsible. The charges on which Foothill based this element of its counterclaim were reflected in Additional Service Requests ("ASRs") submitted by P+W to Foothill.

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In the course of the hearings, Foothill reduced the amount sought by its counterclaim for P+W ASRs to the amount determined by the arbitrators in Phase One of the separate arbitration between P+W and Foothill to be due from Foothill to P+W. The arbitrators have determined this to be \$894,070. Foothill excepted from this counterclaim an unspecified amount for “the stray issues regarding the generator” for emergency power, acknowledging that West Bay “was no longer involved” in this aspect of the work.

To the extent Foothill’s counterclaim for P+W ASRs is based on Foothill having to pay extra to P+W because of delay in completion of the Project for which West Bay is responsible, the arbitrators believe that, even if West Bay were responsible for any delay in completion, recovery is precluded by Section 7.5 of the General Conditions of the contract in which liquidated damages are expressly made a substitute for any actual damages suffered by Foothill as the result of delay in completion of the work.

Apart from liability for ASRs based on delayed completion, Foothill contended that West Bay was liable to it for P+W’s ASRs because they were for services performed in dealing with unjustified RFIs (“request for information”) submitted by West Bay.

Article 3.1.10 of the General Conditions imposed upon West Bay an affirmative obligation to submit an RFI whenever West Bay “encountered any condition” which showed an “ambiguity, conflict, error or omission” in the plans or specifications.

Section 01112 of the Special Conditions defined more particularly the conditions under which an RFI was to be submitted and the procedures for doing so and specified limitations on the submission of RFIs.

The evidence showed that in some cases West Bay submitted an RFI which duplicated a previous RFI to which an adequate response had been made. In some other cases, West Bay submitted an RFI unnecessarily, because the plans were clear enough for it to have resolved any alleged problem on its own. However, West Bay contended that most of the more than 1400 RFIs it submitted, including more than 300 that were triggered by erroneous or inadequate responses to the initial RFI, were justified by one or more of the circumstances described in Article 3.1.10 or Section 01112. This contention was corroborated both by the project architect for P+W, who testified that a majority of the initial RFIs, i.e., some 800 out of about 1100,

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were “legitimate,” and also by correspondence from Foothill’s construction manager criticizing P+W because of problems with the plans that necessitated the submission of many RFIs.

Section 01112 provided that, if West Bay submitted an RFI contrary to the specified conditions and limitations, it was to bear the cost of review of the RFI. Section 3.1.10 of the General Conditions also provided that, if P+W “reasonably determined” that an RFI did “not reflect adequate or competent supervision or coordination” by West Bay or did not reflect West Bay’s “adequate or competent knowledge of the requirements” of the work or the contract of was “not justified for any other reason,” then, in responding to the RFI, P+W was both to “indicate” such determination to West Bay and also to indicate the amount of costs to be borne by West Bay for “the processing, review, evaluation and response” to the RFI.

The evidence showed that no such indication was ever given with respect to any RFI. The arbitrators believe that, in the absence of any indication that any RFI was unjustified and that West Bay was to bear the cost of review thereof, the RFIs must be regarded as appropriate and not in breach of any obligation that West Bay owed to Foothill.

Moreover, the evidence failed in any event to show how much of the effort covered by the ASRs for which Foothill sought to impose liability on West Bay was devoted to unjustified ASRs.

Based on the foregoing, the arbitrators intend to deny the counterclaim of Foothill for P+W ASRs.

Foothill False Claim Act Counterclaims. By its Amended Counterclaim, Foothill contended that West Bay’s claims for delay damages and for inefficiency, as set forth in CPE’s 404 and 405, constituted false claims within the meaning of the California False Claims Act, Government Code Sections 12650-51, because West Bay did not satisfy contractual prerequisites for asserting them and because the amounts sought were “grossly inflated.”

Foothill also contended that West Bay obtained the contract by fraud and that its fraud constituted a false claim, because West Bay allegedly made false statements in its responses to Foothill’s pre-qualification questionnaire

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to prospective bidders and would otherwise have been disqualified by Foothill from submitting a bid.

Foothill also contended that West Bay's claim for loss of bonding capacity constituted a false claim because, as a matter of law, a claim for loss of bonding capacity does not lie against a public agency and, as a matter of fact, the evidence did not support such a claim.

By its Amended Counterclaim, Foothill sought three times an unspecified amount of damages for the alleged false claims, together with its costs of litigation, including attorney's fees and a penalty of \$10,000 for each false claim.

In its post-hearing brief, Foothill also contended (a) that the claim asserted by West Bay on behalf of Facility Systems constituted a false claim because it "has no merit" and because it was not preceded by a Government Code claim and (b) that Scott's claim was a false claim because it had been waived and because it was "based on faulty expert reasoning."

The arbitrators have previously issued a decision summarily denying Foothill's contention that West Bay obtained the contract by fraud and in thereafter obtaining progress payments under the contract asserted false claims against Foothill. In reaching their decision, the arbitrators assumed that the evidence would show false representations on the part of West Bay in responding to the pre-qualification questionnaire, as alleged by Foothill, and that the evidence would also show that the matters not disclosed were not a matter of public record. Although their previous decision was silent on the point, the arbitrators were prepared also to assume that, if Foothill had known of the matters that were not disclosed, it would have disqualified West Bay from bidding.

In support of its contentions with respect to West Bay obtaining the contract by fraud and, thus, asserting false claims, Foothill relied upon United States ex rel. Marcus v. Hess, 317 U.S. 537 (1947), and San Francisco Unified School Dist. ex rel. Contreras v. Laidlaw Transit, Inc., Cal. App. 4th (1st Dist. 2010). The arbitrators believe that neither of these cases supports Foothill's position.

The Hess case involved bid rigging as a result of which the government paid in excess of a competitive price for the work involved.

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The Laidlaw case similarly involved a situation in which the school district was led to pay for services that it did not receive. Thus, there was in each of these cases a direct causal connection between the claims made and loss to the governmental agency involved.

In the present case, the contract resulted from non-collusive competitive bidding. Foothill not only did not suffer any loss, but actually saved money in that West Bay bid significantly less than rival bidders and Foothill, accordingly, paid significantly less for construction of the Project than it would have if West Bay had been disqualified. Moreover, Foothill has not contended, except with respect to disputed claims, that West Bay failed to comply with the requirements of the contract or that the construction work West Bay performed was worth less than the price it has been paid.

The arbitrators, accordingly, reaffirm their decision to deny Foothill's false claim and fraud contentions with respect to West Bay obtaining the contract, both for lack of proximate cause and lack of damage.

The remaining false claim claims on the part of Foothill are also denied. The evidence failed to show that Foothill paid out or was asked to pay out any money based on a false statement. What the false claim contentions of Foothill with respect to CPEs 404 and 405 and the Facility Systems and Scott claims actually amounted to is that, either for reasons of law or reasons of fact or both, they should be denied. However, showing that the evidence is not sufficient to prove a claim, *i.e.*, mounting a successful defense against a claim, does not show that the claim is a false claim. See Fassberg Constr. Co. v. Housing Authority of the City of Los Angeles, 151 Cal. App. 4th 267 (2007).

The arbitrators believe that experienced governmental contracting agencies and their counsel understand or reasonably should understand the difference between a false claim and a defense sufficient to defeat a claim and that the latter does not make a claim a false claim. In this case, Foothill's Executive Director of Facilities and Operations admitted he had not even read the applicable Government Code provisions. The assertion of false claim contentions in this arbitration with respect to CPEs 404 and 405 and the Facility Systems and Scott claims without any basis for doing so and without even any attempt to understand what constitutes a false claim shows that the latter false claim contentions were "clearly frivolous,

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clearly vexatious or brought solely for the purpose of harassment” within the meaning of the Government Code, i.e., brought to intimidate West Bay and its subcontractors from pursuing their claims. Thus, to the extent the attorney’s fees of West Bay and Scott were incurred to defend against these false claim contentions, the arbitrators believe that Government Code Section 12652(g)(9) entitles them to an award of attorney’s fees, and they intend to provide for such fees in their award.

Foothill Counterclaim for Fire Protection Sprinkler Deferred Seismic Calculations. Foothill contended that West Bay’s subcontractor Transbay Fire Protection, Inc. and thereby West Bay was responsible for the preparation by a registered structural engineer of calculations showing the point loads imposed upon the roofs of the two buildings by connections to the fire protection sprinkler systems, as required by the Division of the State Architect (“DSA”). Foothill sought to recover \$10,000 to allow for it to have these calculations made, because West Bay refused. West Bay contended that nothing in contract obligated it or its fire protection subcontractor to provide these calculations. Foothill did not cite to any provision in the fire protection sprinkler specifications or offer any other evidence in support of its contention. Indeed, the only evidence on the point appeared to state that the calculations in question should be made by the structural engineer of record, which was a consultant to Foothill’s architect, Perkins & Will. Accordingly, the arbitrators intend to deny this claim.

Foothill Counterclaim for Consultant Costs. The arbitrators intend to deny Foothill’s counterclaim for consultant costs for the same reasons as they intend to deny the claims of West Bay and Scott for consultant costs. Neither the contract nor any applicable statute provides for such recovery, and AAA Rule R-53 provides that the expenses of witnesses for each side shall be borne by the party producing the witness.

Attorney’s Fee Claims. West Bay contended on multiple theories that it is entitled to an award of attorney’s fees.

As a general proposition, Article 15.4.2 of the General Conditions of the contract precludes an award of attorney’s fees to either side. It provides that each party “shall bear its own attorneys’ fees.” Moreover, arbitration costs that may be awarded to a prevailing party exclude attorney’s fees.

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Despite the contractual limitation, the arbitrators have concluded, as discussed above, that West Bay is entitled by statute to an award of attorney's fees to the extent it can show reasonable fees that it incurred in defense against the false claim component of Foothill's counterclaim relating to CPEs 404 and 405 and the Scott and Facility Systems claims.

West Bay also contends that it should be awarded attorney's fees because the arbitration clause in the contract between P+W and Foothill provides for the prevailing party to recover attorney's fees. West Bay's argument is that, since the arbitration between it and Foothill was consolidated for hearing with the arbitration between P+W and Foothill, the prevailing party provision in the P+W contract was incorporated into its arbitration. The arbitrators believe that, although the two arbitrations were consolidated for hearing, they remain separate arbitrations and the prevailing party attorney's fee provision in the contract between P+W and Foothill applies only to the arbitration between them. West Bay's argument to the contrary is, accordingly, rejected, and the arbitrators intend to deny its effort to obtain an award of fees by virtue of such argument.

West Bay contends finally that it should be awarded attorney's fees based on Rule R-45(d)(ii) of the AAA Construction Rules. Rule R-45(d)(ii) authorizes arbitrators to make an award of attorney's fees if both parties to an arbitration request them. West Bay's argument is that both it and Foothill have requested fees in this arbitration. However, Foothill's request for fees has been limited to the prompt payment and false claim claims, and the arbitrators believe that Rule R-45(d)(ii) applies only when both parties have made an unqualified request for fees. Moreover, even if it were otherwise, Rule R-45(d)(ii) does not make an award of fees mandatory, but merely authorizes arbitrators to award them in the exercise of their discretion. In short, the arbitrators believe that under the circumstances of this case Rule R-45(d)(ii) does not authorize them to award fees, and, even if it does, they decline in the exercise of their discretion to do. Thus, the arbitrators intend to deny West Bay's effort to obtain fees based on Rule R-45(d)(ii).

As discussed above, the arbitrators have concluded that Foothill did not wrongfully withhold retention from West Bay and, thus, did not violate Public Contract Code Section 7101. West Bay is, accordingly, not entitled to the recovery of attorney's fees incurred in pursuing its Section 7107 claim. Instead, to the extent Foothill can show that it incurred reasonable

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fees in defending against this claim, it is entitled by statute to an award of attorney's fees, and the arbitrators to include such fees in their award.

Scott did not seek an award of attorney's fees and the arbitrators do not intend to include any attorney's fees for or against Scott in their award.

Costs. Pursuant to Rules R-52, R-53 and R-54, the arbitrators believe that West Bay and Scott should be regarded as the prevailing parties in this arbitration and that Foothill should be responsible for the costs of the arbitration, including the court reporter fees, the charges of the American Arbitration Association and the compensation of the arbitrators

To the extent required by applicable law or the contract between the parties, the foregoing constitutes the arbitrators' findings of fact and conclusions of law.

Conclusion. Based on the foregoing, it is the intention of the arbitrators to provide in their award that:

1. Foothill pay West Bay \$2,024,301 (\$714,731 for delay plus \$1,367,420 in retention minus \$22,000 liquidated damages and \$35,850 settlement of punchlist dispute), together with (i) interest thereon at the legal rate of 10% per year from October 30, 2008 less credit for interest paid or payable to West Bay from escrowed moneys, (ii) costs of the arbitration advanced by West Bay, including the charges of the American Arbitration Association and the compensation of the arbitrators and (iii), upon application therefore, court reporter fees advanced by West Bay.
2. Foothill pay Scott \$85,984.34 (\$55,109.34 for delay plus \$14,499 for labor escalation, \$28,426 for material escalation, \$12,081 for PCO 161 and \$3,869 for PCO 170 minus \$28,000 liquidated damages), together with (i) interest thereon at the legal rate of 10% per year from October 30, 2008, (ii) costs of the arbitration advanced by it, including the charges of the American Arbitration Association and the compensation of the arbitrators and (iii), upon application therefore, court reporter fees advanced by Scott.
3. West Bay pay Scott \$264,464 (\$230,464 for Scott's share of the retention included in the amount to be paid West Bay by Foothill plus \$34,000 in
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compromise of the dispute between Scott and West Bay), together with interest thereon at the rate of 10% per year from October 30, 2008.

4. Attorney's fees are to be paid by West Bay to Foothill and by Foothill to West Bay as determined upon application therefore.

Dated: March 29, 2011.



Peter J. Ippolito, arbitrator

Bernard S. Kamine, arbitrator

James R. Madison, arbitrator


Note: The signatures of the arbitrators to this Decision may be made on counterpart copies.

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Dated: March 29, 2011.



Peter J. Ippolito, arbitrator



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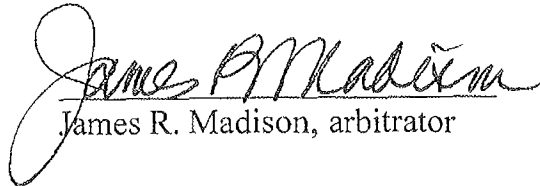
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Dated: March 29, 2011.

Peter J. Ippolito, arbitrator

Bernard S. Kamine, arbitrator



James R. Madison, arbitrator

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BEFORE THE AMERICAN ARBITRATION ASSOCIATION

WEST BAY BUILDERS, INC.,)	
Claimant and Counter-Respondent,)	No. 74 110 Y 01050 08
and)	
EDWARD W. SCOTT ELECTRIC CO, INC.)	)	SUPPLEMENT TO
Claimant,)	
vs.	)	MEMORANDUM OF
)	
FOOTHILL-DE ANZA COMMUNITY	)	DECISION
COLLEGE DISTRICT,)	
Respondent and Counter-Claimant.)	

This Supplement to the Memorandum of Decision previously issued by the arbitrators in the above-described case will address the following:

1. Requests made by parties for correction or modification of the Memorandum of Decision;
2. The respective applications for attorney's fees and costs submitted by West Bay and Foothill-De Anza Community College District ("Foothill"); and
3. The effect of the payment of retention to West Bay by Foothill and the distribution of escrowed retention to West Bay.

A. West Bay Request for Correction.

By letter from McInerney & Dillon dated April 5, 2011, West Bay requested that numbered paragraph 3 on page 34 of the Memorandum of Decision be corrected to reflect the correct Scott share of the retention to be paid to West Bay by Foothill. The numbered paragraph in question is, accordingly, hereby corrected to read as follows:

3. West Bay pay Scott \$230,464 (\$196,464 for Scott's share of the retention in the amount to be paid West Bay by Foothill plus \$34,000 in compromise of the dispute between Scott and West Bay), together with interest thereon at the rate of 10% per year from October 30, 2008.

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B. Foothill Request for Modifications.

By letter from Jaret & Jaret dated April 12, 2011, Foothill requested that the Memorandum of Decision be modified in the following respects:

1. West Bay Pre-Award Interest.

a. To delete the provision for West Bay to recover pre-award interest.

(1) Foothill contended in this regard that the recovery by West Bay of pre-award interest is precluded by Civil Code Section 3287, because West Bay's damages were "not capable of being made certain" as of the beginning date of from which interest is to be awarded. Foothill would be correct if the decision that West Bay is to recover pre-award interest were based on Section 3287(a). However, the arbitrators' decision is based on Section 3287(b), which affords them discretion to provide for the recovery of pre-award interest from the date when this arbitration was initiated. Under Lewis C. Nelson & Sons, Inc. v. Clovis Unified School Dist., 90 Cal. App. 4th 64 (2001), Section 3287(b) applies to public entities just as Section 3287(a) does.

(2) Foothill contended alternatively that the recovery by West Bay of pre-award interest is barred because West Bay purportedly elected to receive interest instead on escrowed retention. However, Foothill has not cited any authority for the proposition that such interest is in lieu of pre-award interest, and the arbitrators believe it should not be so treated.

b. If pre-award interest is to be recovered by West Bay, it should be at the rate of 7% per year and not 10%. Foothill argued in this connection that Government Code Section 970.1 limits the applicable rate to 7% per year. The problem with this argument is that Section 970.1 applies to "post-judgment" interest and not to pre-award interest. The decision of the arbitrators that West Bay is to recover pre-award interest at the rate of 10% per year is properly based on Civil Code Section 3289.

Based on the foregoing, the request of Foothill to modify the Memorandum of Decision with respect to the award of interest to West Bay is denied. However, the arbitrators agree that interest paid to West Bay on

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escrowed retention should be credited against pre-award interest otherwise due West Bay and they intend to credit such interest in their award.

2. Scott Pre-Award Interest.

a. To delete the provision that Scott recover pre-award interest or alternatively to limit the rate of pre-award interest recovered by Scott to 7% per year. Foothill made the same arguments in support of these contentions as made in support of the same contentions with respect to the recovery of pre-award interest by West Bay, and the arbitrators have the same responses. Thus, these requests for correction are denied.

b. If pre-award interest is to be awarded to Scott, the beginning date should be limited to July 29, 2009, when Scott filed its separate Demand for Arbitration. Although Scott did not file a separate demand for arbitration until July 29, 2009, as noted by Foothill, the arbitrators believe that, in the exercise of their discretion to provide for the recovery of pre-award interest by Scott, it is appropriate that such interest accrue from the date when West Bay initiated this arbitration, as the Scott claim was included by West Bay as a pass-through claim as of that date. Thus, this request for correction will be denied.

3. Allowance for West Bay Home Office Overhead. To delete the allowance for home office overhead from the amount awarded West Bay on account of CPE 405 and, if such allowance is retained, to correct the amount from \$31,042 to \$31,049. Foothill argued in this connection that nothing should be awarded for home office overhead, because the arbitrators determined that the evidence did not support the amount claimed by West Bay based on the Eichleay formula. However, the arbitrators concluded that, although the evidence did not support the amount claimed by West Bay, the amount determined to be due West Bay on account of CPE 405 constitutes, in effect, a contract change order. Therefore, the amount should include the standard allowance for home office overhead provided by the contract for contract change orders. In any event, typographical errors in the passage beginning at the bottom of page 12 of the Memorandum of Decision and continuing onto page 13 will be corrected to read as follows:

Thus, based on 270 days of compensable delay, the arbitrators believe that the evidence supported the following award of damages:

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\$1,836 x 270	=	\$495,720
562 x 270	=	<u>151,740</u>
Subtotal	=	\$647,460
Minus	=	<u>76,049*</u>
Subtotal	=	\$571,411
Field OH and profit markup on		
labor @ 10%	=	<u>49,572</u>
Subtotal	=	\$620,983
Home Office overhead @ 5%	=	31,049
Subcontractors		
Dasco	=	\$10,602
Egan	=	39,973
Shooter	=	<u>2,048</u>
Subtotal	=	\$52,623
Markup @ 5%	=	<u>2,631</u>
Subtotal	=	\$55,254 <u>55,254</u>
Subtotal		\$707,286
Bond @ 1 %	=	<u>7,012</u>
Total	=	\$714,398

* Credit for field overhead portion of the markup on approved CPEs and insurance claims

Numbered paragraph 1 on page 34 will also be corrected to read in part that:

Foothill pay West Bay \$2,023,968
(\$714,398 for delay plus

4. Award of Attorney's Fees to West Bay Based on Frivolous False Claim Assertions. In the guise of requesting a correction of the Memorandum of Decision to delete the award of attorney's fees to West Bay pursuant to Government Code Section 12652(g)(9), Foothill attempted to reargue the issue of West Bay's alleged fraud in the inducement of the contract. As the arbitrators have determined, Foothill may have been misled into allowing West Bay to bid for the contract at issue. However, no evidence whatsoever was offered that Foothill suffered any injury or prejudice of any kind as a result. Indeed, the evidence was undisputed that Foothill benefited significantly from allowing West Bay to bid.

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Foothill also ignores that fact that, although the arbitrators denied all of its false claim counterclaims, they did not find that its false claim claim based on West Bay's effort to recover damages for lost bonding capacity was frivolous or otherwise justified an award of attorney's fees to West Bay. Only those false claim claims founded on West Bay's extra compensation claims were found to have justified an award of attorney's fees. In this connection, despite a case holding plainly that having a good defense against a contractor's claim for extra compensation does not make the claim a false claim, Foothill clung tenaciously until virtually the last day of testimony to the position it would somehow show that West Bay's CPE 404 and 405 claims and its pass-through claims on behalf of Facility Systems and Scott constituted false claims. Not until the final cross examination of Foothill's Executive Director of Facilities and Operations did it become clear that Foothill had made no effort even to understand what constitutes a false claim and that these particular false claim contentions were "clearly frivolous, clearly vexatious or brought solely for the purpose of harassment." Their purpose was plainly to intimidate West Bay and its subcontractors from pursuing their claims and to drive up the attorney's fees incurred by West Bay in doing so. Thus, Foothill's request that the Memorandum of Decision be corrected by deletion of an attorney's fee award to West Bay is denied.

5. Award to West Bay and Scott of the Costs of the Arbitration.

Finally, the request of Foothill that the Memorandum of Decision be corrected by removing the decision of the arbitrators for West Bay and Scott to recover the costs of the arbitration advanced by them is also denied. Article 15.4 of the contract provided that "the expenses and fees of the Arbitrators shall be divided equally among the parties to the arbitration." However, it also provided that "the foregoing notwithstanding, the Arbitrators may award arbitration costs, including Arbitrators' fees . . . to the prevailing party." AAA Rule R-52 also provides that the arbitrators may apportion the cost of the arbitrators compensation in their award. The arbitrators believe that West Bay and Scott unquestionably prevailed in this arbitration and that, regardless of whether Article 15.4 controls over the AAA Rules or vice versa, exercising their discretion to apportion the costs in favor of West Bay and Scott is, accordingly, appropriate.

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C. Scott Request for Modification.

By letter from Leonidou & Rosin dated April 18, 2011, Scott requested modification of the Memorandum of Decision to increase the number of compensable days of delay. However, the arbitrators believe that the delays determined by them to be concurrent as to West Bay and Foothill were also concurrent as to Scott. Thus, the arbitrators believe no adjustment is in order in the number of days of compensable delay awarded to Scott.

D. Foothill's Attorney's Fee Application.

Public Contracts Code Section 7107 provides, in effect, that Foothill was obligated to release the contract retention to West Bay within 60 days after Foothill took beneficial occupancy of the Campus Center in September 2007, provided that Foothill was entitled to retain from such release not to exceed 150% of the amount of any dispute between Foothill and West Bay. In any action for the collection of funds wrongfully withheld, the prevailing party "shall be entitled to attorney's fees and costs."

Foothill prevailed in this arbitration on the question of whether it withheld the retention wrongfully. This raises the issue of what attorney's fees were reasonably incurred by Foothill in defending against West Bay's claim that the retention was withheld wrongfully.

As nearly as may be gleaned from Foothill's Request for Attorney's Fees and Costs, it contends that it is entitled to all of the fees incurred in connection with this arbitration from September 2007 onward, except for those it "carved out that do not relate to the defense of contract claims and the related defense of prompt payment claims." Although the fees were billed at a reduced rate of \$225 an hour, the evidence showed that on a lodestar basis, Foothill was entitled to be compensated at the rate of \$300 an hour.

In a case like the present which involved some issues on which Foothill became entitled to recover fees and others on which it was not, the challenge for Foothill was to show what was necessary to defense of the issues on which it is entitled to fees. See Reynolds Metals Co. v. Alperson, 25 Cal. 3d 124 (1979). Instead of carving out fees not related to defense of the prompt payment claim, Foothill needed to show the fees that were related to such defense. In other words, Foothill is entitled only to the

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reasonable fees it can show would not have been incurred “but for” such defense.

The arbitrators believe that, under the circumstances of this case, Foothill’s defense against West Bay’s prompt payment claim was independent of its contract defenses. As Foothill conceded, perhaps unwittingly, on page 3 of its Reply to West Bay’s Opposition to Foothill’s claim for attorney’s fees, “Foothill was not required to prevail on any contract claims in order for it to prevail on the 7107 [prompt payment] claim.” In other words, Foothill was not required to expend legal effort to defeat the contract claims of West Bay. Indeed, it did not defeat them. The arbitrators determined that West Bay was entitled to payment of the retention and then some. All that was required of Foothill was the legal effort necessary to show that the funds withheld amounted to no more than 150% of a disputed amount. See Thompson Pacific Constr. Co. v. City of Sunnyvale, 155 Cal. App. 4th 525 (2007).

Foothill withheld \$1,367,420 in retention. The project was not substantially complete until 355 days after the contract completion date. Foothill claimed that it was entitled to \$710,000 liquidated damages for this period at the contract rate of \$2,000 a day. Thus, the liquidated damage claim justified retaining \$1,065,000. Foothill was aided in justifying its retention to secure this claim by the presumption that it was entitled to liquidated damages for the entire delay in completion. This presumption is based on a reasonable likelihood of delay not being excused and, thus, was entitled to be weighed against proof of excuse and did not involve merely the risk of non-production of evidence. Scott filed a lawsuit to foreclose a stop payment notice in the amount of \$724,400. The continued pendency of the lawsuit justified retaining \$1,086,800. Between these two factors, Foothill was essentially “home and dry” in the sense of being able to prevail against West Bay’s claim that the retention was withheld wrongfully. Foothill disputed in good faith not only 2/3 of the retention, but more than the amount retained. Cf. Taylor v. Van Catlin Constr. Co., 130 Cal. App. 4th 1061 (2005) (Civil Code Section 3260).

Given the obvious justification that existed for Foothill’s retention, the arbitrators believe that only nominal legal effort was reasonably necessary to defeat West Bay’s claim that the retention was wrongful. In this connection, the arbitrators believe that, as in Fox v. Vice, 131 S. Ct. 2205 (2011), they are not to become “green eyeshade accountants,” but may do “rough

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justice.” The arbitrators intend, accordingly, to provide in their award that Foothill be credited with \$15,000 on account of its entitlement to attorney’s fees for prevailing on the wrongful retention claim. They believe that, based on the justifiable lodestar rate of \$300 an hour for Foothill’s lawyers, this will, if anything, more than reasonably compensate Foothill for the time required to establish that the retention was not withheld wrongfully from West Bay.

In addition to attorney’s fees, the arbitrators believe that Foothill is entitled to those costs incurred by it that both satisfy the foregoing criterion and also are within the categories of costs allocable pursuant to Rule R-50. However, the arbitrators believe that Foothill has not shown it incurred any costs for which it is entitled to reimbursement.

E. West Bay’s Application for Attorney’s Fees.

Government Code Section 12652(g)(9) provides, in effect, that if, as in this arbitration, West Bay prevails in defending against false claims contentions made by Foothill and shows that the contentions are clearly frivolous, it shall be entitled to reasonable attorney’s fees and expenses.

In this connection, although the arbitrators denied all of Foothill’s false claim contentions, not all of them were found to be frivolous. The only false claim contentions that were found to be frivolous were the contentions that CPE 404, CPE 405 and the Facility Systems and Scott claims constituted false claims. Thus, the arbitrators believe that, just as it was Foothill’s challenge to show the fees it would not have incurred but for the issue on which it became entitled to an award of fees, it was West Bay’s challenge to show the reasonable fees it would not have incurred but for its effort to show that the false claim contentions on the part of Foothill which the arbitrators have found to be both unmerited and frivolous were, indeed, unmerited and frivolous.

In West Bay’s application for an award of attorney’s fees, one factor in the amount claimed was the allocation of 1,556.85 hours of lawyer hours to West Bay’s defense against Foothill’s false claim contentions out of the total time of 1,819.35 hours devoted to the case by its lawyers after Foothill’s false claims contentions were set forth in its amended counterclaim filed on October 8, 2009, shortly before the evidentiary hearings began on Monday, October 13. The claimed hours included 676.6

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hours billed to the case by West Bay's lead lawyer Timothy L. McInerney; 775.25 hours billed by William J. McGahan; 102.25 hours billed by Anna Hertzman; and 20.0 hours billed by Brian Junginger.

West Bay claimed that its defense against Foothill's false claim contentions was "inextricably intertwined" with its effort to prosecute CPEs 404 and 405 and the Facility Systems and Scott Electric claims. Thus, West Bay argued that all of the hours devoted to the case were compensable, except for those which could be segregated to issues, such as its lost bonding capacity claim, on which it was not entitled to recovery of fees.

Multiplying the hours claimed by \$425 an hour for McInerney's time, \$375 an hour for McGahan's time and \$275 an hour for the time of Hertzman and Junginger resulted in a claim of \$611,892.50. Foothill offered evidence that McInerney's law firm actually billed West Bay only \$300 an hour for services rendered in connection with this arbitration. West Bay argued that this evidence was beside the mark in that statutory awards of legal fees should be based on lodestar rates, *i.e.*, rates that lawyers of comparable experience in the substantive and geographic area were reasonably entitled to charge for services of a comparable nature. West Bay's legal argument is supported by the applicable case law. Ketchum v. Moses, 24 Cal. 4th 1122 (2007); PLCM Group, Inc. v. Drexler, 22 Cal. 4th 1084 (2000).

Factually, based on the arbitrators' own extensive experience as advocates in and arbitrators of construction disputes and their familiarity with the rates charged by other construction lawyers whose training and experience is comparable to that of McInerney and McGahan, the arbitrators find that the rates claimed for them are reasonable and appropriate and they intend to base their award on such rates. Although the rates claimed for Ms. Hertzman and Mr. Junginger are not unreasonable, the arbitrators believe the evidence does not support connecting their services to the false claim issues for which West Bay is entitled to recovery of legal fees.

Based on applying a multiplier of 1.5 to the lodestar amount, West Bay sought a total of \$917,838.75. West Bay contended that such a multiplier is justified by the complexity of the issues presented and the duration of the dispute during which its lawyers were foreclosed from accepting other engagements. However, the arbitrators believe that, although the case was complex, it was not unusually so. Application of a

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multiplier to the lodestar amount is justified only when lawyers have performed extraordinary services, and this arbitration is not such a case. Thus, the arbitrators intend not to include a multiplier in their award of attorney's fees to West Bay.

In opposition to West Bay's application, Foothill contended that it is "overly broad," that establishing that the false claim claims were frivolous involved primarily a matter of legal briefing and that at best West Bay should be awarded only fees "keyed to narrow and discrete tasks." However, the arbitrators believe that Foothill fails to comprehend fully the effort West Bay was compelled to in order to show that Foothill's false claim contentions were frivolous.

First, Attachment "A" to Foothill's Amended Counterclaim described multiple alleged false claims and sought the statutory penalty "for each false claim." Further, in addition to contending that the claims asserted by West Bay should be denied because they constituted false claims, Foothill sought some \$1.5 million in damages because of the alleged false claims. Moreover, Foothill vigorously resisted West Bay's efforts to dispose summarily of its false claim claims. Instead, Foothill clung tenaciously to its false claim contentions throughout the course of this extended arbitration, maintaining that those which the arbitrators found to be frivolous would somehow be supported by evidence right up until its position collapsed in the cross examination of its Executive Director of Facilities and Operations on almost the final day of evidentiary hearings.

Even apart from the false claim contentions, Foothill mounted a determined opposition to West Bay's efforts to prove the CPE claims and those of Facility Systems and Scott. However, the arbitrators believe that injection of the false claim contentions into the mix and the steadfast maintenance of them throughout the hearings compelled West Bay to incur a significant increment of legal time and expense over and above what would have been required in the absence of such contentions.

Under Thompson Pacific v. City of Sunnyvale, 155 Cal. App. 4th 525 (2007), it is necessary, of course, to distinguish between the fees that would have been incurred in connection with the CPE claims and those of Facility Systems and Scott Electric even without the false claim contentions and the added fees incurred as a result of such contentions. As in the case of Foothill's fee application, however, the arbitrators believe they are not

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required to become “green eyeshade accountants.” Instead, they believe they may make a reasonable approximation of the added fees incurred by reason of the false claim contentions.

Based on their perception of the time devoted to various aspects of the arbitration, the arbitrators believe that, if West Bay had not been required to confront the false claim allegations, only 1/3 of the effort expended with respect to the CPE claims and those of Facility Systems and Scott Electric would have been reasonably necessary. The remaining 2/3 reflected the additional effort reasonably necessary to prove that the false claim allegations were frivolous.

West Bay ultimately reduced the time for which it seeks an award of attorney’s fees, purporting to eliminate time that would have been required to prove its CPE 404 and CPE 405 claims and the similar claims of Facility Systems and Scott even if Foothill had not made its false claim claims. The reduced time totaled 555.35 hours for McInerney and 753.94 hours for McGahan. Based on \$425 an hour for McInerney and \$375 an hour for McGahan, this yields a total of \$518,750.31 before application of a multiplier. The arbitrators respect the effort, but believe it was not sufficiently rigorous. Instead they intend to include in their award only an approximation of 2/3 of the amount initially claimed by West Bay without any multiplier, or \$448,000.

F. Miscellaneous Matters.

Credit for Payment of Retention. The Memorandum of Decision concluded that Foothill is to pay West Bay the sum of \$2,024,301, together with interest at the rate of 10% per year from October 30, 2008. As described above, the arbitrators have corrected this to \$2,023,968.

The parties agreed that \$1,080,944.56 was paid to West Bay on April 22, 2011 from escrowed retention and that Foothill paid West Bay \$286,626.41 on May 13, 2011. The total of these two items is \$1,367,570.97.

After subtracting the payments received, the remaining principal balance to be included in the award to West Bay is \$656,397.03.

Attachment B13

Interest. Interest on \$2,023,968 at 10% per year for the period of 905 days from October 30, 2008 through April 22, 2011 is \$501,833.16. Interest on \$943,023.44 at 10% per year for the period of 21 days from April 23, 2011 through May 13 is \$5,425.61. Interest on \$656,397.03 @10% per year is \$25,176.87 for the period of 140 days from May 14, 2011 through September 30, 2011 and \$179.83 per day thereafter. The total interest is \$532,435.65 plus \$179.83 per day beginning September 30, 2011.

West Bay received two interest payments from escrowed retention, one of \$49,053.05 on May 21, 2009 and a second of \$13,469.26 on December 20, 2010. The total of these payments is \$62,522.31.

After subtracting the interest payments received, the remaining interest to be included in the award to West Bay is \$469,913.34 plus \$179.83 per day beginning September 30, 2011.

Interest at 10% per year from October 30, 2008 on the sum of \$85,984.34 to be included in the award to be paid by Foothill to Scott is \$25,112.14 for the period of 1066 days through September 30, 2011 and \$23.56 per day thereafter.

Interest at 10% per year from October 30, 2008 on the sum of \$230,464 to be included in the award to be paid by West Bay to Scott is \$67,308.12 for the period of 1066 days through September 30, 2011 and \$63.14 per day thereafter.

Costs. It was necessary for Arbitrator Kamine to be absent on certain of the days when evidentiary hearings were scheduled. The parties stipulated that the evidentiary hearings could proceed when it was necessary for Arbitrator Kamine to be absent and that a reporter's transcript be prepared for him to read in lieu of his attendance in person. The court reporter's transcript is determined by the arbitrators to be the official record of the arbitration hearings for these days, to wit, June 29, June 30, July 1, July 26, July 27, July 28 and July 29, 2010.

West Bay and Foothill agreed to join in advancing the costs of the foregoing reporter's transcripts. However, the arbitrators believe that, pursuant to Rule R-51, they may assess the costs as "other expenses of the arbitration." It is the intention of the arbitrators that the costs be assessed

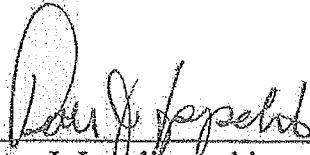
Attachment B13

against Foothill, and they intend, accordingly, to provide in their award that, as the overall prevailing party in the arbitration, West Bay recover from Foothill the share advanced by West Bay of the costs of the foregoing reporter's transcripts as follows:

June 29, 2011	\$1,904.88
June 30	1,319.25
July 1	1,314.25
July 26	1,494.25
July 27	1,464.25
July 28	1,829.25
July 29	<u>1,309.25</u>
Total	\$10,635.38

It is further the intention of the arbitrators to provide in their award that West Bay and Scott each recover from Foothill the charges of the American Arbitration Association and the compensation of the arbitrators advanced by them.

Dated: September 28, 2011.



Peter J. Ippolito, arbitrator

Bernard S. Kamine, arbitrator

James R. Madison, arbitrator

Note: The signatures to this Supplement to Memorandum of Decision may be made by the arbitrators on counterpart copies.

Attachment B13

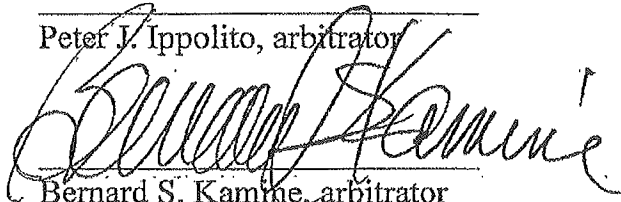
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Peter J. Ippolito, arbitrator



Bernard S. Kamme, arbitrator

James R. Madison, arbitrator

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Attachment B13

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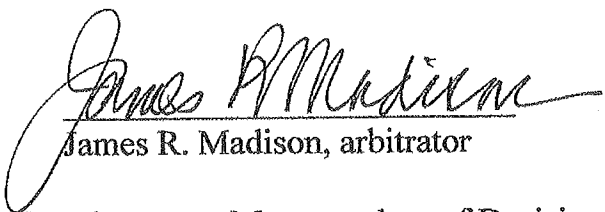
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Dated: September 28, 2011.

Peter J. Ippolito, arbitrator

Bernard S. Kamine, arbitrator



James R. Madison, arbitrator

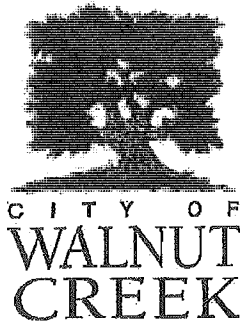
Note: The signatures to this Supplement to Memorandum of Decision may be made by the arbitrators on counterpart copies.

Attachment B13

EXHIBIT 2

6b13.57

Attachment B13



May 22, 2012

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

RE: Walnut Creek Library Project - Letter of Recommendation

To Whom It May Concern:

I am writing this letter to recommend West Bay Builders, Inc. based on their work on the recently constructed Walnut Creek Library. The \$41.5 million project located in our downtown opened to the public in July 2010, received LEED Gold certification and was completed on-time and under budget; West Bay Builders' portion of the costs totaled approximately \$28 million.

West Bay Builders displayed a positive problem-solving attitude toward a complex set of wide-ranging issues which included everything from safely managing traffic conflicts (between vehicles and pedestrians as well as minimizing disruption to commuters), overcoming staging challenges (the site was very small with adjacent active land uses that included a private home), and coordinating the installation of a large number of public art pieces. They were responsive to our construction requests, and worked well with City staff and the construction management firm hired by the City. The City found their pricing to be fair and West Bay was willing to assist the City in finding cost-effective solutions for the project. Change orders related to the construction totaled less than 10%.

The project was highly visible in the community and I especially appreciated their help with communication and scheduling fundraising-related efforts such as tours.

Attachment B13

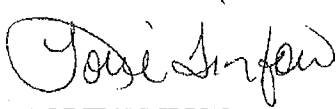
City of Santa Clara

May 22, 2012

Page 2

Overall, we had a positive experience with the firm and are pleased to give this letter of recommendation for West Bay Builders, Inc. If you should need further information regarding West Bay Builders, feel free to contact me by phone at 925-943-5810 or by email at tinfow@walnut-creek.org.

Sincerely,

A handwritten signature in cursive script that reads "Lorie Tinfow".

LORIE TINFOW

Assistant City Manager

p/library recommendation letter WBB 5-22-12

6b13.59

Attachment B13



GROUP 4

ARCHITECTURE
RESEARCH +
PLANNING, INC

211 LINDEN AVENUE

50 SAN FRANCISCO

CA 94080 USA

T: 650-871-0709

F: 650-871-7911

www.g4arch.com

24 May 2012

To Whom It May Concern

Re: Walnut Creek Library Project - Letter of Recommendation

Dear Sir/Madam:

I am writing this letter to recommend West Bay Builders, Inc. (WBB) following the completion of our \$28,000,000, LEED Gold library for the City of Walnut Creek and constructed in near the busy commercial downtown center. West Bay Builders completed the project on-time and under budget.

Working in a downtown congested climate requires significant coordination with traffic and pedestrians. WBB rose to the challenge of constructing the project with safety as their number one concern. WBB had a problem solving attitude for issues that arose during this complex project. They were responsive to our requests and managed their subcontractors efficiently. Given the project's complexities, change orders were reasonable, kept to a minimum, and negotiated efficiently and fairly.

Overall, we have had a positive experience in this construction contract and are pleased to give this letter of recommendation for West Bay Builders, Inc. If you should need further information regarding West Bay Builders as the General Contractor on the above project, feel free to call me.

Sincerely,
GROUP 4 ARCHITECTURE, RESEARCH + PLANNING, INC.

David M. Sturges, LEED^{AP} BD+C
Principal

DMS/mm

WAYNE GEHRKE
ARCHITECT

DAWN E. MERKES
ARCHITECT

DAVID SCHNEE
ARCHITECT

DAVID M. STURGES
ARCHITECT

JILL EYRES
ARCHITECT

JONATHAN HARTMAN
ARCHITECT

PAUL JAMTGAARD
ARCHITECT

WILLIAM LIM
ARCHITECT

ANDREA WILL
ARCHITECT

Attachment B13



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P.O. Box 12688
Oakland, CA 94604-2688
(510) 464-6000

August 14, 2012

2012

John McPartland
PRESIDENT

Tom Radulovich
VICE PRESIDENT

Grace Crunican
GENERAL MANAGER

Mr. Michael Savulescu
Project Manager
West Bay Builders, Inc.
250 Bel Marin Keys Blvd, Building A
Navato, CA 94949

Subject: BART Earthquake Safety Program
Contract 15PL-110 – Yard Shops and Miscellaneous Structures

Dear Mr. Savulescu:

I am pleased to have the opportunity to prepare this recommendation letter for the West Bay Builders based on your company's performance on the subject contract. Please feel free to use this letter to demonstrate your company's ability to complete a construction contract professionally and satisfactorily.

As a transit agency, we require the contractor to perform at the highest standards and with zero impact to any of our daily transportation operations, I am glad to say that West Bay Builders has proven their ability to meet both of these objectives on a construction project that is closely intertwined with our shop maintenance operations. In this contract, West Bay Builders employees have shown the ability to construct the work successfully despite numerous requirements for last minute adjustments and often with limited construction access. We appreciate you and your teams' positive attitude and willingness to work closely with the owner; this is clearly reflected in your two years' smooth coordination with so many different departments within our agency while completing the seismic retrofit work in nearly 20 different buildings.

We are happy to see that the construction is expected to complete 15 months ahead of the three and half years' schedule, on budget, with good safety records, and without claim. We also appreciate your efforts in securing the involvement of MBE/WBE firms to exceed the MBE/WBE utilization goal required at the time of bid opening, which is very important to us as a public agency.

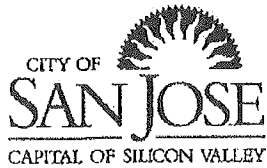
I would also like to show my appreciation for the hard work from you and other West Bay Builders employees including in particular Mike Gram, Frank Ramos, and Elan Thibert, who have worked in the field in a professional and safe manner. With these talented staff on your team, I am happy to serve as a professional reference for you and your company in the future.

Sincerely,

A handwritten signature in black ink that reads "Vincent Lee".

Vincent Lee
Contract 15PL-110, Project Manager
BART Earthquake Safety Program

Attachment B13



Department of Public Works

CITY FACILITIES ARCHITECTURAL SERVICES DIVISION

March 17, 2010

To whom it may concern,

I am pleased to write a letter of recommendation for West Bay Builders, Inc (WBB) for the construction completion of Happy Hollow Park and Zoo located in San Jose, Ca., a forty million dollars renovation of an existing zoo and amusement park.

WBB approached this project in a very organized and professional manner. Throughout the project WBB displayed problem solving abilities when complicated issues arose. The City and WBB were always able to reach agreement on issues relating to cost and schedule. WBB provided the City with an outstanding product that the City will be proud of for years to come.

Thanks to WBB's hard work and professional level of services, the project was highly successful. We have received numerous complements from the public after the soft grand opening on March 14.

Please feel free to call me directly at (408) 535-8361 if you would like additional information regarding the City's relationship with WBB.

Sincerely,

Ron Cheung
Associate Landscape Architect
City Facilities Architectural Services Division

Attachment B13



We build strong kids,
strong families, strong communities.

October 21, 2009

Mr. Paul Thompson
West Bay Builders
250 Bel Marin Keys Blvd.
Building A
Novato, CA 94949

Re: Chinatown YMCA Branch of the YMCA of San Francisco

Dear Mr. Thompson,

On behalf of YMCA of Chinatown, I am writing in support the work you are currently doing in constructing the Chinatown YMCA building. Although we are just crossing the half way point in our project we have been pleased with the team assembled for our project.

As you know, the many dedicated donors and volunteers have worked very hard to raise the funds for this project over the last 10 years. In the heart of San Francisco's Chinatown our dream is to continue the mission of the YMCA offering programs and services to youth and families for the next 100 years.

David Carey, Bill Devers, Pat Chavez, and Mike Solorzano have handled this job with professionalism. They have kept this very challenging project on schedule and support us in our efforts to achieve our goals at every hurdle. Bill has been a great problem solver and keeps 10 steps ahead of the game to keep us rolling.

We look forward to completing this project with the collaborative spirit and team approach that we have experienced so far. We have had a very positive working relationship with the West Bay Team.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Kari Lee'.

Kari Lee
Executive Director
Chinatown YMCA of San Francisco

A handwritten signature in cursive script, appearing to read 'Bill Worthington'.

Bill Worthington
Vice President Property
YMCA of San Francisco

Attachment B14

Deficient Items	Bid Analysis Spreadsheet (METRO comments) & Staff Report items	WBB rebuttal letter dated November 20, 2012 (Attachment B13)	METRO's position after review of WBB rebuttal info
<p>Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any.</p>	<p>Bidder listed 5 items. METRO has documentation on an additional lawsuit/mediation between Bidder and owners of constructions projects that were not listed by Bidder. WBB stated the project was completed in 2004 which was over 7 years ago. With mediation occurring in 2009, the mediation is still applicable to list.</p>	<p>The following is West Bay Builder's, Inc. ("West Bay") rebuttal to the allegations contained in the Bid Analysis Spreadsheet provided by Santa Cruz METRO ("Metro"). Initially the information relied on by Metro to reject West Bay's bid is wrong or completely out of context.</p> <p>West Bay also learned that some of the misinformation was provided to Metro by a representative of Foothill-De Anza Community College School District ("Foothill"). West Bay was forced to sue Foothill to collect its contract balance and damages resulting from deficient drawings. Foothill retaliated with numerous false claims. The matter was arbitrated over 44 days and Foothill was found by a three person arbitration panel to have filed "frivolous" claims against West Bay, made claims for the sole purpose to "harass" West Bay and ultimately made to pay West Bay damages including substantial legal fees as a result thereof Exhibit 1. This award was confirmed in Santa Clara Superior court and judgment was entered against Foothill. This background is important because the information Metro was provided was wrong and Foothill's motivation to fabricate allegations is obvious. Unfortunately, West Bay's character and ability was put into question.</p>	<p>METRO received the rebuttal letter from WBB on November 20, 2012</p> <p>See Attachment B12, B13. Foothill lawsuit was listed on WBB's bid so the lawsuit was not in question. During a reference check Foothill provided a deficient performance rating about WBB and stated that the WBB lawsuit material was confidential information. Foothill reference is one of many responses in regards to WBB's performance.</p>
<p>Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person.</p>	<p>Bidder answer was "N/A" METRO has documentation stating otherwise.</p>	<p>The specific deficient items on the spread sheet reference actions or documents that do not support the conclusion that West Bay's responses were deficient. Item No. 4 asks if the bidder has ever been "disbarred". Metro indicated that there was documentation that established West Bay had been disbarred. The document was a resolution from the City of Oakland referencing a job with the City of San Francisco ("City"). West Bay and its owners have NEVER been disbarred by a public entity. The Oakland resolution is referencing the City's HRC's erroneous letter indicating West Bay was disbarred, however it was not. The settlement agreement from 2000 accurately reflects the details (The Settlement Agreement is confidential but can be provided to Ms. Gallagher for review to verify that West Bay's response was accurate). The Oakland City resolution is wrong and Metro offers no resolution, finding or otherwise from any public entity disbarring West Bay.</p>	<p>WBB statements do not have any backup documentation. WBB should have provided this documentation as an attachment to their rebuttal letter. Based on this information, staff recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.</p>
<p>Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any.</p>	<p>Bidder listed 5 items. METRO has documentation on an additional lawsuit/mediation between Bidder and owners of constructions projects that were not listed by Bidder. WBB stated the project was completed in 2004 which was over 7 years ago. With mediation occurring in 2009, the mediation is still applicable to list.</p>	<p>Item No. 5 alleges that West Bay did not list every lawsuit or mediation completed within the last 7 years. As evidence, a settlement agreement with the Pleasanton Unified School District is offered. However, a review of the settlement agreement indicates that there was no lawsuit filed. Furthermore, there is no evidence of mediation; only that a dispute was settled. The issue involved a water leak that was resolve without litigation. The matter was handled by West Bay's insurance company without involvement of outside legal counsel or West Bay personnel. No officer or employee of West Bay attended a mediation. The absence of litigation, made the issue moot as related to the question posed.</p>	<p>WBB asserts that "there is no evidence of mediation." WBB statement is incorremment, per Attachment B07, Pleasanton Unified School District provided the document to METRO. Based on this information, staff recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.</p>

6b14.1

Attachment B14

<p>Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agencies contact person, and further, describe in detail the nature of the work of improvement.</p>	<p>Bidder answer was "No" METRO has found a judgment for liquidated damages in a case with a sub which was filed in Alameda County Superior Court on August 29, 2012.</p>	<p>Item No. 6 requested if West Bay paid liquidated damages or failed to complete a project on time. Metro challenges West Bay's response based on a State of California Division of Labor and Standards judgment in which a subcontractor and West Bay were responsible for "liquidated damages". Again, on the face of this document it is evident that it relates to wage violations of one of West Bay's subcontractors and not liquidated damages for failing to finish a project on time. Titian Electric failed to pay fringe benefits and filed Chapter 7 Bankruptcy. The law in California makes the general contractor jointly responsible for a subcontractor's failure to pay prevailing wages, or union trust fund contributions. Labor Code section 1775 et seq. The document does not reflect an owner assessing liquidated damages for a delay in completing a project. West Bay's response was accurate.</p>	<p>Per Attachment B08, it states per Case RG12645959, State Case 40-27539/259 (Request that Clerk Enter Judgment and Judgment on the Final Civil and Wage Penalty Assessment). Judgment "A copy of the Civil Wage and Penalty Assessment of the Labor Commissioner has been filed with this court. Judgment is hereby entered as follows: \$32,069.75 as Wages; \$14,050.00 as Penalties under Labor Code section 1775 and 1813; \$32,069.75 as Liquidated damages." WBB statement is correct that the liquidated damages were not assessed by an owner. Based on this information, this item is correctable.</p>
<p>Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants.</p>	<p>Bidder answered "No" METRO has found a judgment in a case with a sub against First National for enforcement of a stop notice release bond, filed in San Francisco County Superior Court on September 12, 2012 (same day bid was due) METRO found a judgment against Safeco Insurance Company (and WBB) for attorney's fees in a case with a sub, and against Safeco and First National Insurance Company of America (and WBB) for prejudgment interest, filed in Santa Clara County Superior Court on September 4, 2009. In same case, WBB, Safeco and First National tendered a check to the sub as a result of a settlement, filed in Santa Clara County Superior Court on April 8, 2009.</p>	<p>Item No. 7 asks if a surety ever "paid or satisfied any claim against bidder". West Bay correctly answered in the negative. Metro challenged the response and provided two judgments in which a surety was named. However, neither document contradicts West Bay's response. In both actions, a surety has not paid any funds toward the claim. Furthermore, West Bay has never had any of its sureties pay funds to satisfy a claim of any type. As is typical, a surety will not pay claims, unless the principal is insolvent or unable to satisfy a valid claim.</p>	<p>Per Attachment B09 & B10, the court found WBB and WBB's surety liable for payment. WBB statement is correct that it does not show that payment was paid. Based on this information, this is a correctable item.</p>
<p>Checked references revealed deficiencies with WBB's performance.</p>	<p>A clear general consensus in most of the interviews of owners is that West Bay performs quality work, on time and on budget. See attached letters of recommendation from numerous owners. Exhibit 2.</p>	<p>Due to the statutory time frames in which subcontractors are required to file lawsuits, sometimes subcontractor actions get filed before West Bay can receive final payment from the owner. All issues regarding West Bay's last project for Metro, were resolved through negotiation. West Bay plans to use the same project manager, Chris Van Tiem, who had a good working relationship with Steve Kelly.</p>	<p>WBB statement is correct that subcontractor actions get filed before WBB can receive final payment from the owner. METRO received different statements by WBB in regards to the WBB team. (See Attachment B16). Steve Kelly had a professional relationship with the contractor, which was required to work through numerous change orders and issues with the project. It is METRO's intention to recommend an award to the lowest, responsive and responsible bidder.</p>

6b14.2

Attachment B14

<p>Overall METRO finds WBB's bid as nonresponsive and nonresponsible.</p>	<p>West Bay is the lowest responsible bidder and must be awarded the contract.</p>	<p>Based on all information, staff recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.</p>
<p>Part 1-20, 1.30.L states that METRO may reject the bid of any party who has been delinquent or unfaithful in any former contract with METRO, and who cannot satisfactorily prove that it is responsible as required in the IFB or whose Bid is not responsive. In previous project (MetroBase Fleet Maintenance Building), METRO requested subcontractor contract documents and WBB did not provide any documentation during the project or after negotiations. (See Attachment B11). Per Code of Federal Regulations 49 CFR 18.36(i) that was referenced in the contract, the contractor agrees to provide METRO with access to documents which are pertinent to the contract for the purpose of audits, examinations, excerpts and transcription. WBB ignored requests and once WBB received the final project payment, WBB did not follow up on any documentation.</p>	<p>On November 8, 2012, METRO's District Counsel and Timothy McInerney (attorney for WBB) communicated, and discussed the subcontractor contracts (See Attachment B11). McInerney stated he was going to have an answer to the question. To this day, WBB has not responded to this item. Based on this information, staff recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.</p>	<p>See Attachment B11. Chris Van Tiem from WBB provided a letter to subcontractors stating "Please do NOT send the requested documents." Based on this information, staff recommends that the Board of Directors adopt a finding that WBB is a nonresponsive and nonresponsible bidder.</p>
<p>METRO requested the subcontractors to provide the subcontractor contracts, and WBB obstructed METRO's attempt to ascertain the documentation (See Attachment B11).</p>		

6b14.3

Attachment B14

Frank Cheng

From: Les White
Sent: Monday, November 26, 2012 5:11 PM
To: Peg Gallagher; Frank Cheng; Erron Alvey
Subject: FW: Judy K Sousa

Good Evening,

I just received the enclosed message from West Bay.

FYI

Les

From: Paul Thompson [mailto:PaulT@westbaybuilders.com]
Sent: Monday, November 26, 2012 5:09 PM
To: Les White
Subject: Judy K Sousa

Les

I appreciate you giving us the time necessary to respond to the issues concerning our bid for your project.

I know you have to rely on your staff/legal for the award but I want you to know I am personally committed to making sure WBB does a good job for Metro.

You have my word that WBB will complete your project on time and under budget and we will not have a claim on this project. .

We are committed to treating Metro as a good client and when we are all said and done you and I will be able to go have a beer and celebrate a successful project. (no offense to Peg, but you won't need to spend a nickel on attorney's bills - but she is welcome to join us for the celebration)

We look forward to working with you again

(and you have my word in writing)

Paul Thompson, President

West Bay Builders, Inc.

250 Bell Marin Keys Blvd

Novato, CA 94949

(O) (415) 456-8972

(C) (415) 203-1001

fax (415) 382-9894

Attachment B16

8:46am September 19th Voicemail from Paul Thompson, West Bay Builders.

Hey Les, this is Paul Thompson with West Bay Builders, it's a quarter to nine on Wednesday. I understand you are out today, but um, I just, um, following up. I understand. We are the apparent low bidder on the new project coming up. We are looking forward to, um, doing a good job for you guys. I hope you don't have too much heartburn over the last time. I think we, you and I both worked together to get it resolved. I want to let you know we have a new project team ready for your project. Umm and, I want to talk to you about it and have you meet the guys and demonstrate to you umm our commitment that we are going to make this job a success. I made personnel changes on my side. Like I said, we got a new team ready, we are fired up about it, and I just want to talk to you about it. So I was hoping you give me a call. Phone number is 415-456-8972. Thanks, bye.

6b16.1

Attachment B17

Frank Cheng

From: Les White
Sent: Friday, November 30, 2012 3:51 PM
To: Peg Gallagher; Frank Cheng; Erron Alvey
Subject: Fwd: Scanned from E6530c-upstairs 11/30/2012 15:27
Attachments: DOC113012.pdf

Les White
General Manager
SCMTD

----- Forwarded message -----

From: "Paul Thompson" <PaulT@westbaybuilders.com>
To: "Les White" <LWhite@scmtd.com>
Subject: Scanned from E6530c-upstairs 11/30/2012 15:27
Date: Fri, Nov 30, 2012 3:45 pm

Les

In my review of Metro's reference checks on WBB I was surprised to see two negative entries made by the person from Metro who called two of our projects. I was surprised because both projects were/are successful projects, and both Owners think highly of WBB, yet the reference check for Metro said otherwise. One entry was for a Bart project - Powell st in San Francisco, and the other was for Happy Hollow Zoo for the City of San Jose.

I am not sure what was said or how the questions were answered and/or transcribed, but they are incorrect. Attached are two reference letters for both of these two projects. You will see both letters contradict any negative comments about WBB and actually they say very good things about WBB.

Paul Thompson, President
West Bay Builders, Inc.
250 Bell Marin Keys Blvd
Novato, CA 94949
(O) (415) 456-8972
(C) (415) 203-1001
fax (415) 382-9894

-----Original Message-----

From: CharlieTheCopier@westbaybuilders.com
[mailto:CharlieTheCopier@westbaybuilders.com]
Sent: Friday, November 30, 2012 3:28 PM
To: Paul Thompson
Subject: Scanned from E6530c-upstairs 11/30/2012 15:27

Scanned from E6530c-upstairs.
Date: 11/30/2012 15:27
Pages:2

Attachment B17



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P.O. Box 12688
Oakland, CA 94604-2688
(510) 464-6000

2012

November 29, 2012

John McPartland
PRESIDENT

Tom Radulovich
VICE PRESIDENT

Grace Crunican
GENERAL MANAGER

Paul Thompson, President
West Bay Builders
250 Bell Marin Keys Blvd
Novato, CA 94949

RE: BART Powell Street Station Modernization Project

DIRECTORS

Geil Murray
1ST DISTRICT

Joel Keller
2ND DISTRICT

Mary V. King
3RD DISTRICT

Robert Roburn
4TH DISTRICT

John McPartland
6TH DISTRICT

Thomas M. Blalock, P.E.
6TH DISTRICT

Lynette Sweet
7TH DISTRICT

James Fang
8TH DISTRICT

Tom Radulovich
8TH DISTRICT

Dear Paul,

As a following up on our conversation yesterday regarding the Powell Street Station project, I want to assure you that the District overall is satisfied with the performance of West Bay Builders on the project.

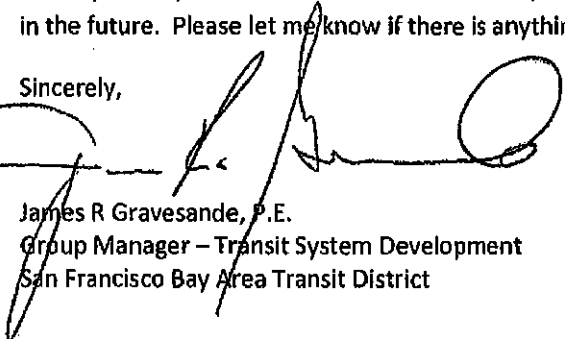
The Powell Street Station project had to be completed in one of BART's busiest stations. West Bay Builders did a fine job of resolving a number of issues, including staging difficulties, leaking water, interaction with patrons, BART staff and our advertising Contractor. I thought the solution that was presented to solve the asbestos abatement staging issue was very creative and worked for everyone. The proposal that allowing you to abate larger areas while minimizing patron inconvenience during the 2011 holiday season saved us all from a lot of patron and BART Operations complaints.

I feel that working as a team, we were able to overcome the challenges that we both faced, BART with a less than optimal set of contract documents and West Bay Builders with staffing and sub-consultant challenges.

Since the completion of the project I have heard of nothing but good comments about the work that was done, specifically the new way finding signage that you company installed. Should in the future West Bay Builders be the low bidder on one of my Group's contract, I will have no problem recommending award to our Board of Directors.

Thank you for your efforts on the Powell Street project and I look forward to working with you in the future. Please let me know if there is anything I can do for you.

Sincerely,


James R Gravesande, P.E.
Group Manager – Transit System Development
San Francisco Bay Area Transit District



www.bart.gov

6b17.2

Attachment B17



Department of Public Works

CITY FACILITIES ARCHITECTURAL SERVICES DIVISION

March 17, 2010

To whom it may concern,

I am pleased to write a letter of recommendation for Catherine Stock, Project Manager for West Bay Builders, Inc (WBB) and her entire WBB team for the substantial completion of Happy Hollow Park and Zoo located in San Jose, Ca., a forty million dollars renovation of an existing zoo and amusement park.

Catherine transitioned into the Project almost fifty percent into construction completion after the departure of the previous Project Manager and was able to step in immediately without any loss of momentum to the Project schedule. As such, she and the WBB team provided the City with an outstanding product that the City will be proud of for years to come.

Thanks to Catherine and her WBB team's hard work and professional level of services, the project was highly successful. We have received numerous complements from the public after the soft grand opening on March 14.

Please feel free to call me directly at (408) 535-8361 if you would like additional information regarding the City's relationship with WBB.

Sincerely,

Ron Cheung
Associate Landscape Architect
City Facilities Architectural Services Division

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: December 7, 2012

TO: Board of Directors

FROM: Frank Cheng, Project Manager & Information Technology Manager

SUBJECT: CONSIDERATION OF DECLARING ZOVICH CONSTRUCTION AS NONRESPONSIVE, AND REJECTING THEIR BID FOR THE JUDY K. SOUZA OPERATIONS BUILDING FACILITY

I. RECOMMENDED ACTION

That the Board of Directors declare Zovich Construction as nonresponsive, and reject their bid for the Judy K. Souza Operations Building Facility.

II. SUMMARY OF ISSUES

- On June 29, 2012, a Notice of Invitation for Bids (IFB 12-23) was issued and sent to interested bidders and Builders Exchanges.
- On August 8, 2012, IFB 12-23 Addendum #1 was issued.
- On August 17, 2012, IFB 12-23 Addendum #2 was issued.
- On September 12, 2012, METRO received eight (8) bids.
- On November 8, 2012, the Board of Directors received comments and deferred the Judy K. Souza Operations Building staff reports.
- METRO staff has been researching and reviewing bids for presentation to Board of Directors.
- METRO staff recommends that the Board of Directors declare Zovich Construction as nonresponsive, and reject their bid for the Judy K. Souza Operations Building Facility.

III. DISCUSSION

On June 29, 2012, a Notice of Invitation for Bids (IFB 12-23) was issued and sent to interested bidders and Builders Exchanges. On August 8, 2012, IFB 12-23 Addendum #1 was issued. On August 17, 2012, IFB 12-23 Addendum #2 was issued.

On September 12, 2012, METRO received eight (8) bids, all bids below engineer's estimate.

West Bay Builders, Inc.	\$ 13,494,000
Zovich Construction	\$ 13,500,000
Lewis C. Nelson & Sons, Inc.	\$ 13,572,000

C. Overaa & Co.	\$ 13,659,000
F & H Construction	\$ 13,787,000
Otto Construction	\$ 13,936,000
SJ Amoroso	\$ 13,997,000
Roebbelen Contracting, Inc.	\$ 14,178,000

On November 8, 2012, the Board of Directors received comments and deferred the Judy K. Souza Operations Building staff reports.

The above eight bids are ordered from lowest to highest bid. West Bay Builders, Inc. submitted the lowest bid. An analysis of all the bids was performed by METRO staff to evaluate all deficiencies of the bids and if the deficiency is “correctable” or “not correctable”. The deficiency evaluation will show if the bidder(s) are responsive and responsible. For details, see attachment A (IFB 12-23 Bid Analysis Spreadsheet). Award procedures are included in IFB 12-23, Part I-20, 1.34. METRO will select the lowest responsive, responsible bidder based on a determination of (1) which bidder is the lowest monetary bidder on the Base Bid; (2) whether or not the lowest monetary bidder submitted a responsive bid; and (3) whether or not the lowest monetary bidder is responsible. Responsive factors and responsibility factors were taken into account. METRO staff determined criteria for deficiencies found to be evaluated as “correctable” or “not correctable.” Subsequent to the submission of the staff report on November 9, 2012, additional research lead to staff determining that deficiencies in submission in subcontractor certifications should be considered correctable and bidders were notified that subcontractor certifications would now be due two days after award and only from the awardee.

Correctable	Not Correctable
If majority of documents were provided and only a few had discrepancies	Omission of major items
For each item listed by the bidder, part of information is missing	Misrepresentation of facts

The following is Zovich Construction (Zovich) and METRO’s review of any discrepancies:

- Document 2, item 13A asks to provide projects in the State of California involving construction of a building, each with an original contract price of no less than \$20,000,000, Zovich did not meet the necessary project list requirements (See **Attachment C**). Based on this information, staff recommends that the Board of Directors adopt a finding that Zovich is a nonresponsive bidder.
- Document 2, item 13B asks to provide at least two public works projects in the State of California involving construction of a building, Zovich did not provide enough information to determine qualification (See **Attachment C**). Based on this information, staff recommends that the Board of Directors adopt a finding that Zovich is a nonresponsive bidder..

- The above evaluation determined the items as “not correctable” as seen in Attachment A, and finds Zovich’s bid as nonresponsive, no further reference check was performed.

A bid may be responsive even if there is a discrepancy in the bid, as long as the discrepancy is inconsequential, that is, the discrepancy must not:

1. Affect the amount of the bid
2. Give a bidder an advantage or benefit over others
3. Be a potential vehicle for favoritism
4. Influence potential bidders to refrain from bidding
5. Affect the ability to make bid comparisons

METRO is waiving the irregularity in the bid for Document 6 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling OVER \$100,000), Document 7 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling \$100,000 or LESS.) and Document 8 (Disclosure of Governmental Positions) because the waiver does not give the bidders an unfair advantage by allowing the bidders to withdraw their bids without forfeiting their bid bonds. From the Document 6, 7 & 8 that were submitted, the bidders varied in the amount of documents submitted. A notice letter will be sent to the lowest responsive and responsible bid who has been approved for award to clarify any correctable deficiencies.

METRO staff has researched, reviewed, and recommends that the Board of Directors adopt the findings based on information contained in this report, declare Zovich Construction as nonresponsive, and reject their bid for the Judy K. Souza Operations Building Facility.

IV. FINANCIAL CONSIDERATIONS

Funds for the construction of the Judy K. Souza Operations Building Facility Component of the MetroBase Project are available within the funds the METRO has secured for the Project.

V. ATTACHMENTS

Attachment A: IFB 12-23 Bid Analysis Spreadsheet (4 pages)

Attachment C: 12-23 Zovich Construction’s bid - Projects List (7 pages)

Attachment A

CORRECTABLE

NOT CORRECTABLE

DEFICIENT ITEMS	WEST BAY BUILDERS, INC.	ZOVICH CONSTRUCTION
BID AMOUNT	\$ 13,494,000	\$ 13,500,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing one subcontractor form	
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)		
Document 8 - Disclosure of Governmental Positions	Missing one subcontractor form	
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person.	Bidder answer was "N/A" METRO has documentation stating otherwise.	
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any.	Bidder listed 5 items. METRO has documentation on an additional lawsuit/mediation between Bidder and owners of constructions projects that were not listed by Bidder. WBB stated the project was completed in 2004 which was over 7 years ago. With mediation occurring in 2009, the mediation is still applicable to list.	
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agency's contact person, and further, describe in detail the nature of the work of improvement.	Bidder answer was "No" METRO has found a judgment for liquidated damages in a case with a sub which was filed in Alameda County Superior Court on August 29, 2012.	
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants.	Bidder answered "No" METRO has found a judgment in a case with a sub against First National for enforcement of a stop notice release bond, filed in San Francisco County Superior Court on September 12, 2012 (same day bid was due) METRO found a judgment against Safeco Insurance Company (and WBB) for attorney's fees in a case with a sub, and against Safeco and First National Insurance Company of America (and WBB) for prejudgment interest, filed in Santa Clara County Superior Court on September 4, 2009. In same case, WBB, Safeco and First National tendered a check to the sub as a result of a settlement, filed in Santa Clara County Superior Court on April 8, 2009.	
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		
Document 2 - Item 13.A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years.		Did not list three qualifying projects.
Document 2 - Item 13.B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project.		Did not provide enough information to determine qualification.
Document 2 - Item 13.C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project.	Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.	No individual resume for Project Manager.

Attachment A

CORRECTABLE

NOT CORRECTABLE

DEFICIENT ITEMS	LEWIS C. NELSON & SONS, INC.	C. OVERAA & CO.
BID AMOUNT	\$ 13,572,000	\$ 13,659,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing for all subcontractors forms at time of bid, subsequently submitted	
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)	Missing for all subcontractors forms at time of bid, subsequently submitted	
Document 8 - Disclosure of Governmental Positions	Missing for all subcontractors forms at time of bid, subsequently submitted	Missing some subcontractor forms at time of bid
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person.		
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any.		Provided a litigation(missing tribunal or case number) METRO found an additional lawsuit/mediation. Otto stated the project completed in 2003 (\$5.3M contract) and the case is in discovery phase.
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agency's contact person, and further, describe in detail the nature of the work of improvement.		
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants.		
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		Did not provide interim financial statement.
Document 2 - Item 13.A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years.		
Document 2 - Item 13.B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project.		
Document 2 - Item 13.C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project.	No individual resume for Project Manager.	Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.

Attachment A

CORRECTABLE

NOT CORRECTABLE

DEFICIENT ITEMS	F&H CONSTRUCTION	OTTO CONSTRUCTION
BID AMOUNT	\$ 13,787,000	\$ 13,936,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing for all subcontractors forms	Missing some subcontractor forms
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)	Missing for all subcontractors forms	Missing some subcontractor forms
Document 8 - Disclosure of Governmental Positions	Missing for all subcontractors forms	Missing some subcontractor forms
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person.		
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any.		METRO found a lawsuit/mediation initiated by bidder. The bidder explained that the issue was with the lender.
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agency's contact person, and further, describe in detail the nature of the work of improvement.		
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants.		
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		
Document 2 - Item 13.A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years.	Did not provide contract amounts on projects.	
Document 2 - Item 13.B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project.	Not possible to determine which projects would qualify.	
Document 2 - Item 13.C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project.	Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.	

Attachment A

CORRECTABLE

NOT CORRECTABLE

DEFICIENT ITEMS	SJ AMOROSO	ROEBBELEN CONTRACTING, INC.
BID AMOUNT	\$ 13,997,000	\$ 14,178,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing for all subcontractors forms	Missing for all subcontractors forms
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)	Missing for all subcontractors forms	Missing for all subcontractors forms
Document 8 - Disclosure of Governmental Positions	Missing for all subcontractors forms	Missing for all subcontractors forms
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person.		
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any.		
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agency's contact person, and further, describe in detail the nature of the work of improvement.		
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants.		
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		
Document 2 - Item 13.A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years.		
Document 2 - Item 13.B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project.		
Document 2 - Item 13.C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project.		Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.

ZOVICH & SONS, INC. Attachment C

2485 Technology Dr

Hayward, CA 94545

p(510)784-1273 f(510)784-0173

PROJECT HISTORY

WORK IN PROGRESS

Client: West Contra Costa Unified School District
Contact Person: Karim Nassab
Contact Ph. No. & Fax: 510-412-5657/510-412-5661
Architect: Powell & Partners 510-663-3800 / 510-663-3807
Project Name: Ohlone Elementary School West Campus Phase 1
Project Address: 1616 Pheasant Dr Hercules Ca
Type of Work: Construction of 2 new buildings, 25k and 17k sqft
Earthquake Resistant:
Contract Amount: \$16,961,000
Total C/O Amt: \$650,000
Contract Time: 420 calendar days
Scheduled Comp Date: 7/20/2013
of Days Extension: 0
Current Status: 45%
Stop Notices: 0
Lawsuits: 0
Liquidates Penalties: 0
Superintendent: Ante Zovich
Project Manager: Mike Geldfeld
LEED: No

Client: Chabot-Las Positas Community College District
Contact Person: Victoria Lamica 925-485-5287/925-485-5294
CM Contact: Parson Brinkeroff Mario Rebholz 925-765-3034
Architect: Steinberg Architects- Elizabeth Gibbons 408-817-3112 / 408-295-5928
Project Name: Las Positas College Student Services & Admin Bld
Project Address: 3000 Campus Hill Rd, Livermore Ca
Type of Work: 63k sq feet 2 story building
Earthquake Resistant:
Contract Amount: \$25,210,000
Total C/O Amt: \$1,200,000
Contract Time: 730
Scheduled Comp Date: 2/20/2013
of Days Extension: 0
Current Status: 80% complete
Stop Notices: 0
Lawsuits: 0
Liquidates Penalties: 0
Superintendent: Marco Zovich
Project Manager: Ante Zovich Jr / Tammy Zovich (Assistant PM)
LEED: Gold

ZOVICH & SONS, INC. Attachment C

2485 Technology Dr

Hayward, CA 94545

p(510)784-1273 f(510)784-0173

PROJECT HISTORY

COMPLETED

Client: Sequoia Union High School District
Contact Person: Cambridge CM-Doug Johnson
Contact Ph. No. & Fax: p 650-388-6550 / f 650-543-3031
Architect: Spencer Associates p 650-855-8850 / f 650-855-8855
Project Name: Carlmont Biotechnology Building
Project Address: 1400 Alameda De Las Pulgas, Belmont Ca 94002
Type of Work: construction of new building
Earthquake Resistant:
Contract Amount: \$4,985,000
Total C/O Amt \$0
Contract Time: 300 calendar days
Scheduled Comp Date: 7/9/2011
of Days Extension: 0
Current Status: 100% complete Sept 2011
Stop Notices: 0
Lawsuits: 0
Liquidates Penalties: 0
Superintendent: Marco Zovich
Project Manager: Ante Zovich Jr
LEED: Silver

Client: Town of Danville
Contact Person: Dennis Sheil - Covallo Group
Contact Ph. No. & Fax: p-925-837-2846/f-925-837-2864
Architect: Architectural Resources Group- Philip Rossetti 415-421-1680/f-415-421-0127
Project Name: Danville Veterans Memorial Building
Project Address: 400 Hartz Ave Danville Ca 94526
Type of Work: Addition and remodel of existing
Earthquake Resistant: Construction/Modernization- NO
Contract Amount: \$5,325,000
Total C/O Amt \$0
Contract Time: 487 calendar days
Scheduled Comp Date: 11/10/2011
of Days Extension: 0
Current Status: 100% complete March 2012
Stop Notices: none
Lawsuits: none
Liquidates Penalties: none
Superintendent: Ante Zovich
Project Manager: Tammy Zovich
LEED: Silver

Client: West Valley Mission Community College District
Contact Person: Swinerton Management-Gogo Heinrich
Contact Ph. No. & Fax: p-408-741-2574/f-408-867-6328
Architect: Steinberg Architects - David Ewell 408-295-5446
Project Name: West Valley College Fox Technology Cntr
Project Address: 14000 Fruitvale Saratoga Ca
Type of Work: 32k sqft 2 story new construction
Earthquake Resistant: Construction/Modernization- NO

Attachment C

Contract Amount: \$12,900,000
Total C/O Amt \$800,000
Contract Time: 380 cal days
Scheduled Comp Date: 11/30/2009
of Days Extension: 45days
Current Status: 100% complete 1/26/10
Stop Notices: none
Lawsuits: none
Liquidates Penalties: none
Superintendent: Marco Zovich
Project Manager: Ante Zovich Jr
Project Engineer: Tammy Zovich
LEED: No

Client: City of Fremont

Contact Person: Martha Martinez City Project Manager
Contact Ph. No. & Fax: 510-494-4727/ 510-494-4751
Architect: WLC Architects - Jefferson Yu 916-355-9922
Project Name: Fremont Fire Station #2
Project Address: 37299 Niles Blvd Fremont Ca
Type of Work: new construction 2 story/7500k(sqft) fire station
Earthquake Resistant: Construction/Modernization- NO
Contract Amount: \$3,799,000
Total C/O Amt \$51,767.93
Contract Time: 365 cal days
Scheduled Comp Date: 10/30/2009
of Days Extension: 60
Current Status: 100% complete
Stop Notices: none
Lawsuits: none
Liquidates Penalties: none
Superintendent: Ante Zovich
Project Manager: Tammy Zovich
LEED: Silver NC 2.2

Client: West Valley-Mission Community College District

Contact Person: Javier Castruita
Contact Ph. No. & Fax: p-408-741-2195/f-408-867-9523
Architect: Steinberg Architects- David Ewell 408-295-5446
Project Name: West Valley College Aquatic Cntr
Project Address: 14000 Fruitvale Saratoga Ca
Type of Work: 2k sqft new bld/new olympic size pool
Earthquake Resistant: Construction/Modernization- NO
Final Contract Amount: \$5,313,000
Total C/O Amt \$10,000
Contract Time: 180 days
Scheduled Comp Date: 1/20/2008
of Days Extension: 60 days
Current Status: actual completion 3/20/2008
Stop Notices: none
Lawsuits: none
Liquidates Penalties: none
Superintendent: Ante Zovich
Project Manager: Ante Zovich Jr/Tammy Zovich (assistant)
LEED: No

Client: Santa Clara Valley Water District

Contact Person: Christopher Hakes
Contact Ph. No. & Fax: 408-265-2607 x3796/408-979-5691

Attachment C

Architect: Havdison Komatsu, Hsieh & Jackson, Dennis Okunara 510-625-9800
Project Name: Almaden New Water Quality Laboratory
Project Address: 1020 Blossom Hill Rd, San Jose CA
Type of Work: Construction of new laboratory bld
Earthquake Resistant: Construction/Modernization- NO
Final Contract Amount: \$17,900,000
Total C/O Amt \$340,000
Contract Time: 425 calendar days
Scheduled Comp Date: 2/25/2007
of Days Extension: 60 days
Current Status: actual completion 4/25/08
Stop Notices: none
Lawsuits: none
Liquidates Penalties: none
Superintendent: Marco Zovich
Project Manager: Ante Zovich Jr/Tammy Zovich (assistant)
LEED: No

Client: Contra Costa Community College District
Contact Person: Jeff Kingston(no longer employee contact Tom Beckett)
Contact Ph. No. & Fax: p-925-229-1000
Architect: tBP Architects 925-246-6419 Tom Beckett
Project Name: Los Medanos College Info Resource Center
Project Address: 2700 E Leland Rd, Pittsburg, CA
Type of Work: New construction of library & offices, 34k sqft
Earthquake Resistant: Construction/Modernization- NO
Final Contract Amount: \$11,042,000
Total C/O Amt \$325,000
Contract Time: 450 days
Scheduled Comp Date: 8/5/2007
of Days Extension: 62 days
Current Status: actual completion 10/26/07
Stop Notices: none
Lawsuits: none
Liquidates Penalties: none
Superintendent: Marco Zovich/Ante Zovich
Project Manager: Ante Zovich Jr
LEED: No

Client: Loma Prieta Unified School District
Contact Person: Tom Levenhagen
Contact Ph. No. & Fax: p-408-353-8632/ f-408-8792
Architect: BCA 210 Hammond Ave Fremont Ca p-510-445-1000
Project Name: CT English MS New Construction
Project Address: 23800 Summit Rd Los Gatos Ca 95033
Type of Work: new construction 4 1 story blds, 19k sqft
Earthquake Resistant: Construction/Modernization- NO
Contract Amount: \$4.5MM
Contract Time: 365 days
Current Status: completed 10/11/2006
Stop Notices: none
Lawsuits: none
Liquidates Penalties: none
Superintendent: Ante Zovich
Project Manager: Tammy Zovich
LEED: No

Client: Pleasanton Unified School District
Contact Person: Hugh Anton

Attachment C

Contact Ph. No. & Fax: P-925-426-4404 F-925-426-3564
Architect: ATI Architects-3860 Blackhawk Rd Danville CA 925-648-8800
Project Name: Harvest Park Middle School Special Ed Preschool
Project Address: 4900 Valley Ave, Pleasanton, CA 94566
Type of Work: portable classrooms
Contract Amount: \$560,000
Contract Time: 4 months
Current Status: Completed 4/05
Stop Notices: None
Lawsuits: None
Liquidates Penalties: Part of Contract, none assessed
LEED: No

Client: San Ramon Valley Unified School District
Contact Person: Steve Bautista-School District Project Manager
Contact Ph. No. & Fax: p(925)552-5986 f(925)552-0598
Architect: Anderson & Doig Structural Engineers
Project Name: Monte Vista HS Gymnasium
Project Address: 3131 Stone Valley Rd, Danville, CA 94526
Type of Work: Structural Repairs
Contract Amount: \$800,000
Contract Time: 4 months
Current Status: Completed Aug 2004
Stop Notices: None
Lawsuits: None
Liquidates Penalties: Part of Contract, none assessed
LEED: No

Client: Fremont Union High School District
Contact Person: Sharon Serrano-3DI Construction Management, Project Manager
Contact Ph. No. & Fax: p(408)522-2203 f(408)522-2234
Architect: The Steingberg Group-60 Pierce Ave San Jose, CA 408-295-5446
Project Name: Lynbrook High School-New Field House & Gym and Cove Remodel
Project Address: 1280 Johnson Ave, San Jose, CA
Type of Work: New Building Construction and Remodel of 2 Existing Buildings
Contract Amount: \$4,042,000
Contract Time: 1yr
Current Status: Completed October 15, 2003
Stop Notices: (1)-resolved
Lawsuits: None
Liquidates Penalties: Part of Contract, None Assessed
LEED: No

Client: Eastern Contra Costa Transit Authority/Tri Delta Transit
Contact Person: Steve Ponte, Owner's Vice President
Contact Ph. No. & Fax: p(925)754-6622 f(925)754-2530
Architect: Carter & Burges, Inc-300 Frank H Ogawa Plz #10 Oakland, CA 510-465-8400
Project Name: Maintenance Facility Expansion Project
Project Address: 801 Wilbur Ave, Antioch, CA
Type of Work: Construction of new maintenance bld & new headquarters district bld, 25k sqft
Contract Amount: \$5,000,000
Contract Time: 11 Months
Current Status: Completed April, 2004
Stop Notices: None
Lawsuits: None
Liquidates Penalties: Part of Contract, None Assessed
LEED: No

Client: Fremont Union High School District

Attachment C

Contact Person: Sharon Serrano-3rd Construction Management, Project Manager
Contact Ph. No. & Fax: p(408)522-2203 f(408)522-2234
Architect: The Steingberg Group-60 Pierce Ave San Jose, CA 408-295-5446
Project Name: Lynbrook High School- New Library
Project Address: 1280 Johnson Ave, San Jose, CA
Type of Work: New Building Construction
Contract Amount: \$2,500,000
Contract Time: 1yr
Current Status: Completed July 2002
Stop Notices: None
Lawsuits: None
Liquidates Penalties: Part of Contract, None Assessed
LEED: No

Client: San Ramon Valley Unified School District
Contact Person: Steve Bautista-School District Project Manager
Contact Ph. No. & Fax: p(925)552-5986 f(925)552-0598
Architect: Akol & Yoshii-1407 Oakland Blvd Walnut Creek CA 925-934-5522
Project Name: Alamo Elementary School-New Multi Purpose Building
Project Address: 100 Wilson Rd, Alamo, CA
Type of Work: New Building Construction
Contract Amount: \$1,500,000
Contract Time: 9 Months
Current Status: Completed December 2002
Stop Notices: None
Lawsuits: None
Liquidates Penalties: Part of Contract, None Assessed
LEED: No

Client: City of Concord
Contact Person: Behjat Zanjnai, Project Manager
Contact Ph. No. & Fax: p(925)671-3402
Architect:
Project Name: Concord Child Care Center
Project Address: 1380 Detroit Ave, Concord, CA
Type of Work: New Building Construction
Contract Amount: \$500,000
Contract Time: 6 Months
Current Status: Completed July 2001
Stop Notices: None
Lawsuits: None
Liquidates Penalties: Part of Contract, None Assessed

Client: San Mateo Union High School District
Contact Person: John Holm-Vanir Construction Management Project Manager
Contact Ph. No. & Fax: p(650)375-7110
Architect:
Project Name: ADA Upgrades-Aragon Hs & Mills HS
Project Address: (Various High School Sites)
Type of Work: Modernization
Contract Amount: \$1,000,000 - 2 Contracts at \$500k each
Contract Time: 9 Months
Current Status: Completed June 2000
Stop Notices: None
Lawsuits: None
Liquidates Penalties: Part of Contract, None Assessed

Client: San Leandro Unified School District
Contact Person: Jean Moore-Vanir Construction Management Project Manager

Contact Ph. No. & Fax: p(510)895-7931 **Attachment C**
Architect:
Project Name: Portable Classrooms- John Muir MS & Bancroft MS / Washington ES & San Leandro
Project Address: 1279 San Leandro Blvd, CA
Type of Work: Consruction of Temporary Classrooms inc associated site utilites
Contract Amount: 500000- 2 Contract \$250k each
Contract Time: 3 Months
Current Status: Completed December 1999
Stop Notices: None
Lawsuits: None
Liquidates Penalties: Part of Contract, None Assessed

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: December 7, 2012

TO: Board of Directors

FROM: Frank Cheng, Project Manager & Information Technology Manager

SUBJECT: **CONSIDERATION OF DECLARING BIDS FROM LEWIS C. NELSON AND SONS, INC., C. OVERAA & CO., F & H CONSTRUCTION, OTTO CONSTRUCTION, SJ AMOROSO AND ROEBBELEN CONTRACTING, INC. TO BE RESPONSIVE AND THESE BIDDERS TO BE RESPONSIBLE PURSUANT TO THE BIDS SUBMITTED FOR THE CONSTRUCTION OF THE JUDY K. SOUZA OPERATIONS FACILITY, PARKING STRUCTURE AND RELATED SITE WORK ON SEPTEMBER 12, 2012 AND AWARD CONTRACT TO THE LOWEST, RESPONSIVE, RESPONSIBLE BIDDER**

I. RECOMMENDED ACTION

That the Board of Directors declare the Bids submitted by Bidders Lewis C. Nelson & Sons, Inc., C. Overaa & Co., F & H construction, Otto Construction, SJ Amoroso and Roebbelen Contracting as responsive and these Bidders as Responsible pursuant to the Bids submitted for the Construction of the Judy K. Souza Operations Facility, Parking Structure and Related Site Work and award the Contract to the Lowest, Responsive, Responsible Bidder

II. SUMMARY OF ISSUES

- On June 29, 2012, Santa Cruz METRO issued a Notice of Invitation for Bids (IFB 12-23) for the construction of the Judy K. Souza Operations Facility, Parking Structure and Related Site Work to interested bidders and various Builders Exchanges.
- On August 8, 2012, IFB12-23 Addendum # 1 was issued and on August 17, 2012, IFB 12-23 Addendum #2 was issued.
- On September 12, 2012, Santa Cruz METRO received eight (8) bids in response to IFB 12-23. Santa Cruz METRO ranked the bids according to price and, thereafter, reviewed the bids for responsiveness and evaluated the Bidders for responsibility.
- During the course of the review and evaluations of the bids, Santa Cruz METRO staff determined that West Bay Builders, Inc. was not “responsible” and that Zovich Construction’s bid was non-responsive (see other staff reports on this agenda for details). Santa Cruz METRO staff also received two protests from different bidders and one letter from United Brotherhood of Carpenters and Joiners of America, Local Union 505 which set forth various issues related to the Bids. Santa Cruz METRO staff reviewed the submitted documentation and took actions it believed to be appropriate.

- Santa Cruz METRO staff recommends that the Board of Directors determine that the bids received from Lewis C. Nelson & Sons, Inc., Overaa & Co., F & H Construction, Otto Construction, SJ Amoroso and Roebbelen Contracting be found to be responsive and that each of these Bidders be determined to be responsible.
- Santa Cruz METRO staff further recommends that the General Manager be authorized to execute a contract with the lowest, responsive, responsible bidder in a total amount not to exceed the Bidder's submitted bid amount for the construction of the Judy K. Souza Operations Facility, Parking Structure and Related Site Work.

III. DISCUSSION

For many years, Santa Cruz METRO's identified number one priority has been the completion of the MetroBase Project, that is, the consolidation of its facilities into one location or area in order to conserve assets and facilitate the administration, maintenance and operations of its transit services. Pursuant to this direction, Santa Cruz METRO staff acquired land in the Harvey West area in Santa Cruz near its Operations Facility on River Street and, thereafter, procured architecture, project management and construction services for the remodel of Santa Cruz METRO's Administration Offices on Vernon Street, the construction of the Bus Wash and Fueling Station on River Street and the construction of the Maintenance Facility on Golf Club Drive.

Upon securing sufficient grant funding for the demolition of the Operations building on River Street and the construction of a new facility, on June 29, 2012, a Notice of Invitation for Bids (IFB 12-23) for the Judy K. Souza Operations Facility, Parking Structure and Related Site Work was issued and sent to interested bidders and Builders Exchanges. On August 8, 2012, IFB 12-23 Addendum #1 was issued and on August 17, 2012, IFB 12-23 Addendum #2 was issued.

IFB 12-23 informed the Potential Bidders that Santa Cruz METRO would make an award to the lowest responsive, responsible bidder, based on a determination of (1) which bidder is the lowest monetary bidder on the base bid; (2) whether or not the lowest monetary bidder submitted a responsive bid; and (3) whether or not the lowest monetary bidder is responsible.

On September 12, 2012, Santa Cruz METRO received eight (8) bids; all of which were below the engineer's estimate as follows:

West Bay Builders, Inc.	\$ 13,494,000
Zovich Construction	\$ 13,500,000
Lewis C. Nelson & Sons, Inc.	\$ 13,572,000
C. Overaa & Co.	\$ 13,659,000
F & H Construction	\$ 13,787,000
Otto Construction	\$ 13,936,000
SJ Amoroso	\$ 13,997,000
Roebbelen Contracting, Inc.	\$ 14,178,000

In evaluating each of the bids, Santa Cruz METRO considered the following responsive factors:

<u>RESPONSIVE FACTORS</u>	<u>CRITERIA</u>
1. Bidder's Bond	Pass/Fail
2. Completed Documentation and Required Certifications Submitted	Pass/Fail
3. Bid Meets all IFB Requirements	Pass/Fail

In evaluating whether the Bidder is responsible, the following factors were evaluated:

<u>RESPONSIBILITY FACTORS</u>	<u>CRITERIA</u>
1. Quality of Past Performance and Experience	Pass/Fail
2. Key Personnel Experience	Pass/Fail
3. Financial Viability and Ability	Pass/Fail
4. Fitness and Capacity to do the Proposed Work	Pass/Fail

While some of the bids had inconsequential irregularities, (see **Attachment A – “Technical Review”**), Santa Cruz METRO staff recommends that the Board of Directors find that each of the following Bidders be declared to have submitted responsive bids and that each bidder be declared to be responsible: Lewis C. Nelson & Sons, Inc., Overaa & Co., F & H Construction, Otto Construction, SJ Amoroso and Roebbelen Contracting.

On November 19, 2012, Santa Cruz METRO received a Notice of Protest Regarding Determination of Non-Responsiveness of Lewis C. Nelson and Sons, Inc. (LCN) and Notice of Protest of Award to C. Overaa & Co. from D. Michael Schoenfeld, Murphy Austin Adams Schoenfeld, LLP representing the interests of LCN (**Attachment B**). During the initial evaluation of the bids, Santa Cruz METRO staff determined that Lewis C. Nelson's bid was non-responsive because IFB 12-23 Addendum 2 required that Forms 6, 7, and 8 (**Attachment C**) be submitted within two business days of the bid submission and LCN had not complied with these requirements. Santa Cruz METRO's Pre-Bid, Pre-Award and Post-Award Procurement Protest Procedures are set forth in **Attachment D**.

In reviewing the submittals by the Bidders of Forms 6, 7, and 8, Santa Cruz METRO staff realized that each of the Bidders had failed or neglected to turn in some or all of the required forms or submitted some of the forms incorrectly, yet only some of the Bidders were determined to be non-responsive. Santa Cruz METRO staff have compiled spreadsheets for each of the Bidders and the required submittals for Forms 6, 7 & 8 which illustrate the forms that were

turned in within the two day window and whether the forms were correctly prepared (**Attachment E**). As a result of these findings, on November 21, 2012, Santa Cruz METRO staff informed each of the Bidders in writing that it would be recommending to the Board of Directors that the failure to submit some or all of the forms timely and correctly was an inconsequential irregularity and that the Bidder who ultimately was awarded the contract would have two business days to comply with these requirements (**Attachment F**). Santa Cruz METRO staff's efforts were to treat each bidder fairly, not give any bidder an advantage over another and to evaluate the issue in manner that was not arbitrary or capricious.

On December 3, 2012, Santa Cruz METRO received a letter on behalf of C. Overaa & Co. from Randall M. Smith, Smith & Brockhage, LLP, protesting the bid submitted by Lewis C. Nelson and Sons, Inc. (LCN) and the possible contract award to LCN (**Attachment G**). C. Overaa & Co. advised that LCN's Form 9, (**Attachment H**) which is part of the Bid, in which all subcontractors are required to be listed, had deficiencies which are specifically set forth in the protest letter. In summary, C. Overaa & Co. advised that LCN's Form 9 is incomplete because the exact names of some of the subcontractors are not adequately set forth. On December 3, 2012, Ned Van Valkenburgh from the United Brotherhood of Carpenters and Joiners of America, forwarded a letter (**Attachment I**) also objecting to the LCN bid, and requesting that the Board of Directors reject it because he contends that it fails to meet the requirements of the California Public Contract Code "Subletting and Subcontracting Fair Practices Act," Section 4101, et seq. These letters were forwarded to LCN in order to provide it with notice and an opportunity to address the issues. On December 4, 2012, LCN provided a response to the issues set forth in the C. Overaa's and the Carpenter's Union's letters. (**Attachment J**) Santa Cruz METRO staff requested additional information from LCN which was provided on December 5, 2012 (**Attachment K**). Also attached (**Attachment L**) is C. Overaa's completed Bid Form 9 for reference on this issue.

The Subletting and Subcontracting Fair Practices Act (Public contract Code Sections 4100-4114) generally requires a bidder to list in its bid all subcontractors performing work in excess of one-half of 1 percent of the prime contractor's total bid price. A bidder may only list one subcontractor for each portion of the work defined in the prime contractor's bid. Following the bid submission date, the bidder may substitute a subcontractor for a listed subcontractor only in those instances authorized by law and approved by the public entity.

The public policy behind the Subletting and Subcontracting Fair Practices Act is to prevent bid shopping and bid peddling, and to give the public entity the opportunity to investigate and approve proposed replacement subcontractors. Bid shopping is the use of the low bid already received by the general contractor to pressure other subcontractors into submitting even lower bids thereby increasing the general contractor's profit. Bid peddling is an attempt by a subcontractor to undercut known bids already submitted to the general contractor in order to procure the job.

After evaluating all the materials provided on this issue by the Bidders and Carpenter's Union, Santa Cruz METRO staff maintain that the issues related to LCN's Bid Form 9 (Subcontractors) involve a determination of whether the Bidder knowingly listed a subcontractor with the intention of substituting a different subcontractor once the prime contract was awarded, thus violating the Subletting and Subcontracting Fair Practices Act. This is an issue related to

whether the Bidder can be determined to be responsible and, therefore, allows documents to be considered that were not submitted with the bid. The documents provided by LCN demonstrate that the subcontractors listed on Form 9 are the subcontractors who will be contracted with by LCN should it be awarded the contract. Santa Cruz METRO staff believes that LCN does not, and did not intend to make subcontractor substitutions, therefore, there is no violation and the Bidder may be declared responsible.

Should the Board of Directors follow the recommendations set forth above, Santa Cruz METRO staff propose that the contract for the Construction of the Judy K. Souza Operations Facility, Parking Structure and Related Site Work (IFB 12-23) be awarded to Lewis C. Nelson & Sons, Inc. in an amount not to exceed \$13,572,000 except for properly documented and approved change orders.

Santa Cruz METRO staff is also recommending that the Board of Directors approve the following construction contract change order procedures that will apply to this construction contract:

1. For any change order request from the Contractor that exceeds \$50,000, Santa Cruz METRO staff will review and present such request to Santa Cruz METRO's Board of Directors for approval.
2. For any change order request from the Contractor that is \$50,000 or less, approval of the change order will require review and approval from the incumbents in the following positions:
 - a. Santa Cruz METRO General Manager and
 - b. Santa Cruz METRO Project Manager.
3. Santa Cruz METRO staff will report every month to the Board of Directors on all change orders processed for this contract.

IV. FINANCIAL CONSIDERATIONS

Funds for the construction of the Judy K. Souza Operations Facility, Parking Structure and related Site Work of the MetroBase Project are available with the funds Santa Cruz METRO staff have secured for the Project.

V. ATTACHMENTS

Attachment A: Technical Review

Attachment B: November 19, 2012 letter from D. Michael Schoenfeld, Esq., Murphy Austin Adams Schoenfeld LLP

Attachment C: IFB 12-23 Bid Form Documents 6, 7 and 8

Attachment D: Santa Cruz Metropolitan Transit District's Regulation AR-1027: Pre-Bid, Pre-Award and Post-Award Procurement Protest Procedures

- Attachment E:** Bidder Spreadsheets for submittals for Forms 6, 7 & 8
- Attachment F:** November 21, 2012 Notification letter to Bidders
- Attachment G:** December 3, 2012 letter from Randall M. Smith, Smith & Brockhage, LLP
- Attachment H:** Bid Form Document 9 - Designation of Subcontractors for Lewis C. Nelson & Sons, Inc.
- Attachment I:** December 3, 2012 letter from Ned Van Valkenburgh, Marketing Representative for United Brotherhood of Carpenters and Joiners of American, Local Union 505
- Attachment J:** December 4, 2012 letter from D. Michael Schoenfeld, Esq., Murphy Austin Adams Schoenfeld LLP
- Attachment K:** December 5, 2012 letter sent by facsimile from D. Michael Schoenfeld, Esq., Murphy Austin Adams Schoenfeld LLP

ATTACHMENT A

Technical Review

- **Lewis C. Nelson & Sons, Inc.:**

- Did not provide any documents to meet the requirements noted in Document 6 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion – for subcontracts totaling OVER \$100,000.) Subsequently provided on November 11, 2012.
- Did not provide any documents to meet the requirements noted in Document 7 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion – for subcontracts totaling \$100,000 or LESS.) Subsequently provided on November 11, 2012.
- Did not provide any documents to meet the requirements noted in Document 8 (Disclosure of Governmental Positions). Subsequently provided on November 11, 2012.
- Checked references revealed positive rating with Lewis C. Nelson & Sons's performance.

- **C. Overaa & Company (Overaa):**

- Document 8 (Disclosure of Governmental Positions), most items were supplied, and two deficiencies (one missing subcontract form, and one missing subcontractor signature).
- Document 2, Item 5 asks to list all lawsuits or mediation between bidder and owner of construction project in past seven years, Overaa provided one litigation, but did not provide tribunal or case number, and METRO found an additional lawsuit/mediation. Overaa stated the project was completed in 2003 (\$5.3M contract) and the lawsuit/mediation case is in discovery phase.
- Document 2, item 11 asks for current financial statement, Overaa provided their previous fiscal year financial statement, but did not include interim financial statement due to confidentiality. Subsequently provided on November 6, 2012.
- Checked references revealed positive rating with Overaa's performance.

- **F&H Construction:**

- Did not provide any documents to meet the requirements noted in Document 6 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling OVER \$100,000.) Subsequently provided on November 16, 2012.
- Did not provide any documents to meet the requirements noted in Document 7 (Certification of Proposed SubContractor Regarding Debarment, Suspension and

ATTACHMENT A

Other Ineligibility And Voluntary Exclusion – for subcontracts totaling \$100,000 or LESS) Subsequently provided on November 16, 2012.

- Did not provide any documents to meet the requirements noted in Document 8 (Disclosure of Governmental Positions). Subsequently provided on November 16, 2012.

- **Otto Construction:**

- Missing some documents to meet the requirements noted in Document 6 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling OVER \$100,000.)
- Missing some documents to meet the requirements noted in Document 7 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling \$100,000 or LESS.)
- Document 2, item 5 asks to lists all lawsuits or mediation between bidder and owner of construction project in past seven years, METRO found a lawsuit/mediation initiated by bidder. The bidder explained that the issue was with the lender.
- Checked references revealed positive rating with Otto's performance.

- **SJ Amoroso:**

- Did not provide any documents to meet the requirements noted in Document 6 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling OVER \$100,000.)
- Did not provide any documents to meet the requirements noted in Document 7 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling \$100,000 or LESS.)
- Did not provide any documents to meet the requirements noted in Document 8 (Disclosure of Governmental Positions).

- **Roebbelen Contracting, Inc.:**

- Did not provide any documents to meet the requirements noted in Document 6 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling OVER \$100,000.)
- Did not provide any documents to meet the requirements noted in Document 7 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion – for subcontracts totaling \$100,000 or LESS.)

ATTACHMENT A

- Did not provide any documents to meet the requirements noted in Document 8 (Disclosure of Governmental Positions).

ATTACHMENT B



MURPHY AUSTIN
ADAMS SCHOENFELD LLP

D MICHAEL SCHOENFELD
(916) 446-2300. EXT 3089
mschoenfeld@murphyaustin.com

November 19, 2012

VIA EMAIL AND FACSIMILE

Erron Alvey
Purchasing Agent
Santa Cruz Metro
110 Vernon Street
Santa Cruz, CA 95060

Re: Notice of Protest Regarding Determination of Non-Responsiveness of Lewis C
Nelson and Sons, Inc. and Notice of Protest of Award to C. Overaa & Co.
Our File No : 1347 003

Dear Mr. Alvey:

The purpose of this letter is to advise you and the Board of Directors of the Santa Cruz Metropolitan Transit District ("Metro"), the owner of the prospective procurement known as the Construction of the Judy K. Souza Operations Facility, Parking Structure and Related Site Work (the "project") that our office represents the interests of Lewis C. Nelson and Sons, Inc ("LCN") with reference to its bid for the project. We hereby submit this letter on our client's behalf in protest to the content of the written communications from you and Metro relating to the determination that LCN was not a responsive bidder and/or that the content of the LCN bid that was not in full compliance with the solicitation was unable to be corrected, and that if the award of the project is not made to our client then Metro is urged, respectively, to reject all bids and re-bid the project. The multiple bases for this protest letter are detailed in the balance of this letter.

The Bid of Lewis C. Nelson and Sons, Inc. was Responsive

Attached to this letter are the following documents:

- a) November 9, 2012 memo from Frank Cheng to the Board of Directors (Exhibit 1);
- b) IFB 12-23 Bid Analysis Spreadsheet consisting of 4 pages (Exhibit 2);
- c) Instructions to Bidders for the project (Exhibit 3); and
- d) Addendum Number 1 for the project (Exhibit 4).

Collectively, the first two attached documents communicate the position of Metro that the bid of LCN was non-responsive because Forms 6, 7 and 8, which were required to be submitted within two working days of the bid opening, were not turned in by that time deadline. Indeed, the Bid Analysis Spreadsheet (Exhibit 2) communicates that in the opinion of the author that this deficiency is not correctable. We respectfully disagree.

ATTACHMENT B

Erron Alvey
November 19, 2012
Page 2

The core issue of responsiveness is addressed in both the Instructions to Bidders ("Instructions") as well as by published decisions of courts in California. When we examine the Instructions, consisting of 23 pages, we see very little information that the owner published defining what does or does not constitute a responsive bid. In Section 1.25, entitled "Bid Contents," Metro identified that bids shall include a series of documents including Bid Form Documents 6, 7 & 8. This is found on page 16 of the Instructions. See Exhibit 3 attached.

This requirement was modified by the content of Addendum No. 1 which provided, in Section 3.6 on page 2, that these forms shall be provided within 2 business days of bid opening insofar as they require subcontract content. See Exhibit 4 attached.

While LCN failed to meet the two day deadline submission criteria expressed in Addendum No. 1, such non-compliance is not made "not correctable" by the Instructions and, further, application of the principles of California law render such an omission an immaterial deviation which the owner should waive.

The arguments supporting this position are as follows:

On page 21 of the Instructions, at Section 1.34, subpart E, a reader will find the only location in the Instructions that purports to define what constitutes a responsive bid. It provides, in pertinent part:

A bid will be determined to be responsive if it does what the bidding instructions demand and all required documentation is provided. The following facts will be evaluated

<i>Responsiveness Factors</i>	<i>Criteria</i>
<i>2 Completed Documentation and Required Certifications Submitted</i>	<i>Pass/Fail</i>

It is noted that no where in the cited subpart, or anywhere else in the Instructions, does Metro define that it will evaluate a bid to discern if a "fail" determination is correctable or not. This is not a published criteria. By failing to provide any such criteria, California law requires that the public owner must apply published common law criteria and not an unpublished and undisclosed set of criteria. See *Monterey Mechanical Co v. Sacramento Regional County Sanitation District* (1996) 44 Cal.App.4th 1391, 1412-1413.

The November 9, 2012 Cheng memorandum (Exhibit 1) and the Bid Analysis Spreadsheet (Exhibit 2) published by Metro violate these legal principles by determining, based on unpublished criteria, that LCN's failure to timely deliver the required Documents Nos. 6, 7 & 8 from its subcontractors is not correctable. This determination is without support in the contract documents and California law.

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ATTACHMENT B

Erron Alvey
November 19, 2012
Page 3

A bid which is not strictly responsive may "be accepted if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders, or, in other words, the variance is inconsequential. *Konica Business Machines U.S.A., Inc. v. Regents of University of California* (1988) 206 Cal.App 3d 449, 454. A deviation is inconsequential, does not give a bidder an advantage over other bidders, and can be waived, if the bidder could not withdraw its bid without forfeiting its bid bond. *Manefee v. County of Fresno* (1985) 163 Cal.App 3d 1175, 1177. A bid can only be withdrawn without forfeiture of the bid bond if there is a typographical or arithmetic error in the bid. Public Contract Code § 5103. Mistakes in the submission of bids, and the documents provided, do not permit withdrawal of the bid. *Manefee*, 163 Cal App 3d at 1177.

The salient legal principle raised by this set of facts is whether the failure of LCN to deliver timely these documents from its subcontractors provided to LCN a competitive advantage not available to any other bidder, affect the bid price and/or would allow LCN to withdraw its bid without forfeiting its bid bond. The answer is an unequivocal NO.

The bids were turned in timely on September 12, 2012. By September 14, 2012 the Instructions and Addendum No. 1 required certain forms for subcontractors to be turned in. Admittedly LCN failed to timely do so. It has since rectified this omission. Does this render its bid "non-responsive" as Metro's staff has contended? NO.

At the time the bid was turned in the list of subcontractors was established. No changes were permitted without violating the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 et seq.) (the "Act"). LCN had no right to modify its list of subcontractors without complying with the Act and indeed no application for relief or substitution pursuant to the Act has been submitted by LCN. Accordingly, it did not receive a competitive advantage over the other bidders.

LCN's failure to timely deliver the required forms could not be used as a means to withdraw its otherwise lowest bid without forfeiting its bid bond given the mistake was not a typographical or arithmetic nature. Moreover, the deviation did not affect the bid price.

Given that the two lowest bids, from Westbay and Zovich, are fatally flawed (as recognized by Metro), LCN's bid, as the next lowest, is therefore now the lowest eligible bid. Metro is urged to reconsider its position as to LCN's bid and award LCN the project based on the foregoing and the following legal authority.

The purpose of the public contracting statutes is to ensure full compliance with competitive bidding laws as a means of protecting the public from misuse of public funds, to provide all qualified bidders the fair opportunity to join the bidding process, and to eliminate favoritism, fraud and corruption in the awarding of public contracts. See *Public Contract Code*

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section 100 Metro (and all public entities) must follow its own bidding rules. See *Pozar v Dept. of Transportation* (1983) 145 Cal.App.3d 269.

Applying these initial authorities to the facts of this case there is nothing in the bid documents that provides that the failure to timely deliver these omitted forms renders the LCN bid "non-responsive" that is not able to be corrected or cured. The owner cannot create this determination without first publishing it to all bidders.

The core issue presented is whether LCN's failure to deliver the properly completed forms timely is correctable or not. Metro's position in Exhibits A & B hereto is that the omission of the forms is not correctable. We disagree not only because Metro failed to state that this was the result of their untimely delivery but also because Metro has inconsistently determined that incorrectly submitted forms, such as those submitted by Overaa, the fourth lowest bidder, are able to be corrected. We contend that the position of the owner in this regard is inconsistent and not reconcilable, and thus demonstrates impermissible favoritism and unfairness in the bidding process which violates the legal standards cited above.

Metro has taken the position that the imperfections in the Overaa submission of Documents 6, 7 & 8 can be cured. However it denies the ability of LCN to cure its deviation. These are irreconcilable positions. The omission of signatures and details in the documents by Overaa rendered them incomplete. The same is true for LCN. It is fundamentally flawed, irreconcilable and unfair to allow one bidder to correct mistakes and not allow another bidder to correct mistakes relating to the same documents

Both bidders turned in the material forms and neither is seeking to use the imperfections in their overall bid submissions to attempt to evade or withdraw their bids. Indeed, neither could legally do so

The law and the Instructions require this owner to award this project to the lowest responsive and responsible bidder. A bidder is responsible if it has the fitness, quality, and capacity to perform the work satisfactorily. *City of Inglewood - L.A. County Civic Center Auth v Superior Court* (1972) 7 Cal.3d 861, 867. A public entity that determines a bidder is not responsible must afford a significant level of due process to the bidder, including notice and an opportunity to respond. *Id.* at 870-871. A public entity's failure to provide the appropriate due process abuses its discretion and its decision must be overturned. *D.H. Williams Const., Inc v Clover Unified School District* (2007) 146 Cal App.4th 757, 764.

In this procurement there are no facts identified and there is no assertion published by Metro's staff that LCN is not a responsible bidder. Nor has Metro provided LCN with notice and an opportunity to be heard at this time. Therefore it is urged that, if Metro elects not to award LCN the project, the request of the memo asking the Board of Directors to determine that LCN's bid be rejected as "non-responsive and/or not a responsible bidder" be expressly modified to omit

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that portion that concerns a lack of responsibility. There are no facts that would support such a lack of responsibility determination and Metro should not tarnish any legal entity with any stigma relating to a finding that could be improperly asserted to concern a lack of responsibility where no such finding has been made and there are no facts to support such a finding. Please note that this is a matter of extreme importance to LCN (as it should be to any bidder) and if the election of the owner is not to modify staff's recommendation then LCN requests a formal responsibility hearing as is its right under California law. This request is accompanied by a further request for due process (a separate notice and reasonable opportunity to be heard) should the Metro Board adopt this portion of the staff memorandum as part of its findings in this matter.

The Bid Irregularities of Overaa Should Also be Not Correctable

On page 2 of the Bid Analysis (Exhibit 2) the observed deficiencies of the Overaa bid are identified. It is asserted that these deficiencies are material deviations and not immaterial ones susceptible of being corrected post-bid if the staff recommendation as to LCN's bid irregularities remain unaltered. For the reasons noted above the owner is urged to be consistent as the position taken by staff as to Overaa's bid irregularities being "correctable" and LCN's not being correctable cannot be reconciled and violates the legal principles cited above.

The Bid Solicitation Was Unclear and Metro Should Reject All Bids

Metro expressly reserved for itself the right to reject all bids and re-bid the project. See Exhibit 3, page 19, Section 1.31 A. Many of the 8 bidders did exactly as LCN: fail to turn in the forms 6, 7 and 8 relating to subcontractors. The bidders on this project are all experienced in the public bidding process and the fact that 4 of the 8 bidders failed to turn in the forms, and an additional 2 of the remaining 4 had irregularities in the forms that were submitted, demonstrates that there was confusion, ambiguity and/or inconsistent understandings arising from the procurement process that undermines the fairness of the bidding process. The price difference between the bids received, as reported on page 2 of Exhibit 1, was approximately \$700,000, which represents a bid spread of 5% between the high and low bids. However, the top 3 bids, including LCN's bid, show a spread of only \$78,000, which represents a mere 1.73% bid spread. This is a very tightly bid project on the core information most important to the owner: what will the job cost? The other issues we are dealing with are not essential and do not affect the bid price. For the owner to elect to award the project and incur an additional \$87,000 to award the job to Overaa for the reasons noted above would be a waste of public resources and the owner is urged, if it is not willing to award the project to LCN, to then exercise its right to reject all bids and re-bid the project. This result would then clean the slate of the contentions raised in this letter and avoid the challenges that exist and may very well continue.

The bottom line of this protest letter is that LCN is the lowest, responsive, responsible bidder and if the owner determines that it does not agree with this position it is urged to reject all bids and rebid the project. If the owner elects not to award the project to LCN it is requested that

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the owner modify the staff recommendation and make clear that the ground for its determination is that the LCN bid was determined to be non-responsive and to omit any reference to a lack of responsibility.

Very truly yours,


MURPHY AUSTIN ADAMS SCHOENFELD LLP

D. MICHAEL SCHOENFELD

DMS/sh
Attachments
cc: Lewis C. Nelson and Sons, Inc

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MURPHY AUSTIN ADAMS SCHOENFELD LLP

8.b6

EXHIBIT 1

ATTACHMENT B

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: November 9, 2012

TO: Board of Directors

FROM: Frank Cheng, Project Manager & Information Technology Manager

SUBJECT: CONSIDERATION OF DECLARING WEST BAY BUILDERS, ZOVICH CONSTRUCTION, LEWIS C. NELSON & SONS, F&H CONSTRUCTION, SJ AMOROSO, AND ROEBELLEN CONTRACTING AS UNRESPONSIVE AND/OR NON-RESPONSIBLE, AND REJECTING THE BIDS THEY SUBMITTED FOR THE JUDY K. SOUZA OPERATIONS BUILDING FACILITY

I. RECOMMENDED ACTION

That the Board of Directors declare West Bay Builders, Zovich Construction, Lewis C. Nelson & Sons, F&H Construction, SJ Amoroso, and Roebellen Contracting as unresponsive and/or non-responsible, and rejecting the bids they submitted for the Judy K. Souza Operations Building Facility.

II. SUMMARY OF ISSUES

- On June 29, 2012, a Notice of Invitation for Bids (IFB 12-23) was issued and sent to interested bidders and Builders Exchanges.
- On August 8, 2012, IFB 12-23 Addendum #1 was issued which included:
 - Minutes of the Pre-Bid Conference conducted on July 17, 2012.
 - List of Attendees for Pre-Bid Conference.
 - Partially-Executed PLA Agreement
 - Web link for Plan Check Addendum from Architect-Engineer
 - Web link for Geotechnical Documents
 - Answers to questions for the General and Technical Questions.
- On August 17, 2012, IFB 12-23 Addendum #2 was issued which included:
 - Bid Due Date was changed to September 12, 2012 @ 2:00 PM, PST.
 - Light Fixture Schedule
 - Amended Faithful Performance Bond
 - Web link to Changes to Specifications and Drawings from Architect-Engineer
 - Answers to questions for the General and Technical Questions
- On September 12, 2012, METRO received eight (8) bids.

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- METRO staff has been researching and reviewing bids for presentation to Board of Directors.
- METRO staff recommends that the Board of Directors declare West Bay Builders, Zovich Construction, Lewis C. Nelson & Sons, F&H Construction, SJ Amoroso, and Roebellen Contracting as unresponsive/non-responsible, and rejecting the bids they submitted for the Judy K. Souza Operations Building Facility.

III. DISCUSSION

On June 29, 2012, a Notice of Invitation for Bids (IFB 12-23) was issued and sent to interested bidders and Builders Exchanges.

On August 8, 2012, IFB 12-23 Addendum #1 was issued which included:

- Minutes of the Pre-Bid Conference conducted on July 17, 2012.
- List of Attendees for Pre-Bid Conference
- Partially-Executed PLA Agreement
- Web link for Plan Check Addendum from Architect-Engineer
- Web link for Geotechnical Documents
- Answers to questions for the General and Technical Questions.

On August 17, 2012, IFB 12-23 Addendum #2 was issued which included:

- Bid Due Date was changed to September 12, 2012 @ 2:00 PM, PST.
- Light Fixture Schedule
- Amended Faithful Performance Bond
- Web link to Changes to Specifications and Drawings from Architect-Engineer
- Answers to questions for the General and Technical Questions.

On September 12, 2012, METRO received eight (8) bids, all bids below engineer's estimate.

West Bay Builders, Inc.	\$ 13,494,000
Zovich Construction	\$ 13,500,000
Lewis C. Nelson & Sons, Inc.	\$ 13,572,000
C. Overaa & Co.	\$ 13,659,000
F & H Construction	\$ 13,787,000
Otto Construction	\$ 13,936,000
SJ Amoroso	\$ 13,997,000
Roebellen Contracting, Inc.	\$ 14,178,000

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The above eight bids are ordered from lowest to highest bid. West Bay Builders, Inc. submitted the lowest bid. An analysis of all the bids was performed by METRO staff to evaluate all deficiencies of the bids and if the deficiency is "correctable" or "not correctable". The deficiency evaluation will show if the bidder(s) are responsive and responsible. For details, see attachment A (IFB 12-23 Bid Analysis Sprcadsheet). Award procedures are included in IFB 12-23, Part I-20, 1.34. METRO will select the lowest responsive, responsible bidder based on a determination of (1) which bidder is the lowest monetary bidder on the Base Bid; (2) whether or not the lowest monetary bidder submitted a responsive bid; and (3) whether or not the lowest monetary bidder is responsible. Responsive factors and responsibility factors were taken into account. METRO staff determined criteria for deficiencies found to be evaluated as "correctable" or "not correctable."

Correctable	Not Correctable
If majority of documents were provided and only a few had discrepancies	Omission of major items
For each item listed by the bidder, part of information is missing	Misrepresentation of facts

The following are all the bidders and review of any discrepancies.

- West Bay Builders, Inc.(WBB):
 - Document 2, item 4 asks the bidder if they have ever been determined by a public agency to not be a responsible bidder, WBB answered "n/a," and METRO has documentation stating otherwise.
 - Document 2, item 5 asks to lists all lawsuits or mediation between bidder and owner of construction project in past seven years, WBB listed 5 items, and METRO found an additional lawsuit/mediation WBB stated the project was completed in 2004 which was over 7 years ago. With mediation occurring in 2009, the mediation is still applicable to list.
 - Document 2, item 6 asks within the past seven years, has bidder paid liquidated damages, WBB answered "No," and METRO found a recent judgment for liquidated damages.
 - Document 2, item 7 asks if bidder has any surety of bidder ever paid any claim against bidder, WBB answered "No," and METRO found a few judgments stating that the surety of bidder paid claims.
 - Part I-20, 1.30.I. states that METRO may reject the bid of any party who has been delinquent or unfaithful in any former contract with METRO, and who cannot satisfactorily prove that it is responsible as required in the IFB or whose Bid is not responsive. In previous project (Fleet Maintenance Building) with METRO requested subcontractor contract documents and WBB obstructed METRO's attempt to ascertain the documentation.
 - Checked references revealed deficiencies with WBB's performance.

8.b10

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- Overall with the determined "non-correctable" items, METRO finds WBB's bid as unresponsive and non-responsible.
- Zovich Construction:
 - Document 2, item 13A asks to provide projects in the State of California involving construction of a building, each with an original contract price of no less than \$20,000,000, Zovich did not meet the necessary project list requirements.
 - Document 2, item 13B asks to provide at least two public works projects in the State of California involving construction of a building, Zovich did not provide enough information to determine qualification.
 - The above evaluation determined the items as "not correctable" and finds Zovich's bid as unresponsive, no further reference check was performed.
- Lewis C. Nelson & Sons, Inc. :
 - Did not provide any documents to meet the requirements noted in Document 6 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling OVER \$100,000.)
 - Did not provide any documents to meet the requirements noted in Document 7 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling \$100,000 or LESS.)
 - Did not provide any documents to meet the requirements noted in Document 8(Disclosure of Governmental Positions).
 - The above evaluation determined the items as "not correctable" and finds Lewis C. Nelson & Sons's bid as unresponsive, no further reference check was performed.
- C. Overaa & Company (Overaa):
 - Document 8(Disclosure of Governmental Positions), most items were supplied, and two deficiencies (one missing subcontract form, and one missing subcontractor signature)
 - Document 2, Item 5 asks to list all lawsuits or mediation between bidder and owner of construction project in past seven years, Overaa provided one litigation, but did not provide tribunal or case number, and METRO found an additional lawsuit/mediation. Overaa stated the lawsuit/mediation project was completed in 2003 (\$5.3M contract) and the case is in discovery phase.
 - Document 2, item 11 asks for current financial statement, Overaa provided their previous fiscal year financial statement, but did not include interim financial statement due to confidentiality.
 - Checked references revealed positive rating with Overaa's performance
 - The above evaluation determined the items as "correctable" and finds Overaa's bid as responsive and responsible pending clarification on items mentioned.

8.b11

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- F&H Construction:
 - Did not provide any documents to meet the requirements noted in Document 6 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling OVER \$100,000.)
 - Did not provide any documents to meet the requirements noted in Document 7 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling \$100,000 or LESS)
 - Did not provide any documents to meet the requirements noted in Document 8(Disclosure of Governmental Positions)
 - The above evaluation determined the items as “not correctable” and finds F&H Construction’s bid as unresponsive, no further reference check was performed.

- Otto Construction:
 - Otto’s bid met all the requirements.
 - Document 2, item 5 asks to lists all lawsuits or mediation between bidder and owner of construction project in past seven years, METRO found a lawsuit/mediation initiated by bidder. The bidder explained that the issue was with the lender.
 - Checked references revealed positive rating with Otto’s performance
 - Otto’s bid is determined as responsive and responsible.

- SJ Amoroso:
 - Did not provide any documents to meet the requirements noted in Document 6 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling OVER \$100,000.)
 - Did not provide any documents to meet the requirements noted in Document 7 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling \$100,000 or LESS)
 - Did not provide any documents to meet the requirements noted in Document 8(Disclosure of Governmental Positions).
 - The above evaluation determined the items as “not correctable” and finds SJ Amoroso’s bid as unresponsive, no further reference check was performed

- Roebellen Contracting, Inc. :
 - Did not provide any documents to meet the requirements noted in Document 6 (Certification of Proposed SubContractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion – for subcontracts totaling OVER \$100,000.)
 - Did not provide any documents to meet the requirements noted in Document 7 (Certification of Proposed SubContractor Regarding Debarment, Suspension and

8.b12

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Other Ineligibility And Voluntary Exclusion -- for subcontracts totaling \$100,000 or LESS.)

- o Did not provide any documents to meet the requirements noted in Document 8(Disclosure of Governmental Positions).
- o The above evaluation determined the items as "not correctable" and finds Roebellen Contracting's bid as unresponsive, no further reference check was performed

From the above analysis, METRO has determined the following bidders as responsive and responsible:

- C. Overaa & Company
- Otto Construction

A "cure letter" will be sent to the lowest responsive and responsible bid to clarify any correctable deficiencies. After consideration of the responses of the bidders to the "cure letter" and in consultation with METRO staff and Construction Management firm, METRO will present a formal Staff Report awarding a construction contract to the lowest responsive and responsible bidder for consideration by the Board of Directors.

METRO staff has researched, reviewed, and recommends that the Board of Directors declare West Bay Builders, Zovich Construction, Lewis C. Nelson & Sons, F&H Construction, SJ Amoroso, and Roebellen Contracting as unresponsive and/or non-responsible, and rejecting the bids they submitted for the Judy K. Souza Operations Building Facility.

IV. FINANCIAL CONSIDERATIONS

Funds for the construction of the Judy K. Souza Operations Building Facility Component of the MetroBase Project are available within the funds the METRO has secured for the Project.

V. ATTACHMENTS

Attachment A: IFB 12-23 Bid Analysis Spreadsheet

8.b13

ATTACHMENT B

EXHIBIT 2

8.b14

ATTACHMENT B

IFB 12-23 Bid Analysis Spreadsheet

CORRECTABLE NOT CORRECTABLE

DEFICIENT ITEMS	WEST BAY BUILDERS, INC.	ZOVICH CONSTRUCTION
BID AMOUNT	\$ 13,494,000	\$ 13,500,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing one subcontractor form	
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)		
Document 8 - Disclosure of Governmental Positions	Missing one subcontractor form	
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person	Bidder answer was "N/A" METRO has documentation stating otherwise.	
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any	Bidder listed 5 items. METRO has documentation on an additional lawsuit/mediation between Bidder and owners of constructions projects that were not listed by Bidder. WBB stated the project was completed in 2004 which was over 7 years ago. With mediation occurring in 2009, the mediation is still applicable to list	
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agencies contact person, and further, describe in detail the nature of the work of improvement.	Bidder answer was "No" METRO has found a judgment for liquidated damages in a case with a sub which was filed in Alameda County Superior Court on August 29, 2012.	
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants	Bidder answered "No" METRO has found a judgment in a case with a sub against First National for enforcement of a stop notice release bond, filed in San Francisco County Superior Court on September 12, 2012 (same day bid was due) METRO found a judgment against Safeco Insurance Company (and WBB) for attorney's fees in a case with a sub, and against Safeco and First National Insurance Company of America (and WBB) for prejudgment interest, filed in Santa Clara County Superior Court on September 4, 2009. In same case, WBB, Safeco and First National tendered a check to the sub as a result of a settlement, filed in Santa Clara County Superior Court on April 8, 2009.	
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		
Document 2 - Item 13 A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years		Did not list three qualifying projects.
Document 2 - Item 13 B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project.		Did not provide enough information to determine qualification
Document 2 - Item 13 C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project	Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.	No individual resume for Project Manager.

ATTACHMENT B

IFB 12-23 Bid Analysis Spreadsheet

CORRECTABLE

NOT CORRECTABLE

DEFICIENT ITEMS	LEWIS C. NELSON & SONS, INC.	C. OVERAA & CO.
BID AMOUNT	\$ 13,572,000	\$ 13,659,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing for ALL subcontractors	
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)	Missing for ALL subcontractors	
Document 8 - Disclosure of Governmental Positions	Missing for ALL subcontractors	Missing one subcontractor form Submitted a blank form
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person		
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any		Provided a litigation (missing tribunal or case number) METRO found an additional lawsuit/mediation. Otto stated the project completed in 2003 (\$5.3M contract) and the case is in discovery phase.
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agency's contact person, and further, describe in detail the nature of the work of improvement.		
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants		
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		Did not provide interim financial statement.
Document 2 - Item 13.A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years		
Document 2 - Item 13.B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project.		
Document 2 - Item 13.C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project	No individual resume for Project Manager.	Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.

8.b16

ATTACHMENT B

IFB 12-23 Bid Analysis Spreadsheet

CORRECTABLE NOT CORRECTABLE

DEFICIENT ITEMS	F&H CONSTRUCTION	OTTO CONSTRUCTION
BID AMOUNT	\$ 13,787,000	\$ 13,936,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing for ALL subcontractors	
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)	Missing for ALL subcontractors	
Document 8 - Disclosure of Governmental Positions	Missing for ALL subcontractors	
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person		
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any		METRO found a lawsuit/mediation initiated by bidder. The bidder explained that the issue was with the lender.
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agencies contact person, and further, describe in detail the nature of the work of improvement.		
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants		
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		
Document 2 - Item 13 A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years	Did not provide contract amounts on projects.	
Document 2 - Item 13 B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project	Not possible to determine which projects would qualify.	
Document 2 - Item 13 C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project	Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.	

8.b17

ATTACHMENT B

IFB 12-23 Bid Analysis Spreadsheet

CORRECTABLE NOT CORRECTABLE

DEFICIENT ITEMS	SJ AMOROSO	ROEBBELEN CONTRACTING, INC.
BID AMOUNT	\$ 13,997,000	\$ 14,178,000
Document 6 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling OVER \$100,000)	Missing for ALL subcontractors	Missing for ALL subcontractors
Document 7 - Certification of Proposed Subcontractor Regarding Debarment, Suspension and Other Ineligibility And Voluntary Exclusion (for Subcontracts totaling \$100,000 or LESS)	Missing for ALL subcontractors	Missing for ALL subcontractors
Document 8 - Disclosure of Governmental Positions	Missing for ALL subcontractors	Missing for ALL subcontractors
Document 2 - Item 4 - Has any person or legal entity holding a legal or equitable ownership of 10% or more of the bidder, ever been determined by a public agency to not be a responsible bidder? If so, state the name, address and telephone number of the public agency, including the name of the agency's contact person		
Document 2 - Item 5 - For every lawsuit or mediation between bidder and the owner of construction project, limited to such lawsuits or mediations initiated or completed within the past seven years, state the name and address of the tribunal, the matter number, the parties, a general description of the nature of the dispute, and the outcome, if any		
Document 2 - Item 6 - Within the past seven years, has bidder paid liquidated damages, ever failed to complete a construction project, within the time allowed by the contract, including any agreed upon contract extensions? If so, state the name, address and telephone number of the owner of such construction project including the name of the agencies contact person, and further, describe in detail the nature of the work of improvement.		
Document 2 - Item 7 - Within the last seven years has any surety of bidder ever paid or satisfied any claim against bidder? If so, state all facts and circumstances, including the name, address, and telephone number of surety and all claimants		
Document 2 - Item 11 - Financial statement (current financial statement)		
Document 2 - Item 11 - Financial statement (interim)		
Document 2 - Item 13 A - Have completed to the public owner's satisfaction, no less than three public works projects in the State of CA involving the construction of a building, each with an original contract price of no less than \$20,000,000 within the last seven years		
Document 2 - Item 13 B - The General Contractor or subcontractor thereof shall have completed to the public owner's satisfaction, at least two PUBLIC WORKS projects in the State of CA of similar scope, size and complexity of this project.		
Document 2 - Item 13 C - Proposed Project Manager shall have experience in management of construction, including at least five years experience with significant responsibility on at least two construction projects of similar scope, size, and complexity of this project		Bidder provided resume for propose Project Manager, but projects listed on the resume did not include sufficient info.

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PART I INSTRUCTIONS TO BIDDERS

1.01 INTRODUCTION

The Santa Cruz Metropolitan Transit District (Santa Cruz METRO) through this Invitation for Bids (IFB) is requesting sealed bids for a firm, fixed-price contract for Construction of the Judy K. Souza Operations Facility, Parking Structure and Related Site Work (the "Project"). Part I of the IFB provides instructions to be followed by Bidders in their responses to the IFB. Bidders must comply with the terms and conditions of this IFB, including any Appendices, Attachments, Addenda and Exhibits.

1.02 THE SCOPE OF WORK/PROJECT FUNDING

- A. The scope of work for the Project shall include but not be limited to the furnishing of, without limitation, all necessary supervision, labor, freight, services, equipment, materials, supplies, transportation, installation, overhead, packing, cartage, insurance, license, fees, taxes, permits, bonds, inspection, tools and other expenses necessary to satisfy the provisions, plans and specifications of the IFB, expressed and implied for the construction of the new Judy K. Souza Operations Facility, Parking Structure and Related Site Work ("Project").
- B. The Project is funded in part with federal funding and as a result, each Bidder must adhere to all federal requirements as amended from time to time. The IFB and resulting Contract, contain certain standard terms and conditions required by the United States Department of Transportation (DOT) and the Federal Transit Administration (FTA), whether or not expressly set forth within the contract documents. All contractual provisions required by the DOT and FTA, as set forth in FTA Circular 4220 1F (a copy of which can be obtained from Santa Cruz METRO's Purchasing Agent), are hereby incorporated by reference and required to be followed by the Prime Contractor for the Project. By submitting a Bid, the Bidder warrants that it has read and understood the entire IFB including Part VI (FTA Requirements for Construction Contracts) and FTA Circular 4220 1F and agrees to fulfill all the terms and conditions of the contract if selected as the Prime Contractor.
- C. If the successful Contractor on the Project enters into written contracts with any subcontractor(s) who will be working on the Project, the Subcontractors must meet described criteria in order to be acceptable to Santa Cruz METRO and the subcontracts must contain certain mandated clauses. The Contractor is required to provide METRO with each subcontract and any amendment thereto throughout the contract term.
- D. Volume 1, Part 1 primarily contains language regarding instructions related to

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the Bid which must be followed by each Bidder to insure that a completed and submitted Bid is responsive to the IFB. However, Part 1 also includes contract terms and conditions which are incorporated into the final contract that the successful Prime Contractor must follow.

1.03 COORDINATION, INTERPRETATION, AND EXAMINATION OF CONTRACT DOCUMENTS

CONTENTS: This Invitation for Bids (IFB) includes three volumes and the construction drawings. Volume 1 includes the following parts: (I) Instructions to Bidders, (II) Bid Form, (III) General Conditions of the Contract, (IV) Special Conditions of the Contract, (V) Contract, (VI) FTA Requirements for Construction Contracts and (VII) Protest Procedures. Volumes 2 and 3 contain the construction plans and specifications, including the administration and management of the construction. The construction drawings are identified separately. The Final Contract will include all the IFB parts identified above, any addenda that Santa Cruz METRO issues during the IFB process and the Contractor's completed bid documents.

- A. Each Bidder shall thoroughly examine and become familiar with all parts of the IFB and become knowledgeable and familiar with the Project site location, the general and local conditions and all other matters, which can in any way affect the work under this contract. Failure to make an examination necessary for this determination shall not release the bidder from the obligations of this contract.
- B. No oral contract or conversation with any Director, officer, agent or employee of Santa Cruz METRO, either before or after the execution of the contract, shall affect or modify any of the terms or obligations contained in the IFB or resulting Contract.
- C. Anything to the contrary herein notwithstanding, all DOT and FTA mandated terms (Part VI) shall be deemed to control in the event of a conflict with other provisions contained in this Contract unless the conflicting provisions provide more or greater rights to Santa Cruz METRO or third parties or a required state law provision provides more or greater rights to Santa Cruz METRO, third parties or to the Contractor. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Santa Cruz METRO requests, which would cause Santa Cruz METRO or the Contractor to be in violation of any DOT or FTA requirement.
- D. In the event of inconsistencies between requirements contained in different components of the contract documents, provisions in Volume I, II and III prevail over the remaining contract documents. In resolving other conflicting requirements among the Contract Documents, the order of precedence shall be as follows: 1. Change Orders; 2. Addenda; 3. Volumes 2 and 3; 4.

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Executed Contract Document; 5 Volume 1; 6. With reference to Drawings:

- i. Figures govern over scaled dimensions, and
 - ii. Detailed drawings govern over general drawings
- E. For purposes of these instructions and the resulting construction contract, "Contractor" and "Prime Contractor" mean the same.

1.04 PRE-BID CONFERENCE AND JOB WALK

- A. A pre-bid conference will be held on walkthru date on July 17, 2012 at 1:00 p.m. at the following location:

Santa Cruz Metropolitan Transit District
110 Vernon Street
Santa Cruz, California 95060

- B. This will be followed by a job walk on the same day, to physically inspect the Public Works Project site location, and further clarify the Scope of Work.
- C. The pre-bid conference will consist of a discussion of the Project requirements followed by a question and answer period. In the job walk, Santa Cruz METRO staff will answer questions raised by the potential bidders during and after the tour of the Public Works Project site location.

Attendance at the pre-bid conference and job walk is strongly encouraged.

- D. Questions regarding the IFB should be submitted in writing to the Santa Cruz METRO Purchasing Agent at 110 Vernon Street, Santa Cruz, CA 95060 prior to the pre-bid meeting in order to allow Santa Cruz METRO staff sufficient time to prepare responses. Written questions submitted prior to and questions raised at the pre-bid conference and job walk will be answered, if appropriate, by written addenda to the IFB. Upon posting or delivery, such addenda will become a part of the bid documents and binding on all eligible bidders.

1.05 QUESTIONS, CLARIFICATIONS AND IFB REVISIONS

- A. Santa Cruz METRO has made every attempt to provide all information needed by Bidders for a thorough understanding of the project terms, conditions and other requirements. It is expressly understood that it is Bidder's responsibility to examine and evaluate the work required under this IFB and the terms and conditions under which the work is to be performed. If omissions, discrepancies, apparent errors or a need for clarification or explanation are found in the IFB, including the architectural or engineering plans and specifications prior to the date of bid opening, the Bidder shall

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report such to Santa Cruz METRO in writing and request a clarification, which, if substantiated, will be given in the form of addenda to all Bidders. The bidder shall also inform Santa Cruz METRO's Purchasing Agent of all discrepancies that are observed between the Project's Plans and Specifications and any federal or state law or regulation in writing, prior to bid. The submission of a bid proposal shall be conclusive evidence that the Bidder has satisfied itself through its own investigation as to the conditions to be encountered, the character, quality and scope of work to be performed, the materials and equipment to be furnished and all requirements of the IFB. Written questions and/or written requests for clarification should be directed to:

Santa Cruz Metropolitan Transit District
110 Vernon Street
Santa Cruz, CA 95060
Attn: Erron Alvey, Purchasing Agent
E-mail: éalvey@scmtd.com
Phone (831) 426-0199
FAX: (831) 469-1958

- B. Santa Cruz METRO reserves the right to revise the IFB prior to the bid opening. Such revisions, if any, will be made by addenda to this IFB. Copies of such addenda will be furnished to all those who attend the Pre-Bid conference, will be posted at Santa Cruz METRO's website and will be furnished upon request. Bidders shall specifically acknowledge receipt of each and every addenda to the IFB Documents in their Bid. Failure to acknowledge receipt of each and every addenda may render the bid non-responsive. The date and time for submission of a Bid shall be extended by no less than 72 hours if the Purchasing Agent issues any material changes to the IFB later than 72 hours prior to the Bid Submission. For purposes of this paragraph, the term "material change" means a change with a substantial cost impact on the total bid as determined by Santa Cruz METRO.

1.06 SPECIFICATIONS BY BRAND OR TRADE NAME

Santa Cruz METRO does not intend in any manner to limit the bidding directly or indirectly by calling for a designated material, product, thing, or service by a specific brand or trade name. If a brand or trade name exists in the IFB, the words "or equal" are intended to follow so that bidders may furnish any equal material, product, thing, or service. A Bidder shall submit data substantiating a request for a substitution of "an equal item" by **last question date**. Santa Cruz METRO will inform all bidders of the request in the final addendum and whether Santa Cruz METRO accepts or rejects the requested substitution.

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award the contract to the next lowest responsive, responsible Bidder or solicit new bids.

- B. Santa Cruz METRO will not discriminate with regard to race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition or disability in the consideration for an award of this contract.
- C. Santa Cruz METRO will select the lowest responsive, responsible bidder based on a determination of (1) which bidder is the lowest monetary bidder on the Base Bid; (2) whether or not the lowest monetary bidder submitted a responsive bid; and (3) whether or not the lowest monetary bidder is responsible.
- D. The lowest monetary bidder shall be determined based on the total unit price amounts of the Base Bid.
- E. A bid will be determined to be responsive if it does what the bidding instructions demand and all required documentation is provided. The following factors will be evaluated:

<u>RESPONSIVE FACTORS</u>	<u>CRITERIA</u>
1. Bidder's Bond	Pass/Fail
2. Completed Documentation and Required Certifications Submitted	Pass/Fail
3. Bid Meets all IFB Requirements	Pass/Fail

- F. Responsibility is defined as the apparent ability of the Bidder to meet and successfully complete the requirements of the Contract. Responsibility includes consideration of a Bidder's trustworthiness, the quality of past performance and experience, financial viability and ability, and the fitness and capacity to do the proposed work in a satisfactory and safe manner. Bidder may be required to present further evidence that it has successfully performed similar work of comparable magnitude or provide other proof satisfactory to Santa Cruz METRO that it is competent to successfully perform the Work. The following factors will be evaluated:

<u>RESPONSIBILITY FACTORS</u>	<u>CRITERIA</u>
1. Quality of Past Performance and Experience	Pass/Fail
2. Key Personnel Experience	Pass/Fail
3. Financial Viability and Ability	Pass/Fail
4. Fitness and Capacity to do the Proposed Work	Pass/Fail

1.35 EXECUTION OF CONTRACT

The Bidder to whom an award is made shall execute the contract and furnish the required proof of Insurance coverages and payment and performance bonds.

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within ten (10) working days after receipt of Notice of Award. All required documents shall be returned to the Purchasing Agent, Santa Cruz METRO, 110 Vernon Street, Santa Cruz, California 95060.

1.36 USE OF CONSULTANTS

- A. No limitation shall be imposed on Santa Cruz METRO's use of Consultants in any activity related to the Scope of Work. The Consultants, if any, at the direction of Santa Cruz METRO's Project Manager, shall be accorded the same access to facilities and participation in the work activity as any member of Santa Cruz METRO's project team. Involvement of Consultants may include, but shall not be limited to, supervision of construction, contract administration, inspection, progress and technical meetings, conference calls, document review, etc., as directed by Santa Cruz METRO.
- B. Santa Cruz METRO shall have the option of adding Consultants to the distribution list to receive all or selected contract documents.
- C. Santa Cruz METRO will be contracting for the services of a Consultant to provide third party Construction Management. The Notice to Proceed will provide the Contractor the name and contact information for the individual who is Santa Cruz METRO's Construction Manager for this Project. Santa Cruz METRO retains the right to change the Construction Manager at its discretion and will notify Contractor within twenty-four (24) hours of such change. The Construction Manager shall decide all questions that may arise as to the quality or acceptability of materials furnished and work performed and rate of progress of the work, all questions that may arise as to the interpretation of the Drawings and Specifications, and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor. The Construction Manager's decision shall be final. The Construction Manager shall have authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly.

1.37 PUBLIC RECORDS ACT

- A. Responses to this IFB shall be subject to the provisions of the California Public Records Act (Government Code Sections §6250 et. seq)
- B. The Bidder may label information as "Trade Secret", "Confidential" or "Proprietary". Santa Cruz METRO will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act. Santa Cruz METRO will use its best efforts to inform the Contractor of any request for any documents provided by the Bidder to Santa Cruz METRO marked "Trade Secret", "Confidential", or "Proprietary". However, it is incumbent on the Contractor to assert any rights to confidentiality and to seek and obtain a court order prohibiting the release of

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such information.

- C. Under no circumstances, will Santa Cruz METRO be responsible or liable to the Bidder or any other party for the disclosure of any such labeled information, whether the disclosure is required by law or a court order or occurs through inadvertence, mistake, or negligence on the part of Santa Cruz METRO or its officers, employees, agents, and/or Contractors
- D. The Bidder, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the information contained in the IFB and shall hold Santa Cruz METRO harmless from all costs and expenses, including attorney's fees, in connection with such actions.

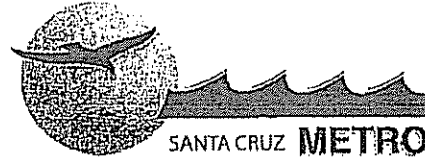
END OF PART I INSTRUCTION TO BIDDERS

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EXHIBIT 4

8.b27

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ADDENDUM NO. 1

Date of Issue: August 8, 2012

Invitation for Bids (IFB) No. 12-23

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT
For Construction of the Judy K. Souza Operations Facility

BIDS DUE: August 30, 2012 @ 2:00 PM, PST

Notice is hereby given that the Santa Cruz Metropolitan Transit District, Santa Cruz, State of California is providing the following clarifications, modifications, additions and/or deletions to the Invitation for Bids (IFB) No. 12-23 for Construction of the Judy K. Souza Operations Facility. This Addendum shall become a part of the original IFB as issued by the Santa Cruz Metropolitan Transit District.

IFB DUE DATE: PREVIOUSLY AUGUST 23, 2012 @ 2:00 PM, PST.

THE NEW BID DUE DATE IS AUGUST 30, 2012 @ 2:00 PM, PST.

Receipt of this Addendum No. 1 shall be acknowledged in your bid response. Any adjustment resulting from this addendum shall be included in the IFB. Where in conflict, the terms and conditions of this addendum supersede those in the Invitation for Bids.

All questions concerning this Addendum shall be in writing and referred to Erron Alvey, Purchasing Agent at 110 Vernon Street, Santa Cruz, CA 95060, (831) 426-0199 Voice, (831) 469-1958 Fax, or email address calvey@scmttd.com.

Note: THE DEADLINE TO SUBMIT ANY ADDITIONAL FORMAL QUESTIONS IS AUGUST 14, 2012.

This Addendum forms a part of the Contract Documents, and modifies the following as noted below:

1. ADDENDUM CONTENT:

1.1 Addendum No. 1: four (4) pages (not including Attachments):

- Attachment A: Minutes of the Pre-Bid Conference conducted on July 17, 2012
- Attachment B: List of Attendees for Pre-Bid Conference
- Attachment C: Partially-Executed PLA Agreement
- Web Link A: Plan Check Addendum from Architect-Engineer
<http://www.scmttd.com/OPS/IFB12-23 OPS Addendum 1.zip>
- Web Link B: Geotechnical Documents
<http://www.scmttd.com/OPS/GeoTechDocuments.zip>

2. CHANGES TO PREVIOUS ADDENDA: (None)

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1.07 EXPENSES TO BE INCLUDED IN BID PRICE AND BID FORM

- A. Unless otherwise specified in the IFB, the bid price shall include all expenses necessary that go into the Construction of a New Operations Facility and Related Site Work under the IFB complete and ready for immediate use by Santa Cruz METRO without additional expense. Bid price shall include, without limitation, all costs for supervision, labor, freight, services, equipment, materials, supplies, transportation, installation, overhead, packing, cartage, insurance, license, fees, taxes, permits, bonds, inspection, tools and other expenses necessary to satisfy the provisions, plans and specifications of the IFB, expressed and implied. All prices shall include freight FOB to the designated delivery point. Santa Cruz METRO will reject requests for additional compensation for freight charges unless it has requested expedited delivery.
- B. Unless Bidder is specifically instructed to do otherwise in the Specifications of this IFB, sales taxes shall be included in the bid price in the amount of 8.5 % of the total bid price. Federal Excise Tax, from which Santa Cruz METRO is exempt, should not be included in the bid price. A Federal Excise Tax Exemption certificate will be furnished to the successful Bidder upon request.
- C. Samples of items, when required, must be furnished free of expense to Santa Cruz METRO and, if not destroyed by tests, may upon request, made at the time the samples are furnished, be returned at Bidder's expense.
- D. Should any unit price be left blank, the bid will be considered non-responsive unless the blank item can be calculated from the information available (i.e., unit price can be determined by dividing the total price by the estimated quantity).
- E. Should any total price be left blank, the bid will be considered non-responsive unless the blank item can be calculated from the information available (i.e., total price can be determined by multiplying the unit price by the estimated quantity).
- F. If any one line item is left blank, and the above situations do not apply, no attempt will be made to reconcile the amounts. The bid in this case will be considered non-responsive.
- G. The selected Prime Contractor shall prepare and submit for the Construction Manager and the Project Manager a detailed cost breakdown to serve as the basis for progress payments before work commences within 668 calendar days of the Notice of Award. The cost breakdown shall be segmented into basic items of work corresponding to the Schedule of Work with the aggregate equaling the Contract total. Cost breakdowns containing prices that appear to be unbalanced may be rejected. The following general guidelines shall be

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followed in preparation of the cost breakdown:

- i. There must be sufficient detail included to allow the Construction Manager to verify progress in accordance with the progress payments specified elsewhere. As a minimum, the cost of each Specification section shall be identified; and
- ii. Each price must include the cost of material, equipment, and labor stated separately.

The Construction Manager/Project Manager will not make progress payments until the detailed cost breakdown has received favorable review.

1.08 INELIGIBLE PARTICIPANTS

- A. Contractors and subcontractors who are ineligible to bid on or perform public works contracts pursuant to California Labor Code §§1777.1 and/or 1777.7 and/or California Public Contract Code §6109 are prohibited from participating in this procurement. Bidder/Contractor are prohibited from performing work on this Project with a subcontractor who is ineligible to perform work on public projects pursuant to Labor Code §1777.1 and/or Labor Code §1777.7. Any Bidder/Contractor or subcontractor who is ineligible to perform work on public works projects pursuant to Labor Code §1771.1 and §1771.7 and/or Public Contract Code §6109 shall not bid on this Project and shall not be awarded the contract or any part thereof. Any contract on this public works project entered into between the Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any Santa Cruz METRO public money for performing work as a subcontractor on this public works contract, and any public money that may have been paid to a debarred subcontractor by a Contractor on the project shall be returned to Santa Cruz METRO. The Contractor shall be solely responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

1.09 CONTRACTOR'S LICENSE REQUIRED

- A. The work to be performed under the IFB require that the selected Contractor possess at the time that this contract is awarded a class "B" license under the provisions of Chapter 9, Division 3, of the Business and Professions Code of the State of California to do the type of work contemplated in the IFB and the Contractor shall be skilled and regularly engaged in the general class or type of work called for under this IFB. Contractor shall only hire Subcontractors for this Project who are properly licensed for the work each is contracted to perform in accordance with federal and state laws.
- B. Any selected Contractor not so licensed shall be subject to all legal penalties imposed by law, including but not limited to any appropriate disciplinary action.

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by the Contractors' State License Board. Failure of the selected Contractor to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security (Bid Bond) of the Bidder.

1.10 LEGAL DAY'S WORK

- A. Eight hours labor constitutes a legal day's work for purposes of this contract. The time of service of any workman employed on this contract is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except upon compensation for all hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate of pay.
- B. The Prime Contractor shall pay to Santa Cruz METRO twenty-five dollars (\$25) for each worker employed in the execution of the contract or by a subcontractor of the Prime Contractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of this section.
- C. The Prime Contractor and every subcontractor shall keep accurate records showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with this contract. The record shall be kept open at all reasonable hours for inspection by the Santa Cruz METRO and to the Division of Labor Standards Enforcement.

1.11 PREVAILING WAGE REQUIRED AND CERTIFIED PAYROLL RECORDS

- A. Contractor is required to pay not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which this public work project is performed and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided for in California Labor Code Section 1771 et seq. In lieu of specifying the rate of wages in the IFB, Santa Cruz METRO will have copies of the prevailing rate of per diem wages on file at Santa Cruz METRO, located at 110 Vernon Street, Santa Cruz, CA, 95060. The statutory provisions for penalties for failure to pay prevailing wages will be enforced (Labor Code Section 1775) and the statutory provisions for penalties for failure to comply with California's wage and hour laws will be enforced (Labor Code Section 1813) by Santa Cruz METRO. The Contractor shall forfeit, as penalty to Santa Cruz METRO, fifty dollars (\$50.00) for each calendar day or portion thereof, for each workman paid less than the stipulated prevailing rates for any work done under the contract by it or by any subcontractor under it, in violation of the provisions of such Labor Code. (See also federal law requirements in Part VI-FTA Requirements for Construction Contracts).
- B. Contractor shall comply with the statutory requirements related to certified

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copies of payroll records including the maintenance of the records, their certification and their availability for inspection pursuant to California Labor Code Section 1776 and all federal requirements related to prevailing wage.

1.12 EMPLOYMENT OF APPRENTICES

The Contractor is required throughout the full term of this construction contract to comply with the statutory requirements relating to the employment of apprentices (Labor Code Section 1777.5).

1.13 DISADVANTAGED BUSINESS ENTERPRISES

A This contract is subject to the requirements of Title 49, Code of Federal Regulations Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Finance Assistance Program. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%

B. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Santa Cruz METRO deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (See 49 CFR 26.13(b)).

X C Bidders are required to document DBE participation or, alternatively, to document adequate good faith efforts to do so as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following documentation concurrent with and accompanying the sealed bid:

- i. The names and addresses of DBE firms that will participate in this contract;
- ii. A description of the work each DBE will perform;
- iii. The dollar amount of the participation of each DBE firm participating;
- iv. Written documentation of the bidder's commitment to use a DBE whose participation it submits to meet the goal;
- v. Written confirmation from the DBE that it is participating in the contract as provided in the Bidder/Contractor's commitment;
- vi. If the DBE participation is nonexistent or limited, evidence of good faith efforts to secure DBE participation.

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- D. To find a database of Certified Disadvantaged Business Enterprise (DBE) firms, please go to the State of California, Caltrans website address: <http://www.dot.ca.gov/hq/bep/> This site will provide access to the State's Unified Certification Program for DBE listings that are updated daily. Bidders can obtain additional information from the Purchasing Agent.
- E. Bidders must present the information required above as a matter of responsiveness with the initial BID (§ 49 CFR 26.53(3))
- F. The Contractor must promptly notify Santa Cruz METRO whenever a DBE Subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Santa Cruz METRO

1.14 PROJECT LABOR AGREEMENT

- A. Santa Cruz METRO is currently negotiating with the Monterey/Santa Cruz Building and Construction Trades Council for implementation of a Project Labor Agreement. An Addendum will be issued at the time those negotiations are complete notifying the prospective Bidder of the availability of the PLA and all documents associated with it. The selected Prime Contractor is required to comply with all terms and conditions of the PLA and will execute an agreement to that affect.

1.15 PROHIBITED INTERESTS

- A. By submitting a bid, the Bidder represents and warrants that neither the General Manager, nor any Director, officer, agent, or employee of Santa Cruz METRO is in any manner interested directly or indirectly in the bid or in the contract which may be awarded under it, or in any expected profits that arise from it (See State of California Government Code section 1090 et seq.)
- B. No member, officer, agent, or employee of Santa Cruz METRO during his/her Santa Cruz METRO tenure or for one year thereafter, shall have any interest, direct or indirect, in the contract to be awarded.

1.16 GRATUITIES

- A. It is improper for any Santa Cruz METRO officer, employee or agent to solicit consideration, in any form, from a Bidder with the implication, suggestion or statement that the Bidder's provision of the consideration may secure more favorable treatment for the Bidder in the award of the contract or that the Bidder's failure to provide such consideration may negatively affect Santa

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Cruz METRO's consideration of the Bidder's submission. A Bidder shall not offer or give, either directly or through an intermediary, consideration, in any form, to a Santa Cruz METRO officer, employee or agent for the purpose of securing favorable treatment with respect to the award of the contract

- B. A Bidder shall immediately report any attempt by a Santa Cruz METRO officer, employee or agent to solicit such improper consideration. The report shall be made to Santa Cruz METRO's Purchasing Agent at (831) 426-0199 with a written follow-up letter setting forth the facts and circumstances of the solicitation. Failure to report such a solicitation may result in the Bidder's submission being eliminated from consideration
- C. Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

1.17 REQUIRED CERTIFICATIONS

Bids shall include all required Certifications, including a statement that the insurance requirements set forth in the IFB can be obtained and will be carried without reservation or exclusion should bidder be awarded a contract pursuant to the IFB.

1.18 SUBCONTRACTING

- A. The Bidder shall submit with his/her bid the names and locations of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to the detailed drawings contained in the plans and specifications, in an amount in excess of $\frac{1}{2}$ of 1 percent of the amount of the prime contractor's total bid and shall list the portion of the work which will be done by each subcontractor. This information shall be supplied on the Designation of Subcontractors Form, which is part of the Bid Form (Document 9). The Bidder is strictly prohibited from listing another contractor who will in turn sublet portions constituting the majority of the work covered by the contract. If the Bidder fails to specify a subcontractor or specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he/she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself.
- B. Attention is directed to the requirements of Sections 4100 to 4114, inclusive, of the California Public Contract Code, which are incorporated herein by reference and are applicable to this contract. The Prime Contractor shall not,

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without the consent of Santa Cruz METRO and pursuant to all applicable federal and state laws and regulations including Public Contract Code Section 4107, 4107.5, 4108, and 4109, either substitute any person as subcontractor in place of the subcontractor designated in the original List of subcontractors, or sublet or subcontract any portion of the work in excess of 1/2 of 1 percent of the total amount of his/her bid for which he/she did not originally designate a subcontractor. The Prime Contractor shall list only one subcontractor for each portion of the work as is defined by the prime contractor in his or her bid. When a portion of the work, which has been subcontracted by the contractor, is not being performed in a manner satisfactory to Santa Cruz METRO, the subcontractor shall be removed immediately at the request of Santa Cruz METRO, and shall not again be employed on the work. No subcontractor listed by the prime contractor under Public Contract Code Section 4104 as furnishing and installing carpeting shall voluntarily sublet his or her subcontract with respect to any portion of the labor to be performed unless he or she specified the subcontractor in his or her bid for that subcontract to the prime contractor.

- C. The selected Prime Contractor will require each subcontractor by written subcontract to be bound to the Contractor by the terms of the contract documents, and to assume toward the Contractor, all the obligations and responsibilities which the contractor, by the contract documents, assumes toward Santa Cruz METRO, to the extent of the work to be performed by the subcontractor. Each subcontract shall preserve and protect the rights of Santa Cruz METRO under the contract documents with respect to the work to be performed by the subcontractor so that subcontracting will not prejudice such rights.
- D. Within 30 days of execution of the Contract for this Construction Project, the selected Contractor shall provide Santa Cruz METRO's designated Project Manager with each subcontract entered into for the Project and will thereafter provide any amendments to those contracts to the Project Manager upon execution. Thereafter, any subcontracts entered into by the contractor during the term of the contract shall be provided to the Project Manager within 5 days of execution.

1.19 BOND REQUIREMENTS

A. Bid Security

- i. All bids must be accompanied by bid security in an amount not less than ten percent (10%) of the Total Contract Price, payable to Santa Cruz METRO. The Bidder's Security must be in the form of cash, a cashier's check, a certified check, or a Bidder's Bond executed by an admitted surety insurer and made payable to Santa Cruz METRO. A combination of any of the above will also be acceptable. If a Bidder's Bond is furnished, it must conform to the form enclosed in the IFB (Bid Form, Part II)

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- ii. It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his/her bid within ninety (90) days after the bid opening without the written consent of Santa Cruz METRO, shall refuse or be unable to enter into this Contract, as provided herein, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payment Bonds, as provided herein or refuse or be unable to furnish adequate and acceptable insurance, as provided herein, he/she shall forfeit his bid security to the extent of Santa Cruz METRO's damages occasioned by such withdrawal, or refusal or inability to enter into an agreement, or provide the required security therefore.
- iii. It is further understood and agreed that to the extent the defaulting bidder's bid bond, certified check, cashier's check, treasurer's check, and/or official bank check (excluding any income generated thereby which has been retained by Santa Cruz METRO as provided shall prove inadequate to fully recompense Santa Cruz METRO for the damages occasioned by default, then the undersigned bidder agrees to indemnify Santa Cruz METRO and pay over to Santa Cruz METRO the difference between the bid security and Santa Cruz METRO's total damages, so as to make Santa Cruz METRO whole
- iv. The Bid Bond must be issued by a fully qualified surety company acceptable to Santa Cruz METRO and listed as a company currently authorized under 31 Code of Federal Regulations (CFR), Part 223 as possessing a Certificate of Authority as described thereunder and, listed as a company possessing the authority to issue surety bonds in the State of California. Bidder's securities will be held until the Contract has been fully executed, after which all Bidders' securities, except any Bidders securities which have been forfeited, will be returned to the respective Bidders as soon as practicable but in no event more than sixty (60) days from the award of the contract

B. Payment Bond

Within ten working days after execution of this Contract, Contractor will provide Santa Cruz METRO with a Performance Bond guarantying due and punctual performance of all obligations of Contractor under the Contract Documents in the amount of 100% of the Contract Price. The bond must be on the form set forth in Part V of the IFB. The bond must be provided by a surety rated in the top two categories by two nationally recognized rating agencies or receiving an A.M. Best Co. "Best's Rating" of A- or better and Class VII or better, or as otherwise approved by Santa Cruz METRO in its sole discretion.

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C. Performance Bond

Within ten working days after execution of this Contract, Contractor will provide Santa Cruz METRO with a labor and material payment bond in the amount of 100% of the Contract Price. Contractor will maintain the payment bond in full force and effect until (i) Contractor has obtained unconditional releases of liens and stop notices from all subcontractors who filed preliminary notice of a claim against the bond and (ii) expiration of the statutory period for subcontractors to file a claim against the bond. The payment bond shall provide Santa Cruz METRO with security for Contractor's full payment to all subcontractors for costs of materials, equipment, supplies, and labor furnished in the course of performance of the Contract. The bond must be on the form set forth in Part V of the IFB and be provided by a surety rated in the top two categories by two nationally recognized rating agencies or receiving an A.M. Best Co. "Best's Rating" of A- or better and Class VII or better, or as otherwise approved by Santa Cruz METRO in its sole discretion.

1.20 WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE PAYMENTS AND OTHER INSURANCES

- A. The Contractor must secure the payment of worker's compensation to its employees as provided in California Labor Code Sections 1860 and 3700 during the entire term of this contract and also must comply with all laws and regulations regarding unemployment insurance benefits for its employees.
- B. A complete list of all insurance coverage requirements can be found in the General Conditions of the Contract Part III. Contractor is required to provide all Certificates of Insurance coverage within ten (10) working days of the Notice of the Award.

1.21 PROGRESS PAYMENTS

Santa Cruz METRO will make progress payments to the Contractor when requested as work progresses and is completed, but not more frequently than monthly in amounts of \$2,500 or more as approved by the Construction Manager and the METRO Project Manager. Payment by Santa Cruz METRO of undisputed contract amounts is contingent upon the Contractor furnishing Santa Cruz METRO with a Release of All Claims against Santa Cruz METRO arising by virtue of the part of the contract related to those amounts.

A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the Santa Cruz METRO's Finance Manager. Santa Cruz METRO will make progress payments within 30 days after receipt of an undisputed and properly submitted payment request from the Contractor. If Santa Cruz METRO fails to make such payments within 30 days, it shall pay interest to the contractor.

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equivalent to the legal rate set forth in Code of Civil Procedure Section 685.010(a).

1.22 RETENTION

Santa Cruz METRO will retain ten (10%) percent of the contract price from each progress payment made pursuant to this contract through the completion of the contract. The retention shall be released, with the exception of 150 percent (150%) of any disputed amount within 60 days after the date of completion of the work. Pursuant to Section 22300 of the Public Contract Code, the Contractor may substitute a deposit of securities in lieu of Santa Cruz METRO withholding any monies to ensure Contractor's performance under the Contract, or alternatively, request that Santa Cruz METRO make payment of retentions earned directly to an escrow agent at the expense of Contractor. The provisions of Public Contract Code Section 22300 are incorporated herein by reference as though set forth in full, and shall govern the substitution of securities and/or escrow account. If a Stop Notice is filed Santa Cruz METRO will retain 125% of the amount set forth in the Stop Notice from the next progress payment made to Contractor.

1.23 REPORTS AND INVESTIGATIONS

Bidders are advised that an investigation of subsurface conditions has been made by Santa Cruz METRO in respect to foundation requirements and/or other design issues. Bidders may inspect the records of Santa Cruz METRO as to such investigation, including examination of samples and drill cores, if any. When logs of test boring showing a record of the data obtained by Santa Cruz METRO'S investigation of subsurface conditions are made available, said logs represent only the opinion of Santa Cruz METRO as to the character of material encountered by it in its test borings and are made available only for the convenience of bidders.

Note that Santa Cruz METRO's investigation of subsurface conditions is made for the purpose of design. Santa Cruz METRO assumes no responsibility whatever in respect to the sufficiency of test borings, or accuracy of the log of test borings, or other preliminary investigations, or of the interpretation thereof. There is no guarantee expressed or implied that the conditions indicated are representative of those existing throughout the work, or any part of it, or that unforeseen developments may not occur.

No information derived from such inspection or records or preliminary investigations made by Santa Cruz METRO, or from the Engineer, or from assistants, or from the maps, Specifications, profiles, or Drawings will in any way relieve the Contractor from any risk or from properly fulfilling all the terms of the Contract. Records of such preliminary investigations as may have been made by Santa Cruz METRO may be inspected at 110 Vernon Street, Santa Cruz. Documents include the Environmental Impact Report, City of Santa Cruz Noise

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Ordinance, and the IFB plans and specifications.

Bidders are advised that an Environmental Impact Report has been prepared for this project. Bidders may inspect this document at Santa Cruz METRO's Administration Office located at 110 Vernon Street, Santa Cruz, California. This document is made available for review by the bidder and nothing in the contract documents will in any way relieve the Contractor from properly fulfilling all the requirements during construction stated in the Report.

1.24 BID PREPARATION

Bidders shall complete and submit the entire Bid Form (Part II), including each required document in accordance with the following:

- A The bidder shall not delete, modify, or supplement the printed matter in the Bid Form or make substitutions. Blank spaces in the Bid Form shall be appropriately completed. The phraseology of the Bid Form must not be changed, and no additions shall be made to the items mentioned therein. Alterations by erasure or interlineations must be explained or noted in the bid over the signature of the Bidder and may subject the Bid to a determination of non-responsiveness.
- B The Bidder shall execute and submit all FTA Certifications as described below.
- C The Bid Form and all accompanying documents shall be completed in ink or typed.
- D The Bidder shall sign the bid in the blank space provided. If bidder is the sole owner, the owner shall sign the bid with his/her full name, address and phone number. If bidder is a corporation, two (2) corporate officers must sign on behalf of the corporation as follows: (1) the chairman of the board, president, or vice president; and (2) the secretary, assistant secretary, chief financial officer, or assistant treasurer. If bidder is a partnership, the true name of the firm shall be set forth; the names and addresses of all partners shall be given and a partner in the firm shall sign the bid authorized to sign contracts on behalf of the partnership. If the bidder is a joint venture, the bid shall be signed by each participating company, by officers, or other individuals who have the full and proper authorization to do so. If an agent of the bidder signs the bid, other than an officer of a corporation or a member of a partnership, a notarized power-of-attorney must be on file with Santa Cruz METRO prior to opening of bids, or must be submitted with the bid. If requested by Santa Cruz METRO, the Bidder shall promptly submit evidence satisfactory to Santa Cruz METRO of the authority of the person signing the bid. If satisfactory evidence of authorization is not provided, the Bid will be rejected as irregular and unauthorized.

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1.25 BID CONTENTS

Bids shall include, but not be limited to, the following:

- A. Completion and submittal of the Bid Form and the Bidder's Declarations and Statement of Understanding and that Bidder can meet the licensing requirements at the time of the award (Bid Form Document 1).
- B. The Bidder shall provide sufficient information to demonstrate to Santa Cruz METRO's satisfaction that the Bidder is responsible. Criteria used by Santa Cruz METRO to determine Bidder responsibility includes, without limitation, whether Bidder and its proposed subcontractors have the skill, experience, necessary facilities and financial resources to perform the Contract in a satisfactory manner and within the required time. A brief description of the history and background of the Bidder/firm, including a statement of the bidder's qualifications and experience in performing the type of work required for this project must be submitted by the Bidder. The Bidder shall complete and submit the Statement of Bidder's Qualifications, Experience, Financial viability and Ability and Project Capacity with the Bid Form (Bid Form Document 2).
- C. Completed Non-Collusion Affidavit (Bid Form-Document 3).
- D. Completed Bidder's Bond or documentation in support of required Bidder's security. (Bid Form- Document 4).
- E. Completed Certification of Proposed Contractor Regarding Debarment, Suspension and other Ineligibility and Voluntary Exclusion (For Contracts over \$100,000). (Bid Form- Document 5)
- F. Completed Certification of Proposed Subcontractor regarding Debarment, Suspension and other Ineligibility and Voluntary Exclusion, if applicable (For Subcontracts over \$100,000) (Bid Form-Document 6)
- G. Completed Certification of Proposed Subcontractor regarding Debarment, Suspension and other Ineligibility and Voluntary Exclusion, if applicable (For subcontracts totaling \$100,000.00 or less) (Bid Form—Document 7)
- H. Disclosure of Governmental positions (Bid Form-Document 8)
- I. A statement listing each subcontractor who will perform work in excess of one-half percent of the total bid proposed for the project. Completion and submittal of Designation of Subcontractors. (Bid Form- Document 9).
- J. Completed Buy America Certificate (Bid Form- Document 10).

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- K Completed Certification Regarding Lobbying (Bid Form-Documnt 11)
- L Completed Disadvantaged Business Enterprise (DBE) Certificate-Statement of Compliance (Bid Form-Documnt 12).
- M Completed Apprenticeship Employment Certification (Bid Form-Documnt 13).
- N Completed Workers' Compensation Certification (Bid Form-Documnt 14)
- O Completed Conflict of Interest Statement (Bid Form-Documnt 15)
- P Completed Levine Disclosure Statement (Bid Form-Documnt 16).
- Q Completed Organizational Conflicts of Interest Statement (Bid Form-Documnt 17).
- R Completed Acknowledgment of Addenda (Bid Form- Documnt 18).

1.26 BID SUBMISSION

- A. To be considered, one (1) original of the bid must be received by 2 p.m. Pacific Standard time on August 23, 2012 at the Santa Cruz METRO Administrative Offices, 110 Vernon Street, Santa Cruz, California 95060, Attn: Erron Alvey, Purchasing Agent. **Bids received after the deadline or delivered to a different location will be returned, unopened.**
- B. Each bid must be submitted in a sealed envelope and be clearly marked to show the bidder's name and the contract name and number, without being opened. **Faxed or electronic bids will not be accepted. All portions of the Bid are to be completed before the Bid is submitted. Failure to do so may result in the bid being rejected as non-responsive.**
- C. All Bidders are put on notice that any collusive agreement fixing the prices to be bid so as to control or affect the awarding of this Contract is in violation of Santa Cruz METRO's competitive bidding requirements and may render void any Contract let under such circumstances.
- D. Any Bid submitted shall remain valid for a period of ninety (90) days from the date of the Bid Opening and cannot be withdrawn by the Bidder unless Santa Cruz METRO consents in writing. However, the successful Prime Contractor shall have no rights to the contract until the Contract has been fully executed by Santa Cruz METRO and a Notice to Proceed has been issued to the Prime Contractor.

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Document 3)

- C. If at any time it shall be found that the person, firm or corporation to whom a contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the contract so awarded shall be null and void and the Contractor and its bondsmen shall be liable to Santa Cruz METRO for all loss or damage which Santa Cruz METRO may suffer thereby and the Board of Directors may advertise for a new contract for construction of the Project.

1.30 WITHDRAWAL OF BIDS

A Bidder may withdraw its Bid at any time before the time established in the IFB for the opening of bids only by filing a written notice with the Purchasing Agent. An oral notice of withdrawal is ineffective.

1.31 SANTA CRUZ METRO RIGHTS

Santa Cruz METRO may investigate the qualifications of any Bidder under consideration inclusive of, but not limited to, the information provided in the Bid. Santa Cruz METRO may require confirmation of information furnished by the Bidder and require additional evidence of qualifications to perform the Work described in this IFB. Santa Cruz METRO reserves the right to:

- A. Reject any or all of the bids, at its discretion;
- B. Reject any bid that, in the opinion of Santa Cruz METRO, is so unbalanced in comparison to other bids received and/or to Santa Cruz METRO's internal estimates that it does not accurately reflect the cost to perform the Work;
- C. Cancel the entire IFB;
- D. Issue a subsequent IFB for the same public works project;
- E. Appoint an evaluation committee to review the bids;
- F. Seek the assistance of outside technical experts to evaluate bids;
- G. Disqualify the bid(s) upon evidence of collusion with intent to defraud or other illegal practices on the part of the Bidder(s); and
- H. Waive any errors or informalities in any bid or in the bidding procedure, to the extent permitted by law.
- I. This IFB does not commit Santa Cruz METRO to award or enter into a contract nor does it obligate Santa Cruz METRO to pay for any costs incurred.

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in the preparation and submission of bids or in anticipation of a contract.

- J. Santa Cruz METRO may reject the bid of any party who has been delinquent or unfaithful in any former contract with Santa Cruz METRO. Santa Cruz METRO may reject a bid from a Bidder who cannot satisfactorily prove that it is responsible as required in the IFB or whose Bid is not responsive.
- K. Bids may be rejected if they show such items as: any alteration of the Bid Form; additions not called for; conditional bids; incomplete bids, erasures; irregularities which make the bids incomplete, indefinite, or ambiguous; obviously unbalanced prices; no acceptable bid security; signature by other than an authorized person; addenda not properly acknowledged; failure to use designated Bid Form; bid materially fails to conform to the requirements of the bid documents or if the bid is not properly executed

1.32 RELIEF OF BIDDERS

A Bidder, after the bid opening, shall not be relieved of his or her bid unless Santa Cruz METRO consents in writing. The Bidder seeking relief shall submit a written request for its withdrawal to the Santa Cruz METRO Purchasing Agent as soon as possible but in no event later than within 5 working days of the bid opening. The request shall contain all facts and circumstances which substantiate how the mistake occurred. No change to the bid shall be made because of a mistake, as provided in Section 5100 et. seq. of the Public Contract Code. The Bidder is cautioned that, pursuant to Public Contract Code 5105, a Bidder who claims a mistake or who forfeits its Bid Security shall be prohibited from participating in further bidding on the project in which the mistake was claimed or security forfeited.

1.33 PROTEST PROCEDURES

Any Protest, Claim or Dispute related to this procurement must be filed in accordance with Santa Cruz METRO's Pre-Bid, Pre-Award and Post-Award Procurement Protest Procedures which are Part VII of the IFB.

FAILURE TO COMPLY WITH ANY OF THE REQUIREMENTS SET FORTH IN SANTA CRUZ METRO'S WRITTEN PROTEST PROCEDURES MAY RESULT IN REJECTION OF THE PROTEST.

1.34 AWARD OF CONTRACT

- A. Santa Cruz METRO will make an award to the lowest responsible bidder, whose bid is responsive to all the requirements of the IFB. Any such award will be made pursuant to a Notice of Award signed by Santa Cruz METRO within ninety (90) days after bid opening. If the lowest responsive, responsible Bidder refuses or fails to execute the contract, Santa Cruz METRO may

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3. BIDDERS' REQUESTS FOR CLARIFICATIONS:

General Questions

3.1 Can a Non-Union General Contractor bid this project as a prime?

Answer: Yes, as long as the Contract is followed, including the PLA.

3.2 What is the self-performance percentage requirement?

Answer: There is no self-performance percentage requirement for this project.

3.3 Reference ITB – 1.07G – “within 668 calendar days of Notice of Award”: Please confirm contract time starts upon issuance of NTP, not NOA.

Answer: Confirmed. The contract time starts upon issuance of the Notice to Proceed.

3.4 On Bid Form - Document 9, “Designation of Subcontractors,” is it ok to include location of business, such as city and state, in lieu of business address? An example would be “Santa Cruz, CA” instead of “159345 Pine Street, Santa Cruz, CA 95060.”

Answer: The name and the location (city and state) of the place of business of each subcontractor is acceptable instead of the full address of the subcontractor.

3.5 On Bid Form - Document 9, “Designation of Subcontractors,” is it ok to turn in the % of total bid 24 hours after bid opening?

Answer: No. The full bid price, including the subcontractor work, is due. Bids will be opened and read publicly on the due date. This price is binding and should be for the full amount of your bid.

3.6 Reference Bid Forms #6, #7, #8: Please confirm bidder may submit forms required for listed subcontractors within 48 hours following bid deadline rather than with bid.

Answer: For Bid Forms #6 and #7, bidder may submit forms for proposed subcontractors within two (2) business days following bid deadline. For Bid Form #8, bidder may submit form relating to proposed subcontractors' employees within two (2) business days following bid deadline; however, bidder must submit this form as it relates to bidder's own employees by the bid deadline.

3.7 In reference to the DBE percentage: Part 1 – 8, 1.13A Disadvantaged Business Enterprises states a national goal for participation of 10%. Part VI – 21 Attachment A states a DBE availability advisory of 1.32%. If I am reading this correctly, the DBE goal to achieve is 1.32%, correct?

Answer: Part one is correct, that is the national goal; however, our agency's annual goal is 1.54%. Our DBE program is outlined here: <http://www.scmtd.com/agency-info/bids-a-proposals>. I apologize for the discrepancy; this section of the IFB was prepared in 2008 and was not updated with the current goal. When we didn't have funding in 2008, it sat on the shelf for awhile.

3.8 How long has the site been in operation?

Answer: About 35 years.

3.9 Will an outfall be constructed?

Answer: There is another outfall that's being installed. We're applying for a Fish & Game permit. But I don't foresee any problems with that because we're using the same information/specifications as for the first outfall we installed for this site already.

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BID FORM – DOCUMENT 6

CERTIFICATION OF PROPOSED SUBCONTRACTOR REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

(For Subcontracts totaling over \$100,000)

(Subcontractor) _____ certifies to the best of its knowledge and belief, that it and its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

Have not within a three year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining; attempting to obtain or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

Have not within a three year period preceding this bid had one or more public transactions (Federal, State or local) terminated for cause or default.

Signature and Title of Authorized Official

If the Proposed Subcontractor is unable to certify to the statements in this certification, it shall attach an explanation to the certification below.

(Subcontractor) _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

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BID FORM – DOCUMENT 7

CERTIFICATION OF PROPOSED SUBCONTRACTOR REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION (For Subcontracts totaling \$100,000 or less)

(Subcontractor) _____ certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

Signature and Title of Authorized Official

If the Proposed Subcontractor is unable to certify to the statements in this certification, it shall attach an explanation to the certification below.

(Subcontractor) _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

ATTACHMENT D

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

Regulation Number: AR-1027

Computer Title: Protest.doc

Effective Date: February 12, 2009

Pages: 5

**TITLE: PRE-BID, PRE-AWARD AND POST-AWARD PROCUREMENT
PROTEST PROCEDURES**

Procedure History

NEW POLICY	SUMMARY OF POLICY
February 12, 2009	New Policy
October 15, 2012	Updated Address

(APPROVED)
L. W.


I. POLICY

- 1.01 It is the policy of the Santa Cruz Metropolitan Transit District (METRO) that it is responsible for resolving all Pre-Bid, Pre-Award and Post-Award Procurement Protest disputes arising out of third party procurements using good administrative practices and sound business judgment. It is METRO's intention that its procurement process provides for fair and open competition in compliance with federal and state laws and METRO policies.
- 1.02 METRO has established these Pre-Bid, Pre-Award and Post-Award Procurement Protest Policy and Procedures so that all procurement protests/disputes are filed, processed and resolved in a manner consistent with the requirements of the Federal Transit Administration (FTA) Circular (4220.1F) *Third Party Contracting Guidance*, dated November 1, 2008, which are on file at METRO's Administrative Offices, 110 Vernon Street, Santa Cruz, CA 95060, and available upon request.

II. APPLICABILITY

- 2.01 This regulation is applicable to all METRO employees.
- 2.02 This regulation is applicable to any Interested Party as defined herein who has a protest/dispute against METRO in the Pre-Bid, Pre-Award and Post-Award procurement phase.

III. DEFINITIONS:

- 3.01 "**Common Grant Rules**" refers to the Department of Transportation regulations "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18, which apply to Federal grants and cooperative

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Policy and Regulation

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agreements with governmental recipients of Federal assistance including Indian tribal governments.

- 3.02 **“Interested Party”** means a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue. A subcontractor does not qualify as an “interested party”.
- 3.03 **“Protest”** means a formal declaration of disapproval or objection issued by a concerned person, group, or organization that arises during the procurement process. A Protest is a potential bidder’s or contractor’s remedy for correcting a perceived wrong in the procurement process. See “Types of Protests” below.
- 3.04 **“Protester”** means a person, group, or organization that files a formal declaration of disapproval or objection. A protester must qualify as an “interested party”.
- 3.05 **“Types of Protests”**: There are three basic types of Protests pursuant to this regulation, based on the time in the procurement cycle when they occur:
- a.) A pre-bid or solicitation phase Protest is received prior to the bid opening or proposal due date. Pre-bid protests are those based on the content of the initial Notice and/or solicitation published by METRO requesting bids from vendors or other interested parties.
 - b.) A pre-award Protest is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract.
 - c.) A post-award Protest is a protest received after award of a contract. A post-award Protest must be received within 5 business days of the making of the award. A post-award Protest generally alleges a violation of applicable federal or state law and/or METRO policy or procedures relative to the seeking, evaluating and/or awarding of the contract.

IV. STANDARDS:

- 4.01 All Protests must be filed in writing with the METRO Administrative Offices, Finance Manager, Santa Cruz Metropolitan Transit District, 110 Vernon Street, Santa Cruz, CA 95060, or electronically at financemanager@scmtd.com. No other location is acceptable.
- 4.02 A Protest must be in writing and set forth the specific grounds of the dispute and shall be fully supported with technical data, test results, or other pertinent information related to the subject being protested. The Protest shall include the name and contact information of the Protester, solicitation/contract number or description, and what remedy the Protester is seeking. The Protester is responsible for adhering to this regulation.
- 4.03 A Protester must exhaust all of METRO’s administrative remedies before pursuing a protest with the FTA.

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- 4.04 METRO's Finance Manager shall make a determination on the Protest generally within ten (10) working days from receipt of the Protest. The Decision of the Finance Manager must be in writing and shall include a response to each substantive issue raised in the Protest.
- 4.05 Any Decision by the Finance Manager may be appealed to the Board of Directors. The Protester has the right within five (5) business days of receipt of the Finance Manager's Decision to file an appeal restating the basis of the Protest and the grounds of the appeal. In the appeal, the Protester is only permitted to raise information and issues previously provided in the Protest or discovered after the Protest was submitted to the Finance Manager for Decision and directly related to the grounds of the Protest. The Protester shall be provided with at least 72-hour notification of when the Board of Directors will hear the Appeal. The Protestor may appear, be represented and present evidence and testimony at the Appeal Hearing. The Board of Directors' decision shall constitute METRO's final administrative determination.
- 4.06 In the event that the Protester is not satisfied with METRO's Board of Directors' final administrative determination, he/she may proceed within 90 days of the final decision to State Court for judicial relief. The Superior Court of the State of California for the County of Santa Cruz is the appropriate judicial authority having the jurisdiction over Protest(s) and Appeal(s).
- 4.07 At any time, the Protester may request reconsideration of METRO's Final Decision if data or information becomes available that was not previously known, or there has been an error of law or regulations.
- 4.08 The Protester may withdraw its Protest or Appeal at any time before METRO issues a final decision.
- 4.09 If METRO postpones the date of proposal submission because of a Protest or Appeal of the solicitation specifications, addenda, dates or any other issue relating to the procurement, METRO will notify, via addendum, all parties who are on record as having obtained a copy of the solicitation documents that a Protest/Appeal had been filed, and the due date for proposal submission shall be postponed until METRO has issued its final Decision.
- 4.10 Reviews of Protests by FTA are limited to 1) METRO's failure to have or follow its protest procedures, or its failure to review a complaint or Protest; or 2) violations of Federal law or regulation.
- 4.11 A Protest Appeal to the FTA must be filed in accordance with the provisions of FTA Circular 4220.1F. Any appeal to the FTA shall be made not later than five (5) working days after a final decision is rendered under METRO's protest procedure. Protest appeals should be filed with:

ATTACHMENT D

Federal Transit Administration
Regional Administrator Region IX
201 Mission Street, Suite 1650
San Francisco, CA 94105-1839

Telephone: (415) 744-3133
Fax: (415) 744-2726

V. METRO Responsibilities to FTA

- 5.01 METRO's Finance Manager will notify the FTA when he/she receives a third party contract protest to which the FTA Circular (4220.1F) *Third Party Contracting Guidance* applies, and will keep the FTA informed about the status of the Protest including any appeals.
- 5.02 METRO's Finance Manager will provide the following information to FTA:
- a. Subjects: A list of Protests involving third party contracts and potential third party contracts that:
 - (a) Have a value exceeding \$100,000, or
 - (b) Involve controversial matter, irrespective of amount, or
 - (c) Involve a highly publicized matter, irrespective of amount
 - b. Details: The following information about each Protest:
 - (a) A brief description of the Protest,
 - (b) The basis of disagreement, and
 - (c) If open, how far the Protest has proceeded, or
 - (d) If resolved, the agreement or decision reached, and
 - (e) Whether an appeal has been taken or is likely to be taken.
 - c. When and Where: METRO will provide this information:
 - (a) In its next quarterly Milestone Progress Report, and
 - (b) At its next Project Management Oversight review, if any.
 - d. FTA Officials to Notify: When METRO's Board of Directors denies a bid Protest, and an appeal is likely to occur, METRO's Finance Manager will inform the FTA Regional Administrator for Region IX, or the FTA Associate Administrator for the program office administering a headquarters project directly about the likely appeal.
- 5.03 METRO's Finance Manager will disclose information about any third party procurement Protest to FTA upon request. FTA reserves the right to require METRO to provide copies of a particular Protest or all Protests, and any or all related supporting documents, as FTA may deem necessary.

ATTACHMENT D

Policy and Regulation
Page 5 of 5

VI. ADMINISTRATION OF REGULATION

6.01 METRO will integrate the Protest Policy and Procedures into their Policies and Procedures.

ATTACHMENT E

IFB 12-23

Subcontractors listed on Document #9 and the related Certifications (6/7 & 8)

Documents submitted by September 14, 2012 (two business days after bid due date)

West Bay Builders

Name as Written on Document #9, Designation of Subcontractors	Document 6 Submitted	Issue Noted	Document 7 Submitted	Issue Noted	Document 8 Submitted	Issue Noted	Additional Issue
Monterey Peninsula Engineering	✓	No form		No form	✓	No form	
Foundation Constructors	✓				✓		
Landavazo Brothers	✓		✓		✓		
Quality Landscape Service					✓		
Gerdau	✓				✓		
Southwest Steel	✓				✓		
Westech			✓	Both certs signed	✓		
Alumawall	✓				✓		
Alcal	✓	Both certs signed			✓	Blank	
Provision	✓				✓	Blank	
MGM Drywall	✓				✓		
California Tile Installers			✓		✓		
Harry L Murphy			✓	Both certs signed	✓		
D Martinez			✓		✓		
Wilson Fire Sprinkler	✓	Both certs signed			✓		
ThysenKrupp			✓		✓		
George H Wilson	✓				✓		
Collins Electrical	✓				✓		
Peck & Hiller	✓				✓		

ATTACHMENT E

IFB 12-23

Subcontractors listed on Document #9 and the related Certifications (6/7 & 8)

Documents submitted by September 14, 2012 (two business days after bid due date)

Zovich Construction

Name as Written on Document #9, Designation of Subcontractors	Document 6 Submitted	Issue Noted	Document 7 Submitted	Issue Noted	Document 8 Submitted	Issue Noted	Additional Issue
A&S	✓		✓		✓		
Dura Venables	✓				✓		
Quality Landscape			✓		✓		
Foundation Cont	✓				✓		
Landvazo	✓				✓		
CMC	✓	Both certs signed			✓		
South West Steel	✓				✓		
Diamond			✓		✓		
Alcal	✓				✓	Not signed	
Bellcore	✓				✓		
Barton	✓				✓		
Lincoln	✓				✓		
DVD	✓				✓		
CTI			✓		✓		
Harry L. Murphy			✓		✓		
Northern Design Inc.				Name typed, not signed	✓	Name typed, not signed	
ThyssenKruitt			✓		✓		
Bell Weather			✓		✓		
George Family		No form 6 or 7		No form 6 or 7		No form	
Geo W/Ilson	✓				✓		
Collins	✓				✓		

ATTACHMENT E

IFB 12-23

Subcontractors listed on Document #9 and the related Certifications (6/7 & 8)

Documents submitted by September 14, 2012 (two business days after bid due date)

Lewis C. Nelson and Sons, Inc.

Name as Written on Document #9, Designation of Subcontractors	Document 6 Submitted	Issue Noted	Document 7 Submitted	Issue Noted	Document 8 Submitted	Issue Noted	Additional Issue
A.S. Demo		No form		No form		No form	
Granite Rock		No form		No form		No form	
Granite Rock		No form		No form		No form	
Foundation		No form		No form		No form	
alamillo		No form		No form		No form	
Rising Sun		No form		No form		No form	
Robyn		No form		No form		No form	
Pacific		No form		No form		No form	
Robyn		No form		No form		No form	
Atcal		No form		No form		No form	
San Joaquin Glass		No form		No form		No form	
U-Neac		No form		No form		No form	
Harry Murphy		No form		No form		No form	
Thyssenkrupp		No form		No form		No form	
Granite Rock		No form		No form		No form	
Geo H. Wilson		No form		No form		No form	
J.M. Electric		No form		No form		No form	
Wilson		No form		No form		No form	
Robyn		No form		No form		No form	
STS		No form		No form		No form	

ATTACHMENT E

IFB 12-23

Subcontractors listed on Document #9 and the related Certifications (6/7 & 8)

Documents submitted by September 14, 2012 (two business days after bid due date)

C. Overa & Co.

Name as Written on Document #9, Designation of Subcontractors	Document 6 Submitted	Issue Noted	Document 7 Submitted	Issue Noted	Document 8 Submitted	Issue Noted	Additional Issue
Collins Electric	✓				✓		
Landavazo	✓		✓		✓		Both #6 and #7 were submitted -- should be one or the other
ThyssenKrupp	✓		✓		✓		Both #6 and #7 were submitted -- should be one or the other
Harris Salinas	✓		✓		✓		Both #6 and #7 were submitted -- should be one or the other
Peck & Hiller	✓		✓		✓		Both #6 and #7 were submitted -- should be one or the other
Foundations Constructors	✓		✓		✓		
Duran & Venables	✓		✓		✓		Both #6 and #7 were submitted -- should be one or the other
Sherman Louche	✓		✓	Both certs signed	✓	No form	
Alcal	✓	Not signed			✓	Blank	
Pacific Glazing	✓		✓		✓		Both #6 and #7 were submitted -- should be one or the other
MGM	✓		✓		✓		Both #6 and #7 were submitted -- should be one or the other
Harry Murphy	✓	Both certs signed	✓	Both certs signed	✓		Both #6 and #7 were submitted -- should be one or the other
Geo H. Wilson	✓				✓		
Southwest	✓				✓		
Belcore	✓		✓		✓		Both #6 and #7 were submitted -- should be one or the other
Western States	✓	Not signed	✓	Both certs signed	✓	Blank	Both #6 and #7 were submitted -- should be one or the other
Alta Vista - Not listed on Document #9			✓	Both certs signed	✓	Blank	Not a listed subcontractor

ATTACHMENT E

IFB 12-23

Subcontractors listed on Document #9 and the related Certifications (6/7 & 8)

Documents submitted by September 14, 2012 (two business days after bid due date)

F & H Construction

Name as Written on Document #9, Designation of Subcontractors	Document 6 Submitted	Issue Noted	Document 7 Submitted	Issue Noted	Document 8 Submitted	Issue Noted	Additional Issue
Granite Rock dba Pavex Construction Division		No form		No form		No form	
Stone and Graf, Inc.		No form		No form		No form	
Quality Landscape		No form		No form		No form	
Second Hiller		No form		No form		No form	
Gerreau Reinforcing Steel		No form		No form		No form	
Alport Steel		No form		No form		No form	
Diamond Coating		No form		No form		No form	
ALCAL Specialty Contracting		No form		No form		No form	
Temper Construction		No form		No form		No form	
ALCAL Specialty Contracting		No form		No form		No form	
Overhead Door		No form		No form		No form	
Lincoln Glass + Mirror Co.		No form		No form		No form	
Urbac Framing		No form		No form		No form	
California Tile		No form		No form		No form	
Central Coast Interiors		No form		No form		No form	
Harry L. Murphy Inc		No form		No form		No form	
Whinn's Painting Co.		No form		No form		No form	
Wilson Fire Sprinklers, Inc		No form		No form		No form	
Smithsen Krupp		No form		No form		No form	
George H. Wilson, Inc.		No form		No form		No form	
Collins Electrical		No form		No form		No form	

ATTACHMENT E

IFB 12-23

Subcontractors listed on Document #9 and the related Certifications (6/7 & 8)

Documents submitted by September 14, 2012 (two business days after bid due date)

Otto Construction

Name as Written on Document #9, Designation of Subcontractors	Document 6 Submitted	Issue Noted	Document 7 Submitted	Issue Noted	Document 8 Submitted	Issue Noted	Additional Issue
Stroer & Graff	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Quality Landscape	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Peck & Hiller	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Dolan	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Harris-Salinas	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Southwest Steel	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Sherman Loehr	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Bellcore	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
AlCal	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Smith Co	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
Signature Glass	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
U-Neac	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Gina Rinaldi	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Central Coast	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Harry L. Murphy	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
D. Martinez	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Thyssen-Krupp	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
George Wilson	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Bell Weather	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Collins Electrical	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
NCM	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
Granite Rock	✓	No form	✓	No form	✓	No form	Both #6 and #7 were submitted – should be one or the other
B-K Mill – Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
Northern Design Inc. - Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
FD Thomas Inc. - Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
Whelan Building Specialties - Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
Canyon Insulation, Inc. - Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
California Tile Installers - Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
Compass Engineering Contractors, Inc. - Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
Consolidated Partitions, Inc. - Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
Earth Shelter Developers - Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
Alpha Air Balancing Agency, Inc. - Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
Inner Space Engineering Corp - Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other
John D. Wait Masonry, Inc. - Not listed on Document #9	✓	Both certs signed	✓	Both certs signed	✓	No form	Both #6 and #7 were submitted – should be one or the other

ATTACHMENT E

IFB 12-23

Subcontractors listed on Document #9 and the related Certifications (6/7 & 8)

Documents submitted by September 14, 2012 (two business days after bid due date)

S.J. Amoroso Construction Co., Inc.

Name as Written on Document #9, Designation of Subcontractors	Document 6 Submitted	Issue Noted	Document 7 Submitted	Issue Noted	Document 8 Submitted	Issue Noted	Additional Issue
A & F Metals		No form		No form		No form	
Duran + Venables inc.		No form		No form		No form	
RC Underground		No form		No form		No form	
Foundation Constructors inc.		No form		No form		No form	
Harris Salinas Rebar inc.		No form		No form		No form	
Rising Sun Company inc.		No form		No form		No form	
R H Concrete Contractors		No form		No form		No form	
Pacific Metal Fabricators		No form		No form		No form	
Danco Waterproofing		No form		No form		No form	
Alcal		No form		No form		No form	
Balfiore Construction		No form		No form		No form	
Capitol Glass Company inc.		No form		No form		No form	
MGM Drywall inc.		No form		No form		No form	
Harry L. Murphy inc.		No form		No form		No form	
California Tile Installers inc.		No form		No form		No form	
Northern Devine inc.		No form		No form		No form	
Frontier Fire Protection inc.		No form		No form		No form	
Thyssenkrupp Elevator Corp		No form		No form		No form	
Geo H. Wilson inc.		No form		No form		No form	
Collins Electrical Company inc.		No form		No form		No form	

ATTACHMENT E

IFB 12-23

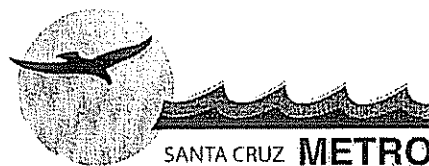
Subcontractors listed on Document #9 and the related Certifications (6/7 & 8)

Documents submitted by September 14, 2012 (two business days after bid due date)

Robbelen Contracting, Inc.

Name as Written on Document #9, Designation of Subcontractors	Document 6 Submitted	Issue Noted	Document 7 Submitted	Issue Noted	Document 8 Submitted	Issue Noted	Additional Issue
GRANITE ROCK		No form		No form		No form	
FOUNDATION CONSTRUCTORS		No form		No form		No form	
QUALITY LANDSCAPE SERVED		No form		No form		No form	
GERDAU		No form		No form		No form	
RIISING SUN CO.		No form		No form		No form	
BAS MANUFACTURE		No form		No form		No form	
DANGO WATERPROOFING		No form		No form		No form	
BELCORE CONSTRUCTION		No form		No form		No form	
AICAL SPECIALTY		No form		No form		No form	
LINCOLN GLASS & MIRROR		No form		No form		No form	
U-NEAC FRAMING & DRWALL		No form		No form		No form	
GINO RINALDI TILE		No form		No form		No form	
ACOUSTIC SOLUTIONS		No form		No form		No form	
HARRY L. MURPHY		No form		No form		No form	
D. MARTINEZ PAINTING		No form		No form		No form	
LOWY		No form		No form		No form	
THYSSEN KRUP		No form		No form		No form	
GEORG H. WILSON		No form		No form		No form	
COLLINS ELECTRIC		No form		No form		No form	
RH CONCRETE		No form		No form		No form	

ATTACHMENT F



November 21, 2012

West Bay Builders, Inc.
Attention Clayton Fraser
250 Bel Marin Keys Blvd., Building A
Novato, CA 94949

Re: IFB 12-23 Change in Subcontractor Documents Requirement and Date of Hearing

Dear Mr. Fraser,

Your firm participated in the bidding for the Judy K. Souza Operations Facility, Parking Structure and Related Site Work. On November 9, 2012, you were notified that Santa Cruz METRO staff was recommending that its Board of Directors find some bidders nonresponsive based on failure to submit the required subcontractor certification forms (Bid Items #6, 7, and 8). While your firm did submit the required subcontractor certification forms, they contained some correctible irregularities.

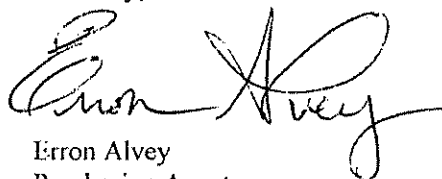
Upon further review, Santa Cruz METRO staff is changing its recommendation. Santa Cruz METRO staff will be recommending that the failure to have the subcontractor certification forms in by the deadline is an immaterial irregularity that should not result in a bid being determined to be nonresponsive.

If the Santa Cruz METRO Board of Directors follows this recommendation, only the firm recommended for award will be required to submit all required and applicable forms and/or correct any irregularities in the forms already submitted. The awardee will submit and/or correct irregularities in these forms within two business days from the Santa Cruz METRO Board of Directors approving award of the contract.

Also, please be advised that the **Bid Review Hearing has been rescheduled for December 7, 2012 at 9:00 AM.**

Should you have any questions, or need any additional information, my email address is ealvey@scmtd.com, or you can contact me by telephone at (831) 426-0199

Sincerely,



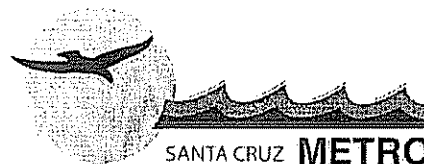
Erron Alvey
Purchasing Agent

cc: McInerney & Dillon

*110 Vernon Street, Santa Cruz, CA 95060 (831) 426-0199, Fax (831) 469-1958
METRO online at <http://www.scmtd.com>*

8.f1

ATTACHMENT F



November 21, 2012

Zovich Construction
Attention Tammy Enos
2485 Technology Dr.
Hayward, CA 94545

Re: IFB 12-23 Change in Subcontractor Documents Requirement and Date of Hearing

Dear Ms. Enos,

Your firm participated in the bidding for the Judy K. Souza Operations Facility, Parking Structure and Related Site Work. On November 9, 2012, you were notified that Santa Cruz METRO staff was recommending that its Board of Directors find some bidders nonresponsive based on failure to submit the required subcontractor certification forms (Bid Items #6, 7, and 8). While your firm did submit the required subcontractor certification forms, they contained some correctible irregularities.

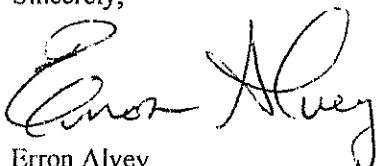
Upon further review, Santa Cruz METRO staff is changing its recommendation. Santa Cruz METRO staff will be recommending that the failure to have the subcontractor certification forms in by the deadline is an immaterial irregularity that should not result in a bid being determined to be nonresponsive.

If the Santa Cruz METRO Board of Directors follows this recommendation, only the firm recommended for award will be required to submit all required and applicable forms and/or correct any irregularities in the forms already submitted. The awardee will submit and/or correct irregularities in these forms within two business days from the Santa Cruz METRO Board of Directors approving award of the contract.

Also, please be advised that the **Bid Review Hearing has been rescheduled for December 7, 2012 at 9:00 AM.**

Should you have any questions, or need any additional information, my email address is ealvey@scmttd.com, or you can contact me by telephone at (831) 426-0199.

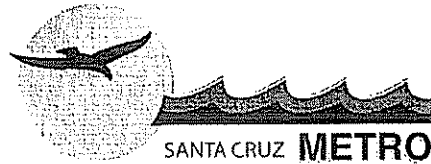
Sincerely,



Erron Alvey
Purchasing Agent

*110 Vernon Street, Santa Cruz, CA 95060 (831) 426-0199, Fax (831) 469-1958
METRO online at <http://www.scmttd.com>*

ATTACHMENT F



November 21, 2012

Lewis C. Nelson and Sons, Inc.
Attention Anthony Aguilar
3400 McCall Avenue, Suite 100
Selma, CA 93662

Re: IFB 12-23 Change in Subcontractor Documents Requirement and Date of Hearing

Dear Mr. Aguilar,

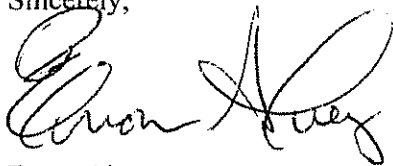
Your firm participated in the bidding for the Judy K. Souza Operations Facility, Parking Structure and Related Site Work. On November 9, 2012, you were notified that Santa Cruz METRO staff was recommending that its Board of Directors find your bid nonresponsive based on failure to submit the required subcontractor certification forms (Bid Items #6, 7, and 8). Upon further review, Santa Cruz METRO staff is changing its recommendation. Santa Cruz METRO staff will be recommending that the failure to have the subcontractor certification forms in by the deadline is an immaterial irregularity that should not result in a bid being determined to be nonresponsive.

If the Santa Cruz METRO Board of Directors follows this recommendation, only the firm recommended for award will be required to submit all required and applicable forms. The awardee will submit these forms within two business days from the Santa Cruz METRO Board of Directors approving award of the contract.

Also, please be advised that the **Bid Review Hearing has been rescheduled for December 7, 2012 at 9:00 AM.**

Should you have any questions, or need any additional information, my email address is calvey@scmttd.com, or you can contact me by telephone at (831) 426-0199.

Sincerely,



Erron Alvey
Purchasing Agent

cc: Murphy Austin Adams Schoenfeld LLP

*110 Vernon Street, Santa Cruz, CA 95060 (831) 426-0199, Fax (831) 469-1958
METRO online at <http://www.scmttd.com>*

ATTACHMENT F



November 21, 2012

C. Overaa & Co.
Attention Larry Etcheverry
200 Parr Blvd.
Richmond, CA 94801

Re: IFB 12-23 Change in Subcontractor Documents Requirement and Date of Hearing

Dear Mr. Etcheverry,

Your firm participated in the bidding for the Judy K. Souza Operations Facility, Parking Structure and Related Site Work. On November 9, 2012, you were notified that Santa Cruz METRO staff was recommending that its Board of Directors find some bidders nonresponsive based on failure to submit the required subcontractor certification forms (Bid Items #6, 7, and 8). While your firm did submit the required subcontractor certification forms, they contained some correctible irregularities.

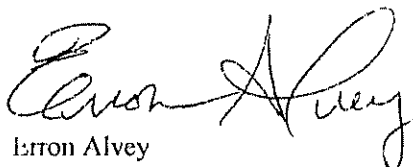
Upon further review, Santa Cruz METRO staff is changing its recommendation. Santa Cruz METRO staff will be recommending that the failure to have the subcontractor certification forms in by the deadline is an immaterial irregularity that should not result in a bid being determined to be nonresponsive.

If the Santa Cruz METRO Board of Directors follows this recommendation, only the firm recommended for award will be required to submit all required and applicable forms and/or correct any irregularities in the forms already submitted. The awardee will submit and/or correct irregularities in these forms within two business days from the Santa Cruz METRO Board of Directors approving award of the contract.

Also, please be advised that the **Bid Review Hearing has been rescheduled for December 7, 2012 at 9:00 AM.**

Should you have any questions, or need any additional information, my email address is ealvey@scmtd.com, or you can contact me by telephone at (831) 426-0199.

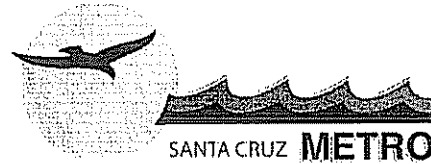
Sincerely,



Erron Alvey
Purchasing Agent

*110 Vernon Street, Santa Cruz, CA 95060 (831) 426-0199, Fax (831) 469-1958
METRO online at <http://www.scmtd.com>*

ATTACHMENT F



November 21, 2012

F & H Construction
Attention Stephen Scibly
P.O. Box 2329
Lodi, CA 95241

Re: IFB 12-23 Change in Subcontractor Documents Requirement and Date of Hearing

Dear Mr. Scibly,

Your firm participated in the bidding for the Judy K. Souza Operations Facility, Parking Structure and Related Site Work. On November 9, 2012, you were notified that Santa Cruz METRO staff was recommending that its Board of Directors find your bid nonresponsive based on failure to submit the required subcontractor certification forms (Bid Items #6, 7, and 8). Upon further review, Santa Cruz METRO staff is changing its recommendation. Santa Cruz METRO staff will be recommending that the failure to have the subcontractor certification forms in by the deadline is an immaterial irregularity that should not result in a bid being determined to be nonresponsive.

If the Santa Cruz METRO Board of Directors follows this recommendation, only the firm recommended for award will be required to submit all required and applicable forms. The awardee will submit these forms within two business days from the Santa Cruz METRO Board of Directors approving award of the contract.

Also, please be advised that the **Bid Review Hearing has been rescheduled for December 7, 2012 at 9:00 AM.**

Should you have any questions, or need any additional information, my email address is ealvey@scmtd.com, or you can contact me by telephone at (831) 426-0199.

Sincerely,

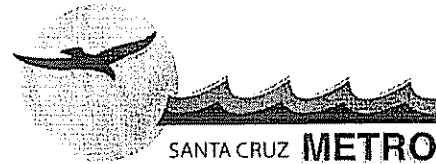
A handwritten signature in black ink, appearing to read "Erron Alvey", written in a cursive style.

Erron Alvey
Purchasing Agent

*110 Vernon Street, Santa Cruz, CA 95060 (831) 426-0199, Fax (831) 469-1958
METRO online at <http://www.scmtd.com>*

8.f5

ATTACHMENT F



November 21, 2012

Otto Construction
Attention Rick Valine
1717 2nd Street
Sacramento, CA 95811

Re: IFB 12-23 Change in Subcontractor Documents Requirement and Date of Hearing

Dear Mr. Valine,

Your firm participated in the bidding for the Judy K. Souza Operations Facility, Parking Structure and Related Site Work. On November 9, 2012, you were notified that Santa Cruz METRO staff was recommending that its Board of Directors find some bidders nonresponsive based on failure to submit the required subcontractor certification forms (Bid Items #6, 7, and 8). While your firm did submit the required subcontractor certification forms, they contained some correctible irregularities.

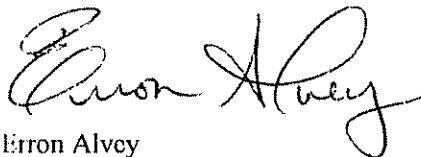
Upon further review, Santa Cruz METRO staff is changing its recommendation. Santa Cruz METRO staff will be recommending that the failure to have the subcontractor certification forms in by the deadline is an immaterial irregularity that should not result in a bid being determined to be nonresponsive.

If the Santa Cruz METRO Board of Directors follows this recommendation, only the firm recommended for award will be required to submit all required and applicable forms and/or correct any irregularities in the forms already submitted. The awardee will submit and/or correct irregularities in these forms within two business days from the Santa Cruz METRO Board of Directors approving award of the contract.

Also, please be advised that the **Bid Review Hearing has been rescheduled for December 7, 2012 at 9:00 AM.**

Should you have any questions, or need any additional information, my email address is ealvey@scmtd.com, or you can contact me by telephone at (831) 426-0199

Sincerely,

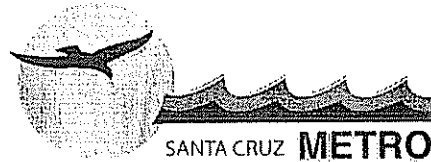


Erron Alvey
Purchasing Agent

*110 Vernon Street, Santa Cruz, CA 95060 (831) 426-0199, Fax (831) 469-1958
METRO online at <http://www.scmtd.com>*

8.f6

ATTACHMENT F



November 21, 2012

S.J. Amoroso Construction Co., Inc.
Attention Dana C. McManus
390 Bridge Parkway
Redwood Shores, CA 94065

Re: IFB 12-23 Change in Subcontractor Documents Requirement and Date of Hearing

Dear Mr. McManus,

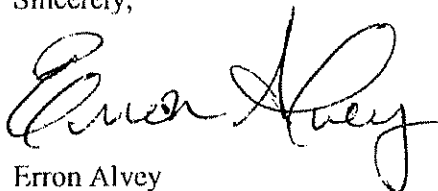
Your firm participated in the bidding for the Judy K. Souza Operations Facility, Parking Structure and Related Site Work. On November 9, 2012, you were notified that Santa Cruz METRO staff was recommending that its Board of Directors find your bid nonresponsive based on failure to submit the required subcontractor certification forms (Bid Items #6, 7, and 8). Upon further review, Santa Cruz METRO staff is changing its recommendation. Santa Cruz METRO staff will be recommending that the failure to have the subcontractor certification forms in by the deadline is an immaterial irregularity that should not result in a bid being determined to be nonresponsive.

If the Santa Cruz METRO Board of Directors follows this recommendation, only the firm recommended for award will be required to submit all required and applicable forms. The awardee will submit these forms within two business days from the Santa Cruz METRO Board of Directors approving award of the contract.

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Should you have any questions, or need any additional information, my email address is ealvey@scmtd.com, or you can contact me by telephone at (831) 426-0199.

Sincerely,



Erron Alvey
Purchasing Agent

*110 Vernon Street, Santa Cruz, CA 95060 (831) 426-0199, Fax (831) 469-1958
METRO online at <http://www.scmtd.com>*

8.f7

ATTACHMENT F



November 21, 2012

Roebelen Contracting, Inc.
Attention Robert J. Kjome
1241 Hawks Flight Court
El Dorado Hills, CA 95762

Re: IFB 12-23 Change in Subcontractor Documents Requirement and Date of Hearing

Dear Mr. Kjome,

Your firm participated in the bidding for the Judy K. Souza Operations Facility, Parking Structure and Related Site Work. On November 9, 2012, you were notified that Santa Cruz METRO staff was recommending that its Board of Directors find your bid nonresponsive based on failure to submit the required subcontractor certification forms (Bid Items #6, 7, and 8). Upon further review, Santa Cruz METRO staff is changing its recommendation. Santa Cruz METRO staff will be recommending that the failure to have the subcontractor certification forms in by the deadline is an immaterial irregularity that should not result in a bid being determined to be nonresponsive.

If the Santa Cruz METRO Board of Directors follows this recommendation, only the firm recommended for award will be required to submit all required and applicable forms. The awardee will submit these forms within two business days from the Santa Cruz METRO Board of Directors approving award of the contract.

Also, please be advised that the **Bid Review Hearing has been rescheduled for December 7, 2012 at 9:00 AM.**

Should you have any questions, or need any additional information, my email address is ealvey@scmtd.com, or you can contact me by telephone at (831) 426-0199.

Sincerely,

A handwritten signature in black ink that reads "Erron Alvey". The signature is written in a cursive style with a large, sweeping initial "E".

Erron Alvey
Purchasing Agent

*110 Vernon Street, Santa Cruz, CA 95060 (831) 426-0199, Fax (831) 469-1958
METRO online at <http://www.scmtd.com>*

8.f8

ATTACHMENT G

SMITH & BROCKHAGE, LLP

3480 BUSKIRK AVENUE, SUITE 200
PLEASANT HILL, CALIFORNIA 94523

Telephone: (925) 296-0636
Facsimile: (925) 296-0640

RANDALL M. SMITH
rms@smithbrock.com

December 3, 2012

Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
110 Vernon Street
Santa Cruz, CA 95060

Re: Project: Construction of the Judy K. Souza Operations Facility Parking
Structure and Related Site Work
Santa Cruz METRO IFB No. 12-23
Our File No.: 7594.1

Ladies/Gentlemen:

We represent C. Overaa & Co ("Overaa"), one of the bidders for the contract (the "Contract") for the above-referenced project (the construction of the Judy K. Souza Operations Facility Parking Structure and Related Site Work).

We are submitting this letter, on Overaa's behalf, to protest the bid submitted by Lewis C. Nelson and Sons, Inc. ("LCN") for that project, and the making of any award to LCN in connection with that project. This is a formal protest, by Overaa, pursuant to Part VII of the Information for Bids. The bases for this protest are set forth below.

The California Subletting and Subcontracting Fair Practices Act requires that bidders on public works projects state, in their bids, the name and location of the place of business of each subcontractor performing work in excess of one-half of one percent of the prime contractor's total bid, and the portion of the work that will be done by each such listed subcontractor. Public Contract Code section 4104.

The Santa Cruz Metropolitan Transit District (the "District") specifically called attention to the requirements of the California Subletting and Subcontracting Fair Practices Act, and incorporated them by reference. Instructions to Bidders, 1.18B. The District further specifically stated that each bidder was required to submit with its bid

ATTACHMENT G

Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
December 3, 2012
Page 2

the names and locations of the place of business of each subcontractor who will perform work in an amount in excess of one-half of one percent of the amount of the prime contractor's total bid, and to state the portion of work to be done by each subcontractor. Instructions to Bidders, 1.18A and 1.25I

There are a number of deficiencies in LCN's subcontractor listings which make LCN's bid non-responsive.

For example, LCN listed "Pacific" for the steel work, and stated that "Pacific" was located in Stockton, California. This vague listing did not adequately identify the subcontractor for the steel work. There are hundreds of contractors listed on the website of the California Contractors State License Board that have names beginning with the word "Pacific," including at least two that have current and active Class B (General Building Contractor) licenses, and at least two that have Class A (General Engineering Contractor) licenses.¹ There are many more contractors who have the word "Pacific" somewhere in their names.

Accordingly, no specific subcontractor was identified for the steel work in LCN's bid.

Approximately two months after bid opening, LCN submitted Documents 6, 7 and 8 to the District which indicated that LCN planned to subcontract to "Monterey Mechanical Co., dba Pacific Metal Fabricators." Both the California State License Board's website and the California Secretary of State's website state that Monterey Mechanical Co.'s address is in Oakland – not Stockton. Moreover, the California State License Board's website does not contain any listing for Pacific Metal Fabricator, as a dba or otherwise. Furthermore, although corporations who regularly transact business in California under a fictitious name are required to file a fictitious name statement with

¹ Pacific Construction (License No. 959699), and Pacific Metro Electric, Inc. (License No. 701614) have Class B licenses, while Pacific Northwest Oil (License No. 705296) and Pacific Southwest Litigation Corp. (License No. 935461) have Class A licenses.

ATTACHMENT G

Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
December 3, 2012
Page 3

the clerk of the county in which it has its principal place of business (Business and Professions Code section 17915), there is no fictitious name statement for Pacific Metal Fabricators on file in Alameda County, the county where Monterey Mechanical Co.'s principal place of business is located.

Most importantly, because LCN only put "Pacific" on its subcontractor list for the steel work, it was impossible to determine from that listing who the specific entity was that would be performing the steel work. This violates the basic purpose and intent of the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100, et. seq.).

The Act is designed to prevent bidders from being able to negotiate with different potential subcontractors after bids are submitted, in order to prevent bid shopping and bid peddling. Public Contract Code section 4104; *Titan Electric Corp v Los Angeles Unified School District*, 160 Cal.App 4th 188, 202 (2008); *Valley Crest Landscape, Inc v. City Council of the City of Davis*, 41 Cal.App 4th 1432, 1439-1440 (1996). Thus, "[i]f a certain subcontractor is listed, for example, as performing the masonry work, the public entity can determine that particular subcontractor is performing the masonry work, and not another subcontractor that was procured to perform at a lower cost." *Valley Crest Landscape, Inc v City Council of the City of Davis, supra* at 1440.

Here, since LCN did not identify a particular subcontractor for the steel work, it could have negotiated with a number of subcontractors after bid for the performance of that work. For example, it could have negotiated with and decided, after bid, to use Pacific Construction of Stockton for that work, instead of Monterey Mechanical Co.

Indeed, because LCN did not turn in Forms 6, 7 and 8 until approximately two months after bid (even though, pursuant to Addendum No. 1, they were supposed to be submitted within two business days after bid), LCN has had approximately two months to decide which subcontractor who could be referred to by the name "Pacific" to subcontract the steel work to.

ATTACHMENT G

Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
December 3, 2012
Page 4

This gave LCN a competitive advantage over bidders who properly identified their subcontractors on their subcontractor listings. It does not matter what use LCN made or did not make of this competitive advantage. Because it had an actual competitive advantage over the other bidders, its failure to specifically identify a particular subcontractor for the steel work cannot be waived as a minor irregularity. *See, Valley Crest Landscape, Inc. v. City Council of the City of Davis, supra* at 1442

There are similar problems with LCN's listing of other subcontractors. For example, LCN listed "A.S. Demo" for the demolition work, and stated that "A.S. Demo" is located in Los Banos. Yet, there is no such contractor listed on the Contractor's State License Board's website, and there is no such entity listed on the California Secretary of State's website. Accordingly, by listing a fictional entity, LCN gave itself the opportunity to decide, after bid opening, who to subcontract the demolition work to. Based on the Documents 6, 7 and 8 which LCN belatedly submitted to the District, it appears that LCN has decided to use SGS Recycling Enterprises, Inc., whose principal office is in Castroville, for the demolition work. Yet, LCN failed to list this entity for the demolition work on the subcontractor list which it submitted with its bid.

LCN also listed "STS" for the "Traffic Coating" work. Yet, there is no licensed contractor with that name, or any similar name, on the Contractor's State License Board website, and we were unable to locate any such contractor on the California Secretary of State's website.

There are also problems with the Document 6, Document 7 and Document 8 forms submitted by LCN. For example, on the list of subcontractors it submitted with its bid LCN listed J.M. Electric as its subcontractor for the electrical work. Yet, LCN failed to submit any Document 6, Document 7 or Document 8 form for J.M. Electric

ATTACHMENT G

Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
December 3, 2012
Page 5

Also, LCN submitted Document 6, Document 7 and Document 8 forms for "LML Enterprises, Inc." (on Documents 6 and 7) and "LNL Enterprises, Inc." (on Document 8). Yet, on the subcontractor listing form which LCN submitted with its bid, LCN did not list LML Enterprises, Inc. or LNL Enterprises, Inc. Pursuant to the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100, et. seq), LCN cannot use a subcontractor not listed on the subcontractor listing that it submitted with its bid

In *MCM Construction, Inc v City and County of San Francisco*, 66 Cal App 4th 359 (1998), and *Valley Crest Landscape, inc v City Council of the City of Davis, supra*, it was held that a bid must be rejected if the bidder makes mistakes on its subcontractor listing form or fails to provide the information that must be included on that form. In these decisions, the Courts held that such mistakes and omissions give a bidder an actual advantage over other bidders because it has the opportunity to decide, after bid, whether or not to withdraw its bid pursuant to Public Contract Code section 5103. Accordingly, in each of these decisions, the Court held that the public entity had no choice except to reject a bid which did not accurately provide the information required on the subcontractor listing form. Accordingly, the District is legally required to reject LCN's bid.

We also note that the Instructions to Bidders, 1.31K, provides that the District may reject bids that contain "irregularities which make the bids incomplete, indefinite or ambiguous" or "if the bid materially fails to conform to the requirements of the bid documents." Here, LCN submitted a subcontractor listing form which was clearly indefinite and ambiguous as to the identities of several of the listed subcontractors, and materially failed to conform to the bidding requirements. As discussed above, by doing so, LCN gave itself a competitive advantage not enjoyed by other bidders: the opportunity to bid shop and bid peddle after bid

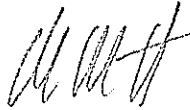
ATTACHMENT G

Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
December 3, 2012
Page 6

For the reasons set forth above, Overaa respectfully requests that the District reject LCN's bid, and that the District not award the Contract for the above-referenced project to LCN.

Very truly yours,

SMITH & BROCKHAGE, LLP



Randall M. Smith

RMS:mt

7594 1/Santa Cruz Metro Letter re Judy K Souza Parking Structure Letter.doc

ATTACHMENT H


BID FORM – DOCUMENT 9

DESIGNATION OF SUBCONTRACTORS

To comply with the requirements of the California Subletting and Subcontracting Fair Practices Act, Bidder shall list the name and address of each Subcontractor, including Disadvantaged Business Enterprise (DBE) Subcontractors to whom bidder proposes to Subcontract more than 1/2 of 1 percent of the work, and description and portions of the Work or services Subcontracted.

Attach additional copies of this form if more space is required.

<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
① <u>AS. Demo</u> Granite Rock	<u>San Jose Los Banos</u>	<u>DEMOLITION</u>	<u>1%</u>
② <u>Granite rock</u>	<u>San Jose</u>	<u>EARTHWORK</u>	<u>4%</u>
③ <u>Granite Rock</u>	<u>San Jose</u>	<u>AC PAVING</u>	<u>10%</u>
④ <u>Foundation</u> Stroer Grass	<u>San Jose Oakley</u>	<u>PILES</u>	<u>10%</u>
⑤ _____	_____	<u>PAVERS</u>	_____
⑥ _____	_____	<u>LANDSCAPE</u>	_____
⑦ <u>Alamillo</u> Alamillo	<u>San Jose Valejo</u>	<u>REBAR</u>	<u>6%</u>



/President
Signature and Title of Authorized Official

ATTACHMENT H

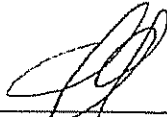
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	<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
(8)	<u>Rising Sun</u>	<u>Exeter</u>	<u>CONCRETE</u>	<u>11%</u>
(9)	<u>Robyn</u>	<u>selma</u>	<u>SITE CONC</u>	<u>7%</u>
(10)			INSULATION	
(11)	Kaseo Fab Pacific <u>Golden state steel</u>	<u>Stockton</u> Fowler Fresno	<u>STEEL</u>	<u>4%</u>
(12)	Kaseo Fab Pacific <u>Golden state steel</u>	<u>Stockton</u> Fowler Fresno	<u>DECK</u>	
(13)			<u>CABINETS</u>	
(14)			<u>INSULATION</u>	



/President
Signature and Title of Authorized Official

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	<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
(15)	_____	_____	AND BARBERA	_____
(16)	Robyn Timber Const	Richmond Selma	CEMENTitious FACADE	7%
(17)	Alcal	Fremont	ROOFING	1%
(18)	San Joaquin Glass	Fresno	GLASS	1%
(19)	AAA U-NEAL	San Jose Rancho Cordova	Drywall	3%
(20)	XXXXXXXXXX	XXXXXXXXXX	TILE	_____
(21)	_____	_____	Acoustical	_____



/President
Signature and Title of Authorized Official

ATTACHMENT H


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Attach additional copies of this form if more space is required.

<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
22 Harry Murphy	San Jose	Flooring	1%
23		Access Flooring	
24		Painting	
25		Signs	
26		Acoustic Panel Parts	
27 Thyssen Krupp	Sacramento	ELEVATOR	1%



/President
Signature and Title of Authorized Official

ATTACHMENT H

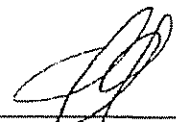
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	<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
(28)	Granite Rock	San Jose	SITE UTILITIES	2%
(29)	In HVAC Val's Geo H. Wilson	Salinas Santa Cruz	Plumbing	
(30)	Val's Geo H. Wilson	Salinas Santa Cruz	HVAC	9%
(31)	J.M. Electric	Salinas	ELECTRICAL	11%
(32)	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	Bituminous Damp Proofing	
(33)	Wilson	Selma	Fire Protection	1%
(34)	Robyn	Selma	Misc. Carpentry	.002%



/President

Signature and Title of Authorized Official

ATTACHMENT H

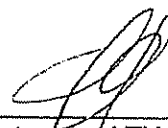
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<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
STC STS	Rancho Cordova	Traffic Coating	1%



/President
Signature and Title of Authorized Official

ATTACHMENT H

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/President

Signature and Title of Authorized Official

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/President
Signature and Title of Authorized Official

ATTACHMENT H

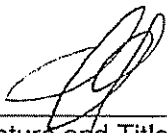
BID FORM – DOCUMENT 9

DESIGNATION OF SUBCONTRACTORS

To comply with the requirements of the California Subletting and Subcontracting Fair Practices Act, Bidder shall list the name and address of each Subcontractor, including Disadvantaged Business Enterprise (DBE) Subcontractors to whom bidder proposes to Subcontract more than 1/2 of 1 percent of the work, and description and portions of the Work or services Subcontracted.

Attach additional copies of this form if more space is required.

<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
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/President

Signature and Title of Authorized Official

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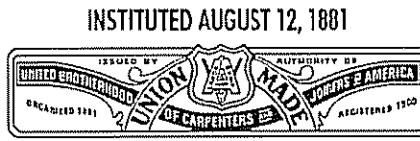


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ATTACHMENT H

ATTACHMENT I
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Local Union 505
County of Santa Cruz
(831) 688-5025



225 Searidge Road
Aptos, CA 95003
F(831) 688-5027

ALWAYS DEMAND THE LABEL

December 3, 2012

Santa Cruz Metropolitan Transit District
110 Vernon Street
SANTA CRUZ, CA 95060

Attn: Members of the Board of Directors

Re: Contract proposal for Judy K Souza Operations & Bus Park Facility
1200 River Street
Santa Cruz, CA 95060

Bid Date: September 12, 2012

Subject: Consideration of Bids from Lewis C Nelson & Sons, Inc. and C Overaa and Company, Inc.

Dear Members of the Board,

I am writing on behalf of the Carpenters Union Local 505 of Santa Cruz County.

We have reviewed the bids on the above-named project and request that the Board reject the bid from Lewis C Nelson & Sons, Inc. ("LCN") because it fails to meet the requirements of the California Public Contract Code "Subletting and Subcontracting Fair Practices Act" Section 4101, et seq. ("PCC4100").

The fundamental intent of the competitive bidding laws (PCC 4100, et. seq.), in requiring the listing of subcontractors, is to prevent bid shopping and bid peddling of subcontracted portions of public projects and it applies to those portions of work valued above the threshold amount (1/2 % of the total base bid amount). Further if a prime contractor fails to list a subcontractor for a portion of work valued over that threshold amount, the law requires that the prime contractor be qualified and actually do that portion of the work. If a prime contractor lists more than two subcontractors to do the same portion of work the prime contractor again must be qualified and actually do that portion of the work, instead of the listed subcontractor.

From this, I believe that the case law supports the assertion that the subcontractor list together with any information contained in the bid submittal, i.e., only those documents presented at the time of the bid opening, 2 pm on September 12, 2012, and Bid Form Documents #6, #7, and #8 (#8 relative only to the subcontractor's workforce), submitted within 2 business days thereafter, must contain sufficient information so that the awarding body can determine, without ambiguity and without additional information from the bidder, the identity of each subcontractor listed on the Subcontractor List, Doc 9. If an examination of the entire bid submittal does not remove an ambiguity as to the

ATTACHMENT I

identity of a subcontractor then, in effect, the prime contractor has listed more than one subcontractor for the same portion of work and thus must be capable and must self-perform this portion of work.

The reality of preparing bids is that contractors are getting numbers (bids) from subcontractors, who tend to wait until the last moments to provide their information in an effort to prevent bid peddling and bid shopping before the bids are submitted. The contractors are rushing to finish filling in their subcontractor lists and they often use the "common" names of their familiar subs. For example, the LCN bid identifies "Pacific" from "Stockton" to do "steel," "STS" from "Rancho Cordova" to do "traffic coating," and "Foundation" from "Oakley" to do "piles".

This shorthand listing of subcontractors creates problems. A search for "Pacific" on the Contractor State License Board ("CSLB") website showed more than 1300 licensed contractors with a business name beginning with "Pacific". There are two "Pacific" entities with a Stockton address—"Pacific Steel and Concrete, Inc." dba "Pacific Construction", # 492634, which expired in 1988; and "Pacific Steel Fabricators, Inc.," # 794214, which expired in 2007. The Metro staff prepared a typed summary of the various bidders' subcontractor lists. Using the information provided in the bid submittal and presumably generally available public information the Metro staff was able to establish a license number for every subcontractor listed by every bidder except for LCN and F&H Construction. In the portion of their typed report about LCN's subcontractor list, the staff noted that there were two "Pacific" contractors and they did not establish a contractor license number for "Pacific" or for "STS." (That some of these "Pacific" contractors do not have active licenses does not preclude LCN from having listed them as their subcontractor since nothing in the bid documents or state law prevents a subcontractor with an expired license from making a bid, although they cannot enter into a contract until the license is "active". So a subcontractor with an expired license could submit a bid to a prime contractor and, if successful, activate (or renew) their expired license and proceed).

There is a similar problem with "Foundation" listed by LCN. The CSLB lists three entities with a name starting with "Foundation" in Oakley, CA—"Foundation Waterways Inc.", # 842509, license expired in 2006; "Foundation/Macias Joint Venture", # 672813, license expired in 1999; and "Foundation Constructors Inc.", # 270761, which has an active license.

Since it appears that the awarding body is unable to resolve these ambiguities this results in LCN having listed more than one subcontractor for the same portion of work. This requires that LCN to be capable and to actually do the work of installing the cement piles and structural steel. Accordingly the awarding body would need to make a determination whether LCN was capable and would do this work, if not, their Doc 9 would appear to fail to meet the requirements of PCC 4100 and their bid would be non-responsive. Since the installation of concrete piles and structural steel each require quite specialized skills and equipment and is work LCN has not previously self-

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performed, it is doubtful that an awarding body could determine that they were capable of self-performing this work.

The bid from C Overaa and Company, Inc. ("COC") lists "MGM" from "San Jose" to do "framing & drywall", and "Southwest" from "Henderson, NV" to do "steel". There are three "MGM's" with San Jose addresses: "M G M Construction", # 764560, revoked in 2007, and "M G M Construction A Partnership", # 825608, also revoked in 2007, and "M G M Drywall Inc.", # 769401, which is active. A review of contractors with a name beginning with "Southwest", showed two companies with a Henderson, NV address: "Southwest Erectors", # 397260, license expired in 2007; and "Southwest Steel of California Inc.", dba "Southwest Steel Inc.", # 935225, which is active.

Under these circumstances, an awarding body must review all documents submitted with the bid in order to determine whether either of these bidders meet the burden of providing an unambiguous subcontractor listed for each of these portions of work. Bid Form Documents #6, #7, and #8, if they were timely submitted, are a starting point. For example, COC submitted Doc #6 and/or Doc #7 for each of its listed subcontractors with its bid submittal. These documents clarify any ambiguity regarding "MGM" and "Southwest" by establishing that "MGM" is "M G M Drywall Inc." and that "Southwest" is "Southwest Steel." Every other subcontractor listed in COC's Doc 9 is also clearly and unambiguously identified by either a Doc #6 or Doc #7 contained in COC's bid submittal.

As part of its review of the bids, the awarding body must be assured that the staff maintained the integrity and record of what documents are properly considered part of the "bid submittal" from each prime contractor. In the very least, the staff report attachment "IFB 12-23 Bid Analysis Spreadsheet" presented to the Board at the November 9 meeting should serve as a tentative authority on this matter. According to that report, LCN submitted no Documents #6, #7 or #8 relating to any of its listed subcontractors by the deadline for those documents to be considered as included in the bid submittal, ie. two business days after September 12, 2012. Thus, although the Board may determine that late submittal of Documents #6, #7, or #8 does not render a bid non-responsive, the Board cannot rely upon late submitted documents from LCN to clarify any ambiguities presented by LCN's subcontractor list.

Subsequent to the November 9 meeting, the staff determined that the staff report was incorrect and that every bidder had errors or omissions in Documents #6, #7 or #8. This apparently led the staff to issue a letter, dated Nov. 21, 2012, informing the bidders that the staff was revising its finding such that failure to provide all of the applicable Doc #6 and/or Doc #7 and Doc #8 within the time period required by the specifications was an immaterial irregularity and would not result in a bid being determined to be non-responsive.

Based upon the above discussion and the requirements of Public Contract Code section 4100 et seq., we believe that the Lewis C Nelson bid submittal is deficient and non-responsive because it fails to provide an unambiguous list of subcontractors performing

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those portions of the project amounting to more than ½% of the total bid amount as required by Public Contract Code sections 4100, et. seq., and urge the Board should so find. Further, if the Board approves the staff's recommended modification of the requirements for submitting complete Doc #6 and/or Doc #7 and Doc #8 as part of the "bid submittals", we believe that the C. Overaa & Company bid submittal is complete and responsive and urge the Board should so find. We urge the Board of Directors of the Santa Cruz Metropolitan Transit District to award the project to the lowest responsible and responsive bidder: C. Overaa & Company.

Thank you for your consideration of these weighty issues, and we look forward to your response. Should you have any questions regarding these requests, please do not hesitate to contact me at 831-760-2429.

Sincerely,

Ned Van Valkenburgh
Marketing Representative

ATTACHMENT J



MURPHY AUSTIN
ADAMS SCHOENFELD LLP

D MICHAEL SCHOENFELD
(916) 446-2300, EXT. 3089
mschoenfeld@murphyaustin.com

December 4, 2012

VIA E-MAIL AND FACSIMILE

Margaret Gallagher
General Counsel
Santa Cruz Metropolitan Transit District
110 Vernon Street
Santa Cruz, CA 95060

Re: Response on behalf of Lewis C. Nelson and Sons, Inc. to Bid Protests of
Overaa and Carpenters Union
Our File No. 1347.003

Dear Ms. Gallagher:

On behalf of our client, Lewis C. Nelson and Sons, Inc. ("LCN"), this letter has been prepared to address the contents of the two protest letters submitted to the District dated December 3, 2012. Because the content of the protest letters overlap, this letter has been prepared to address the contents of each issue raised in one or both communications to the District. Hereinafter, the Carpenters Union and Overaa's counsel are jointly referred to as "protestors."

INTRODUCTION

The core issue presented to the District by the protest letters and this response is whether LCN's bid to the District on September 12, 2012 is responsive. While the protests raise a series of contentions arguing that there are disabling items in the LCN bid that renders it non-responsive, and thus ineligible to be accepted and receive the award of the contract, the facts and law compel the conclusion that the protestors are in error and that the LCN bid is indeed responsive and eligible to be the subject of the prospective award.

To assist the District in addressing the contentions raised and this response, I have attached a series of exhibits to this letter to enable the reader to follow the specific facts addressed.

- Exhibit 1: a copy of the Subcontractor listing (Form 9) provided by LCN with its bid
- Exhibit 2: a copy of the Carpenters Union December 3, 2012 protest letter
- Exhibit 3: a copy of Overaa's counsel's December 3, 2012 protest letter
- Exhibit 4: a copy of the bid day bid to LCN from Pacific Metal Fabricators
- Exhibit 5: a copy of the bid day bid to LCN from Foundation Constructors, Inc.

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Margaret Gallagher
December 4, 2012
Page 2

Exhibit 6: a copy of the bid day bid to LCN from A & S Metals and Demolition

Exhibit 7: a copy of the bid day bid to LCN from STS Inc.

Exhibit 8: a copy of the California State License Board ("CSLB") website printout of the license data for Pacific Metal Fabricators, Foundation Constructors, Inc., A & S Metals and Demolition and STS, Inc.

Exhibit 9: a copy of the bid day bid to LCN from J M Electric

(For proprietary purposes, the bid prices have been redacted from Exhibits 4, 5, 6, 7 and 9.)

These records disclose and support the contention that the content of LCN's bid was indeed responsive and that the protests should be denied. Set forth below is an individualized response to each of the protested issues.

A. Pacific Metal Fabricators

On page 2 of Exhibit 1 is the listing of the steel subcontractor by LCN on bid day. LCN listed "Pacific" under the column heading "Name of Subcontractor" and "Stockton" for the "Business Address" and the scope of work listed was "Steel".

When the content of Exhibit 4, which is the bid submitted by Pacific Metal Fabricators to LCN on bid day (September 12, 2012), is compared to the content of the listing in Form 9, it is clear that LCN's listing was and is in full compliance with the law, and that the contentions of the protestors should be rejected.

First, please examine Exhibit 4. It bears a facsimile transmission time of 12:12 pm on September 12, 2012 as its received date. This substantiates that this bid was indeed received by LCN prior to the 2:00 pm bid opening by the District on the same day and was eligible to be relied upon.

Second, what is the name of the entity that provided the bid? It is **Pacific Metal Fabricators**.

Third, where is the entity located? The address on page one of the Pacific bid (Exhibit 4) lists a street address in **Stockton, California**.

It is thus clear that LCN, prior to its bid submission, received a bid from Pacific in Stockton for the structural steel scope of work for this project. (See the content of Exhibit 4 which identifies this project by name and that the purpose of the document was to "...offer a bid

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Page 3

on the following Structural Steel and Miscellaneous Metal products [furnished] ... and installed as noted....")

The next step in the inquiry is whether LCN's listing of the name "Pacific" and the location as "Stockton" was sufficient. The answer is absolutely yes. Look at Exhibit 4: the bidder is named Pacific and its street address is Stockton.

As the District will note as to the LCN bid, as well as the bid submissions of the other bidders, no bidder has the time, on bid day, to list the complete names of all listed subcontractors and their full addresses on the subcontractor listing form unless it is specifically required by the Instructions to Bidders to do so. Indeed, the District, in Addendum 1, advised bidders that they were not required to list the full address of listed subcontractors. Many public owners call for post-bid submissions to be made with complete names, addresses and other contact information. The District did not solicit such data for this project.

It is industry custom and practice for a prime bidder to list an abbreviated name of the entity and its address and a shorthand description of the scope of work. The purpose of the listing is to avoid the potential for bid shopping such that the prime bidder could use the information in the listing in such a manner so as to allow it to approach another entity than that listed and obtain a competitive advantage, after bid day, and illegally obtain a lower bid price and then substitute another entity for the one listed. Thus the law requires sufficient detail be listed to identify the subcontractor whose bid was relied upon.

When you compare the bid received to the listing, it is clear that the listing by LCN relates specifically to the bid attached as Exhibit 4. Nothing else is required as a matter of law to make the bid responsive.

The protestors contend that after the fact they have determined that there is no licensed entity by the name "Pacific" or "Pacific Metal Fabricators" in Stockton having the listed license number of 388361. The protestors thus conclude that therefore the bid by LCN is non-responsive. The protestors' leap to this conclusion is in error.

On bid day it is crystal clear that prime bidders have no duty to confirm that the subcontractors from whom they receive submitted bids are licensed and/or that the addresses on the bid materials submitted by subcontractors are correct. They generally have no time to do so and as evidenced by this procurement, there are dozens of subcontracted items with multiple bids (sometimes more than a dozen) received for most, if not all, of the subcontracted items. Thus on bid day there is no ability to reasonably check any of the information on bid submissions. That is why California law has long held, using the doctrine of promissory estoppel and the cases of *PG&E v. Thomas Drayage Company* and *Drennan v. Star Paving* that prime contractors who receive bids from subcontractors are entitled to rely upon their accuracy and content (unless there is an obvious mistake) and that the subcontractors who submit such bids do so intending that the

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Page 4

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* Pacific
consistent
NON-existent
entity

primes rely upon them. Thus, subcontractors who submit such bids cannot withdraw them without risk of loss.

In the instant case, there are no obvious errors in the Pacific bid to LCN. It lists the project, the scope of work, the specifics as to inclusions and exclusions, the addenda, a license number and a California address. LCN, as a matter of law, was entitled to rely upon it and LCN did indeed rely upon it and then properly listed a description of the entity in the subcontractor listing known as Form 9. This is confirmed by the content of Exhibit 4.

It is only after the fact that we have all learned that the license number used by Pacific is that of Monterey Mechanical, a very well known and competent constructor whose main office is in Oakland, and that Pacific is a division of Monterey Mechanical located in Stockton.

However, this does not render LCN's bid non-responsive. All that it means is that LCN must use this entity. That is what LCN intends to do.

The protestors would have the District determine that because the listing by LCN did not yield any evidence that such an entity (Pacific) existed, that LCN had the unfair opportunity to bid shop and as a result its bid must be determined to be non-responsive. That is obviously not consistent with the facts demonstrated and there is no foundation for the contention made by the protestors. This element of the protests is properly denied.

B. Foundation Constructors, Inc.

On page 2 of the Carpenters' protest it objects to the listing on page 1 of Exhibit 1 as to "Foundation" in "Oakley" by LCN for the scope of work relating to piles. No other address is provided. This contention is easily dismissed.

Please examine Exhibit 5. This is the bid day bid of Foundation Constructors, Inc., having an address listed at the top of the page as "Main Office...Oakley, California" that LCN received on September 12, 2012 at 1:46 pm. See the facsimile transmission noted at the bottom of the first page of Exhibit 5. Note further that the content of the bid lists this project and the detailed scope of work relating to the furnishing and installation of the 19,547 lineal feet of project piles. What can be inaccurate about this listing? The answer is nothing.

Now, after the fact, the Carpenters have searched the CSLB website and found only one active licensed entity in Oakley bearing this name and reports it to be the very same entity that LCN received a bid from and listed. The other two entities on the CSLB website whose name includes Foundation and are located in Oakley were identified by the Carpenters to have expired licenses. So where is the confusion or mistake or error or other irregularity that the listing of LCN supposedly promotes or causes? There is none. This item raised by the Carpenters is simply meritless.

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what entity?
Monterey Mechanical

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license? *
Do they have license or not?

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Page 5

C. A & S Metals and Demolition

Please see Exhibit 6 which is the bid received by LCN from this entity on bid day at 8:54 am. The bid identifies this project and that its bid is submitted for demolition and rough grading. There are six addresses listed in Exhibit 6 for A & S including Los Banos.

In Exhibit 1, the LCN bid to the District, on page 1, LCN listed "A.S.Demo" in "Los Banos" for "Demolition". This is fully consistent with the bid received. On its face, the conduct of LCN was proper and the protest should be denied on this basis alone.

In addition, on page 2 of Exhibit 6, under the signature, there is the listing of a license number. This number, when inputted into the CSLB website, discloses that the entity listed on the bid form is a division or dba of SGS Recycling Enterprises, an active licensed entity whose corporate address is in Castroville (which is one of the six addresses on the bid of A. S Demo).

Counsel for Overaa in his protest letter goes to great reaches to try to portray the listing of A.S. Demo as ambiguous or in violation of LCN's duties. His contentions stretch credibility and are properly rejected.

Exhibit 8 contains the License Board print out showing that this entity is duly licensed and active. On Exhibit 6 there are multiple names of the entity listed: A & S Metals Recycling & Demolition as well as A & S Metals and Demolition. It then lists the license number of 761104 and the appropriate licensure classification of C21.

Again, what is wrong or inadequate with the listing by LCN of this entity? Nothing. It lists "A.S. Demo" which is obviously an abbreviation for the entity's name. LCN listed one of the addresses listed on the bid form and therefore no error existed. The content of Exhibit 6 validates that the listing relates to the specific bid received prior to the submission. The protest on this issue is simply reaching to find something to cause the District to reject the LCN bid so that Overaa could be the awardee. The District should see this contention for what it truly is.

D. STS Inc.

The contentions raised assert that the listing by LCN on page 6 of Exhibit 1 of "STS" in "Rancho Cordova" for "Traffic Coating" is in error, misleading or incomplete. This is not correct.

Please see Exhibit 7. It is the bid day submission from STS Inc. of Rancho Cordova entitled "Bid Submission" for this project for the scope of work called "Traffic Coatings" received by LCN on September 12, 2012 at 1:44 pm (prior to the delivery of the prime bid).

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The contentions that are made by the protestors concerning this subcontractor listing are obviously meritless. Added to this is the printout from the CSLB contained in Exhibit 8 that shows that the entity whose bid is entitled STS is actually a dba of an active licensed entity known as Spraytech Systems Inc dba S T S Inc. Any contention that this listing violates the legal obligations of LCN is properly dismissed.

E. J M Electric

On pages 4 and 5 of his protest letter, counsel for Overaa notes that in Exhibit 1 (the subcontractor listing of LCN), on page 5, LCN listed JM Electric as the electrical subcontractor. That is correct. As a matter of law LCN must use JM Electric as the electrical subcontractor if LCN is awarded the contract and LCN does indeed intend to do so.

On bid day LCN received a bid from JM Electric at 1:42 pm. A copy is attached as Exhibit 9.

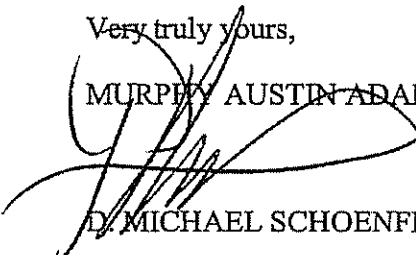
This is not an issue of responsiveness. The mistake of naming LML in the premature submission of forms 6, 7 and 8 is irrelevant. The bottom line is that there is no issue with the listing in LCN's bid and there is no issue of responsiveness presented.

F. Conclusion

Each of the factual contentions and legal arguments raised by Overaa and the Carpenters Union have been shown to lack merit. No competitive advantage exists or existed. No ambiguity or vagueness exists or existed. Each of the issues raised are documented as being in error and thus there are no legitimate grounds that exist to support any credible argument that LCN's bid is anything other than responsive. The District is urged to reject the protests and follow the recommendation of staff to award the project to LCN.

Very truly yours,

(MURPHY AUSTIN ADAMS SCHOENFELD LLP


D. MICHAEL SCHOENFELD

DMS/cw
Enclosures
cc: Lewis C. Nelson and Sons, Inc. (w/encls.)

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MURPHY AUSTIN ADAMS SCHOENFELD LLP

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EXHIBIT 1

ATTACHMENT J

DEC-03-2012 15:07

SANTA CRUZ METRO

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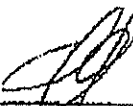
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Attach additional copies of this form if more space is required.

	<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
①	AS. Demo Granite Rock	San Jose Los Banos	DEMOLITION	1%
②	Granite Rock	San Jose	EARTHWORK	4%
③	Granite Rock	San Jose	AC PAVING	1%
④	Foundation Street Closures	Antioch Oakley	PILES	10%
⑤			PAVERS	
⑥			LANDSCAPE	
⑦	San Ramon Alamito	San Jose Vallejo	REBAR	6%


 _____ /President
 Signature and Title of Authorized Official

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Attach additional copies of this form if more space is required.

	<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
8	<u>Rising Sun</u>	<u>Exeter</u>	<u>CONCRETE</u>	<u>11%</u>
9	<u>Robyn</u>	<u>Salina</u>	<u>SITE CONC</u>	<u>7%</u>
10			INSULATION	
11	<u>Ames Fab Pacific Golden State Steel</u>	<u>Stockton Foster Fresno</u>	<u>STEEL</u>	<u>4%</u>
12	<u>Ames Fab Pacific Golden State Steel</u>	<u>Stockton Foster Fresno</u>	<u>DECK</u>	
13			<u>GABNETS</u>	
14			<u>INSULATION</u>	



President

Signature and Title of Authorized Official

ATTACHMENT J

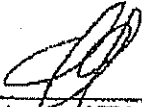
BID FORM - DOCUMENT 9

DESIGNATION OF SUBCONTRACTORS

To comply with the requirements of the California Subletting and Subcontracting Fair Practices Act, Bidder shall list the name and address of each Subcontractor, including Disadvantaged Business Enterprise (DBE) Subcontractors to whom bidder proposes to Subcontract more than 1/2 of 1 percent of the work, and description and portions of the Work or services Subcontracted.

Attach additional copies of this form if more space is required.

	<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
(15)	_____	_____	ATE SASSATEL	_____
(16)	<u>Robyn</u> Finch	<u>Richard Selma</u>	<u>CEMENTWORKS</u> <u>FLORIDE</u>	<u>7%</u>
(17)	<u>Alcal</u>	<u>Fremont</u>	<u>ROOFING</u>	<u>1%</u>
(18)	<u>San Joaquin Glass</u>	<u>Fresno</u>	<u>GLASS</u>	<u>1%</u>
(19)	WMA <u>UNEAC</u>	<u>Santiago Rancho</u> <u>Coronado</u>	<u>Drywall</u>	<u>3%</u>
(20)	_____	_____	Tile	_____
(21)	_____	_____	<u>Acoustical</u>	_____



 /President
 Signature and Title of Authorized Official

ATTACHMENT J


BID FORM - DOCUMENT 9

DESIGNATION OF SUBCONTRACTORS

To comply with the requirements of the California Subletting and Subcontracting Fair Practices Act, Bidder shall list the name and address of each Subcontractor, including Disadvantaged Business Enterprise (DBE) Subcontractors to whom bidder proposes to subcontract more than 1/2 of 1 percent of the work, and description and portions of the Work or services Subcontracted.

Attach additional copies of this form if more space is required.

<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
22 Harry Murphy	San Jose	Flooring	10%
23		Access Egress	
24		Painting	
25		Signs	
26		Access Egress	
27 Thyssen Krupp	Sacramento	ELEVATOR	10%



/President
Signature and Title of Authorized Official

ATTACHMENT J

BID FORM - DOCUMENT 9

DESIGNATION OF SUBCONTRACTORS

To comply with the requirements of the California Subletting and Subcontracting Fair Practices Act, Bidder shall list the name and address of each Subcontractor, including Disadvantaged Business Enterprise (DBE) Subcontractors to whom bidder proposes to Subcontract more than 1/2 of 1 percent of the work, and description and portions of the Work or services Subcontracted.

Attach additional copies of this form if more space is required.

	<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
(29)	Granite Rock	San Jose	SITE UTILITIES	2%
(29)	In HVAC Watt's Geo H. Wilson	Salinas Santa Cruz	Plumbing	
(30)	Watt's Geo H. Wilson	Salinas Santa Cruz	HVAC	9%
(31)	JMElectric	Salinas	ELECTRICAL	11%
(32)	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	
(33)	Wilson	Salinas	Fire Protection	1%
(34)	Robyn	Salinas	Misc. Carpentry	.007%

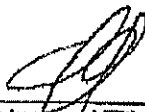

 _____ /President
 Signature and Title of Authorized Official

EXHIBIT 2

ATTACHMENT J

To: Page 1 of 4

2012-12-03 10:56:59 (GMT)

From: Ned Van Valkenburg

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Local Union 505
County of Santa Cruz
(831) 688-5025



225 Seaside Road
Aptos, CA 95003
F(831) 688-5027

December 3, 2012

Santa Cruz Metropolitan Transit District
110 Vernon Street
SANTA CRUZ, CA 95060

Attn: Members of the Board of Directors

Re: Contract proposal for Judy K Souza Operations & Bus Park Facility
1200 River Street
Santa Cruz, CA 95060

Bid Date September 12, 2012

Subject: Consideration of Bids from Lewis C Nelson & Sons, Inc. and C Overaa and Company, Inc.

Dear Members of the Board;

I am writing on behalf of the Carpenters Union Local 505 of Santa Cruz County

We have reviewed the bids on the above-named project and request that the Board reject the bid from Lewis C Nelson & Sons, Inc ("LCN") because it fails to meet the requirements of the California Public Contract Code "Subletting and Subcontracting Fair Practices Act" Section 4101, et seq (PCC4100")

The fundamental intent of the competitive bidding laws (PCC 4100, et. seq.), in requiring the listing of subcontractors, is to prevent bid shopping and bid peddling of subcontracted portions of public projects and it applies to those portions of work valued above the threshold amount (1/2 % of the total base bid amount) Further if a prime contractor fails to list a subcontractor for a portion of work valued over that threshold amount, the law requires that the prime contractor be qualified and actually do that portion of the work. If a prime contractor lists more than two subcontractors to do the same portion of work the prime contractor again must be qualified and actually do that portion of the work, instead of the listed subcontractor

From this, I believe that the case law supports the assertion that the subcontractor list together with any information contained in the bid submittal, i.e., only those documents presented at the time of the bid opening, 2 pm on September 12, 2012, and Bid Form Documents #6, #7, and #8 (#8 relative only to the subcontractor's workforce), submitted within 2 business days thereafter, must contain sufficient information so that the awarding body can determine, without ambiguity and without additional information from the bidder, the identity of each subcontractor listed on the Subcontractor List, Doc 9. If an examination of the entire bid submittal does not remove an ambiguity as to the

ATTACHMENT J

identity of a subcontractor then, in effect, the prime contractor has listed more than one subcontractor for the same portion of work and thus must be capable and must self-perform this portion of work

The reality of preparing bids is that contractors are getting numbers (bids) from subcontractors, who tend to wait until the last moments to provide their information in an effort to prevent bid peddling and bid shopping before the bids are submitted. The contractors are rushing to finish filling in their subcontractor lists and they often use the "common" names of their familiar subs. For example, the LCN bid identifies "Pacific" from "Stockton" to do "steel," "STS" from "Rancho Cordova" to do "traffic coating," and "Foundation" from "Oakley" to do "piles"

This shorthand listing of subcontractors creates problems. A search for "Pacific" on the Contractor State License Board ("CSLB") website showed more than 1300 licensed contractors with a business name beginning with "Pacific". There are two "Pacific" entities with a Stockton address—"Pacific Steel and Concrete, Inc" dba "Pacific Construction", # 492634, which expired in 1988; and "Pacific Steel Fabricators, Inc", # 794214, which expired in 2007. The Metro staff prepared a typed summary of the various bidders' subcontractor lists. Using the information provided in the bid submittal and presumably generally available public information the Metro staff was able to establish a license number for every subcontractor listed by every bidder except for LCN and F&H Construction. In the portion of their typed report about LCN's subcontractor list, the staff noted that there were two "Pacific" contractors and they did not establish a contractor license number for "Pacific" or for "STS". (That some of these "Pacific" contractors do not have active licenses does not preclude LCN from having listed them as their subcontractor since nothing in the bid documents or state law prevents a subcontractor with an expired license from making a bid, although they cannot enter into a contract until the license is "active". So a subcontractor with an expired license could submit a bid to a prime contractor and, if successful, activate (or renew) their expired license and proceed.)

There is a similar problem with "Foundation" listed by LCN. The CSLB lists three entities with a name starting with "Foundation" in Oakley, CA—"Foundation Waterways Inc", # 842509, license expired in 2006, "Foundation/Macias Joint Venture", # 672813, license expired in 1999, and "Foundation Constructors Inc", # 270761, which has an active license.

Since it appears that the awarding body is unable to resolve these ambiguities this results in LCN having listed more than one subcontractor for the same portion of work. This requires that LCN be capable and to actually do the work of installing the cement piles and structural steel. Accordingly the awarding body would need to make a determination whether LCN was capable and would do this work, if not, their Doc 9 would appear to fail to meet the requirements of PCC 4100 and their bid would be non-responsive. Since the installation of concrete piles and structural steel each require quite specialized skills and equipment and is work LCN has not previously self-

ATTACHMENT J

performed, it is doubtful that an awarding body could determine that they were capable of self-performing this work

The bid from C Overaa and Company, Inc. ("COC") lists "MGM" from "San Jose" to do "framing & drywall", and "Southwest" from "Henderson, NV" to do "steel". There are three "MGM's" with San Jose addresses. "M G M Construction", # 764560, revoked in 2007, and "M G M Construction A Partnership", # 825608, also revoked in 2007, and "M G M Drywall Inc", # 769401, which is active. A review of contractors with a name beginning with "Southwest", showed two companies with a Henderson, NV address. "Southwest Erectors", # 397260, license expired in 2007, and "Southwest Steel of California Inc", dba "Southwest Steel Inc", # 935225, which is active.

Under these circumstances, an awarding body must review all documents submitted with the bid in order to determine whether either of these bidders meet the burden of providing an unambiguous subcontractor listed for each of these portions of work. Bid Form Documents #6, #7, and #8, if they were timely submitted, are a starting point. For example, COC submitted Doc #6 and/or Doc #7 for each of its listed subcontractors with its bid submittal. These documents clarify any ambiguity regarding "MGM" and "Southwest" by establishing that "MGM" is "M G M Drywall Inc" and that "Southwest" is "Southwest Steel". Every other subcontractor listed in COC's Doc 9 is also clearly and unambiguously identified by either a Doc #6 or Doc #7 contained in COC's bid submittal.

As part of its review of the bids, the awarding body must be assured that the staff maintained the integrity and record of what documents are properly considered part of the "bid submittal" from each prime contractor. In the very least, the staff report attachment "IFB 12-23 Bid Analysis Spreadsheet" presented to the Board at the November 9 meeting should serve as a tentative authority on this matter. According to that report, LCN submitted no Documents #6, #7 or #8 relating to any of its listed subcontractors by the deadline for those documents to be considered as included in the bid submittal, i.e. two business days after September 12, 2012. Thus, although the Board may determine that late submittal of Documents #6, #7, or #8 does not render a bid non-responsive, the Board cannot rely upon late submitted documents from LCN to clarify any ambiguities presented by LCN's subcontractor list.

Subsequent to the November 9 meeting, the staff determined that the staff report was incorrect and that every bidder had errors or omissions in Documents #6, #7 or #8. This apparently led the staff to issue a letter, dated Nov 21, 2012, informing the bidders that the staff was revising its finding such that failure to provide all of the applicable Doc #6 and/or Doc #7 and Doc #8 within the time period required by the specifications was an immaterial irregularity and would not result in a bid being determined to be non-responsive.

Based upon the above discussion and the requirements of Public Contract Code section 4100 et seq., we believe that the Lewis C Nelson bid submittal is deficient and non-responsive because it fails to provide an unambiguous list of subcontractors performing

ATTACHMENT J

To Page 4 of 4

2012-12-03 10:24:58 (GMT)

From Ned Van Valkenburgh

those portions of the project amounting to more than 1/2% of the total bid amount as required by Public Contract Code sections 4100, et seq, and urge the Board should so find. Further, if the Board approves the staff's recommended modification of the requirements for submitting complete Doc #6 and/or Doc #7 and Doc #8 as part of the "bid submittals", we believe that the C Overaa & Company bid submittal is complete and responsive and urge the Board should so find. We urge the Board of Directors of the Santa Cruz Metropolitan Transit District to award the project to the lowest responsible and responsive bidder C Overaa & Company.

Thank you for your consideration of these weighty issues, and we look forward to your response. Should you have any questions regarding these requests, please do not hesitate to contact me at 831-760-2429.

Sincerely,

Ned Van Valkenburgh
Marketing Representative

EXHIBIT 3

ATTACHMENT J

SMITH & BROCKHAGE, LLP

3480 BUSKIRK AVENUE, SUITE 200
PLEASANT HILL, CALIFORNIA 94523

Telephone: (925) 296-0636
Facsimile: (925) 296-0640

RANDALL M SMITH
rsmith@bmd.com

December 3, 2012

Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
110 Vernon Street
Santa Cruz, CA 95060

Re: Project: Construction of the Judy K. Souza Operations Facility Parking
Structure and Related Site Work
Santa Cruz METRO IFB No. 12-23
Our File No.: 7594.1

Ladies/Gentlemen:

We represent C. Overaa & Co. ("Overaa"), one of the bidders for the contract (the "Contract") for the above-referenced project (the construction of the Judy K. Souza Operations Facility Parking Structure and Related Site Work).

We are submitting this letter, on Overaa's behalf, to protest the bid submitted by Lewis C. Nelson and Sons, Inc. ("LCN") for that project, and the making of any award to LCN in connection with that project. This is a formal protest, by Overaa, pursuant to Part VII of the Information for Bids. The bases for this protest are set forth below.

The California Subletting and Subcontracting Fair Practices Act requires that bidders on public works projects state, in their bids, the name and location of the place of business of each subcontractor performing work in excess of one-half of one percent of the prime contractor's total bid, and the portion of the work that will be done by each such listed subcontractor. Public Contract Code section 4104.

The Santa Cruz Metropolitan Transit District (the "District") specifically called attention to the requirements of the California Subletting and Subcontracting Fair Practices Act, and incorporated them by reference. Instructions to Bidders, 1.18B. The District further specifically stated that each bidder was required to submit with its bid

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ATTACHMENT J

Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
December 3, 2012
Page 2

the names and locations of the place of business of each subcontractor who will perform work in an amount in excess of one-half of one percent of the amount of the prime contractor's total bid, and to state the portion of work to be done by each subcontractor. Instructions to Bidders, 1.18A and 1.25I.

There are a number of deficiencies in LCN's subcontractor listings which make LCN's bid non-responsive.

For example, LCN listed "Pacific" for the steel work, and stated that "Pacific" was located in Stockton, California. This vague listing did not adequately identify the subcontractor for the steel work. There are hundreds of contractors listed on the website of the California Contractors State License Board that have names beginning with the word "Pacific," including at least two that have current and active Class B (General Building Contractor) licenses, and at least two that have Class A (General Engineering Contractor) licenses.¹ There are many more contractors who have the word "Pacific" somewhere in their names.

Accordingly, no specific subcontractor was identified for the steel work in LCN's bid.

Approximately two months after bid opening, LCN submitted Documents 6, 7 and 8 to the District which indicated that LCN planned to subcontract to "Monterey Mechanical Co., dba Pacific Metal Fabricators." Both the California State License Board's website and the California Secretary of State's website state that Monterey Mechanical Co.'s address is in Oakland -- not Stockton. Moreover, the California State License Board's website does not contain any listing for Pacific Metal Fabricator, as a dba or otherwise. Furthermore, although corporations who regularly transact business in California under a fictitious name are required to file a fictitious name statement with

¹ Pacific Construction (License No. 959699), and Pacific Metro Electric, Inc. (License No. 701614) have Class B licenses, while Pacific Northwest Oil (License No. 705296) and Pacific Southwest Irrigation Corp (License No. 935461) have Class A licenses.

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Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
December 3, 2012
Page 3

the clerk of the county in which it has its principal place of business (Business and Professions Code section 17915), there is no fictitious name statement for Pacific Metal Fabricators on file in Alameda County, the county where Monterey Mechanical Co.'s principal place of business is located.

Most importantly, because LCN only put "Pacific" on its subcontractor list for the steel work, it was impossible to determine from that listing who the specific entity was that would be performing the steel work. This violates the basic purpose and intent of the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100, et. seq.).

The Act is designed to prevent bidders from being able to negotiate with different potential subcontractors after bids are submitted, in order to prevent bid shopping and bid peddling. Public Contract Code section 4104; *Titan Electric Corp v Los Angeles Unified School District*, 160 Cal.App.4th 188, 202 (2008); *Valley Crest Landscape, Inc v. City Council of the City of Davis*, 41 Cal.App.4th 1432, 1439-1440 (1996). Thus, "[i]f a certain subcontractor is listed, for example, as performing the masonry work, the public entity can determine that particular subcontractor is performing the masonry work, and not another subcontractor that was procured to perform at a lower cost." *Valley Crest Landscape, Inc. v. City Council of the City of Davis, supra* at 1440.

Here, since LCN did not identify a particular subcontractor for the steel work, it could have negotiated with a number of subcontractors after bid for the performance of that work. For example, it could have negotiated with and decided, after bid, to use Pacific Construction of Stockton for that work, instead of Monterey Mechanical Co.

Indeed, because LCN did not turn in Forms 6, 7 and 8 until approximately two months after bid (even though, pursuant to Addendum No. 1, they were supposed to be submitted within two business days after bid), LCN has had approximately two months to decide which subcontractor who could be referred to by the name "Pacific" to subcontract the steel work to.

ATTACHMENT J

Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
December 3, 2012
Page 4

This gave LCN a competitive advantage over bidders who properly identified their subcontractors on their subcontractor listings. It does not matter what use LCN made or did not make of this competitive advantage. Because it had an actual competitive advantage over the other bidders, its failure to specifically identify a particular subcontractor for the steel work cannot be waived as a minor irregularity. See, *Valley Crest Landscape, Inc v City Council of the City of Davis, supra* at 1442.

There are similar problems with LCN's listing of other subcontractors. For example, LCN listed "A.S. Demo" for the demolition work, and stated that "A.S. Demo" is located in Los Banos. Yet, there is no such contractor listed on the Contractor's State License Board's website, and there is no such entity listed on the California Secretary of State's website. Accordingly, by listing a fictional entity, LCN gave itself the opportunity to decide, after bid opening, who to subcontract the demolition work to. Based on the Documents 6, 7 and 8 which LCN belatedly submitted to the District, it appears that LCN has decided to use SGS Recycling Enterprises, Inc., whose principal office is in Castroville, for the demolition work. Yet, LCN failed to list this entity for the demolition work on the subcontractor list which it submitted with its bid.

LCN also listed "STS" for the "Traffic Coating" work. Yet, there is no licensed contractor with that name, or any similar name, on the Contractor's State License Board website, and we were unable to locate any such contractor on the California Secretary of State's website.

There are also problems with the Document 6, Document 7 and Document 8 forms submitted by LCN. For example, on the list of subcontractors it submitted with its bid, LCN listed J.M. Electric as its subcontractor for the electrical work. Yet, LCN failed to submit any Document 6, Document 7 or Document 8 form for J.M. Electric.

ATTACHMENT J

Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
December 3, 2012
Page 5

Also, LCN submitted Document 6, Document 7 and Document 8 forms for "LML Enterprises, Inc." (on Documents 6 and 7) and "LNL Enterprises, Inc." (on Document 8). Yet, on the subcontractor listing form which LCN submitted with its bid, LCN did not list LML Enterprises, Inc. or LNL Enterprises, Inc. Pursuant to the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100, et seq.), LCN cannot use a subcontractor not listed on the subcontractor listing that it submitted with its bid.

In *MCM Construction, Inc. v City and County of San Francisco*, 66 Cal.App.4th 359 (1998), and *Valley Crest Landscape, inc v City Council of the City of Davis, supra*, it was held that a bid must be rejected if the bidder makes mistakes on its subcontractor listing form or fails to provide the information that must be included on that form. In these decisions, the Courts held that such mistakes and omissions give a bidder an actual advantage over other bidders because it has the opportunity to decide, after bid, whether or not to withdraw its bid pursuant to Public Contract Code section 5103. Accordingly, in each of these decisions, the Court held that the public entity had no choice except to reject a bid which did not accurately provide the information required on the subcontractor listing form. Accordingly, the District is legally required to reject LCN's bid.

We also note that the Instructions to Bidders, 1.31K, provides that the District may reject bids that contain "irregularities which make the bids incomplete, indefinite or ambiguous" or "if the bid materially fails to conform to the requirements of the bid documents." Here, LCN submitted a subcontractor listing form which was clearly indefinite and ambiguous as to the identities of several of the listed subcontractors, and materially failed to conform to the bidding requirements. As discussed above, by doing so, LCN gave itself a competitive advantage not enjoyed by other bidders: the opportunity to bid shop and bid peddle after bid.

ATTACHMENT J

Santa Cruz METRO Administration Offices
Finance Manager
Santa Cruz Metropolitan Transit District
December 3, 2012
Page 6

For the reasons set forth above, Overaa respectfully requests that the District reject LCN's bid, and that the District not award the Contract for the above-referenced project to LCN.

Very truly yours,

SMITH & BROCKHAGE, LLP



Randall M. Smith

RMS:mt

7594 1/Santa Cruz Metro Letter re Judy K Souza Parking Structure Letter.doc

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EXHIBIT 4

ATTACHMENT J

09/12/2012 11:48 2094649472

PACIFIC METAL FAB

PAGE 02/03

September 5, 2012

Bike Canopy

Installed (Qty. 1) Bike Canopy Framing, HDG steel, A201, A504, S707
F.O.B. (Qty. 1) Pipe Railing, HDG steel, A504, A201
F.O.B. (Qty. 2) Ramp Hand Rail, HDG steel, A103, A108

Parking Area

F.O.B. (Qty. 7) Bollard, 6 x 6 x 4' high, with base plate mounting, HDG steel, A102, Q1/A722
F.O.B. (Qty. 1) Bollard, 8" dia x 4' high, with base plate mounting, HDG steel, A102, Q1/A722

Other

Installed (Qty. ~45) Masonry Wall Restraint: Bent Plate and Angle Clips, Shop primer steel,
A101, A102, A702, S102, S103, S710

Included: All assembly fasteners and installation hardware required for our products listed above.

Exclusions and Qualifications:

Illuminated Handrail or Guardrail

Inspection, testing and any related cost

Installation, unless specifically listed in our inclusions

Demolition or shoring

Lines and grades

Field measuring

Fire Watch

Hoisting or off loading of our FOB products.

Painting or coatings, unless specifically listed in our inclusions

Galvanizing, unless specifically listed in our inclusions

Gage material 10 gage or lighter

Metal Decking

Composite Decking

Pipe Guards

Cold Formed Metal Framing, Joists, Studs, Clips, etc.

Aluminum material, unless specifically listed in our inclusions

Non-ferrous material, unless specifically listed in our inclusions

Cast Iron

Roof Screen Support Systems

Rolling Gate

Angle Clips and Bent Plates, unless specifically listed in our inclusions

Pipe sleeves and backup plates for other trades

Expansion joint covers

Access door, panels or hatches and ladders, unless specifically listed in our inclusions

Equipment pad base plates/anchor bolts/embeds

Hollow metal frame

Manhole covers

Highway guardrail

Dock bumpers

Tank supports

Raised floor systems

Roofing, siding, flashing, and closures

Scuppers, roof drains, gutters, down spouts and straps

Skylights

Louvers or framing

Fencing or gates

Unistrut type material

RECEIVED TIME SEP. 12. 12:12PM

Page 2 of 5

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ATTACHMENT J

09/12/2012 11:48

2894649472

PACIFIC METAL FAB

PAGE 04/05

September 5, 2012

Terms and Conditions:

1. Contractor agrees to make monthly progress payments to Subcontractor within 10 calendar days of receipt of payment from Owner for Subcontractor's work. However, Contractor shall be responsible to make all payments to Subcontractor, notwithstanding any failure of Owner to pay Contractor for Subcontractor's work.
2. If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within ten days from the time payment should be made as provided in the Contract, the Subcontractor may, without prejudice to any other available remedies, upon seven days' written notice to the Contractor, stop the Subcontractor's Work until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate adjustment, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.
3. Contractor will provide Subcontractor with their Surety's Name, Bond Number and Contact, and all necessary Pre Lien/Stop Notice Information required by code at the time the contract is tendered.
4. Contractor will notify Subcontractor by certified mail within 48 hours of knowledge of any 'Notice of Completion' for the project filed by Owner or Contractor.
5. Subcontractor is entitled to the same percentages of retention reduction as Contractor.
6. Labor and material warranties are one year from the date of start up unless specifically stated differently in the contract documents.
7. This proposal may be withdrawn within the same time limits afforded a General Contractor under the public code if a material clerical error is found by the Subcontractor, or if not accepted within 30 days.
8. Subcontractor will not be responsible for defects in the plans.
9. All equipment and materials quoted are subject to commercial availability.
10. Subcontractor shall have the same rights afforded the Contractor in any contract between the parties for all claims for money and damages that may occur as a result of any hindering or delaying action each may cause the other for any cause whatsoever.
11. Subcontractor's indemnification and hold harmless liability does not extend beyond Subcontractor's share of any negligent acts, omissions, or misconduct caused by Subcontractor or anyone directly or indirectly employed by Subcontractor.
12. Work shall be performed under a mutually agreed upon progress schedule constructed at the beginning of the project. The Contractor will retain the right to modify the schedule at any time, however, for any unilateral modifications to the progress schedule, which causes extra cost to the Subcontractor, compensation will be allowed Subcontractor for said costs.
13. Any and all coordination efforts shall be conducted by and be the responsibility of the Contractor. Subcontractor will offer full cooperation with any such effort.
14. Any Indemnity by Subcontractor for liens will not extend to liens that may be brought for failure of the Contractor to make payment as provided in the contract.
15. All notifications of termination, failure to comply, or any other notice of claim or default must be sent by registered mail.
16. Any percentages for overhead or profit allowed Subcontractor for termination of contract must be consistent with the percentages allowed the Contractor in the prime contract.
17. PMF will only accept Liquidated Damages for delays which PMF has been proven to be solely responsible.
18. Damage to our completed work by any but our own forces is beyond our responsibility, and the Contractor will actively cooperate with resolving claims Subcontractor may have for damage to our work caused by Contractor, Owner, or their other agents.
19. If Subcontractor is delayed for no reason of his own, and is not given adequate time to finish his work in the manner bid before the end of the contract, the Subcontractor will not be held responsible for any resultant penalties or damages.
20. All contracts that may exist between Contractor and Subcontractor shall remain completely independent of each other, and offsets between such contracts shall not be permitted.
21. Subcontractor will provide continuous cleanup of the Subcontractor's work areas while present at the job site in lieu of any cooperative cleanup crew or general site cleanup requirements the Contractor may have.
22. We will accept no back charge that has not been negotiated and agreed to by us.
23. Subcontractor will not be required to do anything that would be in violation of their union agreements, and cannot be held to any additional employment practices outside of what is required in the bid documents.
24. If Contractor is late making Progress and Retention Payments, he will include an interest amount, calculated from the date Contractor is obligated to make payment and at the highest legal limit allowed at the time payment was due, with his Payment.
25. Unless specifically included in our scope above, this proposal does not provide for any overtime work.
26. In a 'Claims Resolution Procedure' or any other legal dispute between Contractor and Subcontractor, the prevailing party shall be entitled to all court costs and attorney fees.
27. Subcontractor will determine subcontractor's counsel.
28. Time does not permit us to review and comment on your standard subcontract before bid, therefore, we reserve the right, before execution, to review and negotiate your subcontract.

RECEIVED TIME SEP. 12. 12:12PM

Page 4 of 5

8.j30

ATTACHMENT J

09/12/2012 11:48

2094649472

PACIFIC METAL FAB

PAGE 05/05

September 5, 2012

We acknowledge 2 addenda. Our price includes sales tax. We are Union. We are bondable at 1.4%

Lump Sum Total \$ _____ Applicable tax included.

PMF Voluntary Add Alt: If you would like PMF to provide and install:

(Qty. -750 sf) Metal Decking, 1½ HSB-36 x 20 ga,

(Qty. -1006 sf) Metal Decking, 1½ B-Formlock x 22 ga,

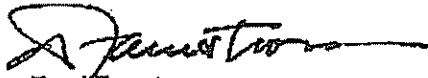
please add \$ _____ to the above lump sum total.

ADD ALT IS NOT INTENDED TO STAND ALONE.

Use and/or listing of our name or bid indicates acceptance of our inclusions, exclusions and terms and conditions, and agreement that our full scope in its entirety will be made a regnant part of any subcontract between the Contractor and PMF for this project.

This quotation is good for 30 days.

Respectfully,



Dary Farnstrom
Division Manager

License #388361

For questions or comments regarding this scope, contact Walt Stevens direct, 209 373 4612

RECEIVED TIME SEP. 12. 12:12PM

Page 5 of 5

8.j31

EXHIBIT 5

ATTACHMENT J

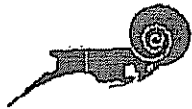


09/12/2012 13:48 9256265783

FOUNDATION

FOUNDATION CONSTRUCTORS, INC.

MAIN OFFICE: P.O. BOX 97, OAKLEY, CA 94561 - TELEPHONE (925) 754-6633 - FAX (925) 625-5783 Contractors Lic. No. C370761A



NO. CALIFORNIA (925) 754-6633
SO. CALIFORNIA (909) 350-1584
TOLL FREE U.S. (800) 841-8740

PILE DRIVING PROPOSAL

ATTN: ESTIMATORS

RE: FW# 268-12
SANTA CRUZ METROTRANSIT DISTRICT
SANTA CRUZ, CA
9-11-12 PAGE 1 OF 2

GENTLEMEN:

OUR PROPOSAL IN ITS ENTIRETY SHALL BECOME A PART OF THE SUBCONTRACT AGREEMENT SHOULD WE BE THE SUCCESSFUL LOW BIDDER ON THIS PROJECT. ANY CONFLICT BETWEEN THESE CONDITIONS AND THE SUBCONTRACT AND THESE CONDITIONS SHALL PREVAIL.

WE PROPOSE TO FURNISH ALL LABOR, MATERIALS AND EQUIPMENT FOR INSTALLATION OF 273 16" PCPS PILES TOTALING 19,547 L.F. FOR THE LUMP SUM

WE INCLUDE:

1. 1 MOBILIZATION (CRANE TO REMAIN ONSITE FOR PRODUCTION PHASE, 1 MONTH STAND BY INCLUDED).
2. PILE CAP CONNECTION (FURNISH & GROUT BARS)
3. 30 INDICATOR PILES (TO BE INCORPORATED INTO PRODUCTION PILE LOCATIONS)
4. PDE ON 20 IND. PILES
5. WEAP
6. 20 CAPWAP'S
7. FURNISH & INSTALL 273 16" SQ PCPS PILES TOTALING 19,547 L.F.
8. PREDRILLING (STOCK PILING & REMOVAL OF DRILL SPOILS BY OTHERS)
9. PILE DESIGN INCLUDES 5' OF CUT OFF ALLOWANCE FOR PRODUCTION PILES & 15' CUT OFF ALLOWANCE FOR INDICATOR PILES. (THIS IS ALLOWABLE DESIGN CUT OFF NOT THE ACTUAL PILE CUT OFF).
10. INDICATOR PILES CUT OFFS (30 TOTAL, 1 CUT PER PILE)

WE EXCLUDE:

1. NOISE & VIBRATION MONITORING
2. LOCATION AND PROTECTION OF UTILITIES
3. DAMAGE TO ADJACENT STRUCTURES DUE TO PILE DRIVING
4. TRAFFIC CONTROL
5. PROFESSIONAL LIABILITY INSURANCE (IF REQUIRED)
6. HAZMAT TRAINING
7. LAYOUT & ASBUILTS OF PILES
8. STOCK PILING & REMOVAL OF DRILL SPOILS
9. PRODUCTION PILE CUT OFFS (SEE ADD UNDER UNIT PRICES) (30 INDICATOR PILE CUT OFFS INCLUDED).
10. PILE TIPS

UNIT PRICES:

1. PILE CUT OFFS ADD /CUT OFF (FOR PILE CUT OFFS 5' AND UNDER)

QUALIFICATIONS:

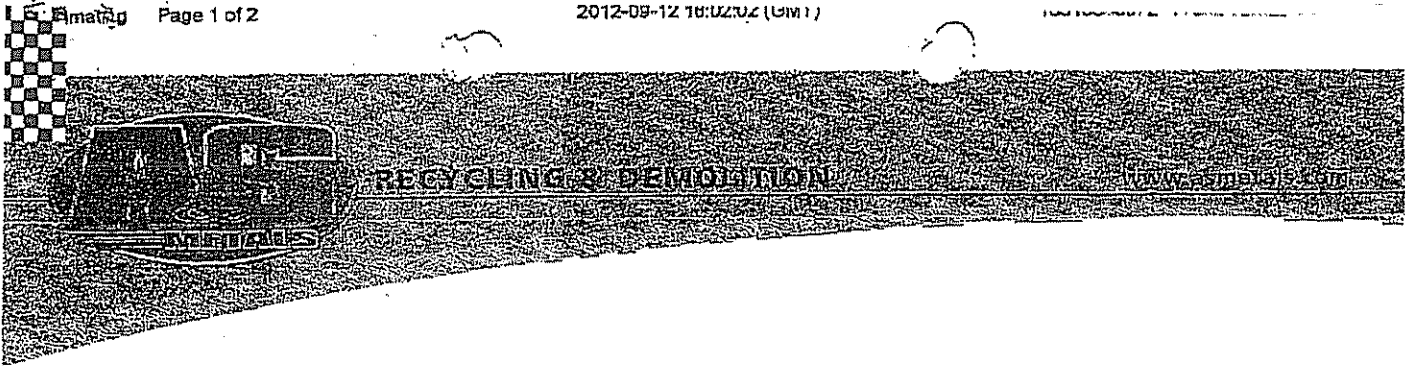
1. ALL OVERHEAD AND UNDERGROUND OBSTRUCTIONS WILL BE REMOVED BY OTHERS.
2. FLAT, LEVEL, ALL WEATHER ACCESS FOR OUR CRANES, FORK LIFTS, AND PILING TRUCKS WILL BE BY OTHERS.

RECEIVED TIME SEP. 12. 11:46PM

8.j33

EXHIBIT 6

ATTACHMENT J



September 12, 2012
QU-12-728

Attention: Estimating

RE: Selective Demolition
Souza Operations Bldg and Parking Structure
1200 River Street, Santa Cruz CA

Dear Estimating,

A & S Metals and Demolition is pleased to provide the following quotation for the demolition and rough grade for the above mentioned project. The quotation was assembled from the list of following documents:

1. RNL Drawings, Demolition Plan, dated 6-22-2012, Project 6040-1569-09
2. RNL Landscape Drawings, Indicating tree removal, Sheet L000
3. Specifications, Santa Cruz Metropolitan Transit District Metrobase Project, Operations Bldg, dated 6-29-2012
4. Addenda Noted: #1, #2

Demolish Superstructure -

- Mobilization
- Demolish existing operations bldg, $\pm 8,000$ sf
- Demolish AC parking lot as indicated, $\pm 48,000$ sf
- Demolish landscaping, retaining walls, and related curb and gutter
- Demolish trees as indicated, ± 9 each
- Saw cut at phasing boundary to retain outer AC aprons
- Traffic control as required for our portion of work
- Dust control including water
- Protection of decorative pavers where required

Rough Grade -

- Upon completion of demolition, rough grade, high track and back drag site smooth
- (e) depressions to be smoothed over with fill on site, bid assumes no import

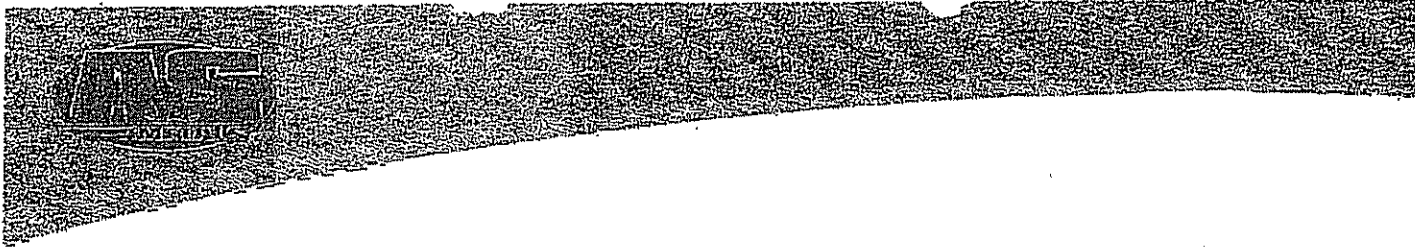
Notes Specific to this Project:

- All General Conditions to be managed and handled by the Primary Contractor. Unless previously authorized, A & S will NOT participate in these costs
- All utility location, disconnects, USA field identification, temporary relocation, etc, to be completed by others prior to A & S mobilization

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8.j35

ATTACHMENT J



- We are requesting a water hook up on site for our dust control equipment
- A & S reserves any and all salvage rights to any and all items on the project upon mobilization. Salvage items for owner to be removed prior to A & S mobilization by others.
- **Bid assumes Prevailing Wage. A&S is NOT a union contractor**
- Proposal is valid for 30 days from the date of this proposal

We are excluding the following for all above described work items:

- **Testing, handling and removal of hazardous, contaminated and/or asbestos containing materials, PCB ballasts, mercury light tubes, oils and/or Freon**
- Safe-off, capping and/or removal of underground utilities
- Demolition and removal of hidden subsurface items not shown
- All permits
- Utility disconnect fees
- Well capping
- Overtime work hours
- Underground storage tanks and/or septic tank removal
- Layout, testing, inspections, engineering, settlement monitoring, surveys and/or survey liability
- Handling, relocating and/or salvage of Owners material and/or equipment
- Import of soil, base rock and turf
- Locating, marking and protection or underground utilities and/or monitoring wells intended to remain
- Structural excavation and/or grading
- Winterization, pumping, mud work or temporary roads
- Dewatering
- Storm Water Run-Off Plan

A&S Metals and Demolition, Inc. proposes to perform the above-described work for the price of

Please do not hesitate to call our office if you have any questions.

Respectfully,
A & S Metals and Demolition



Tom Pietras, Demolition Division Manager
California Contractors License 761104 C21

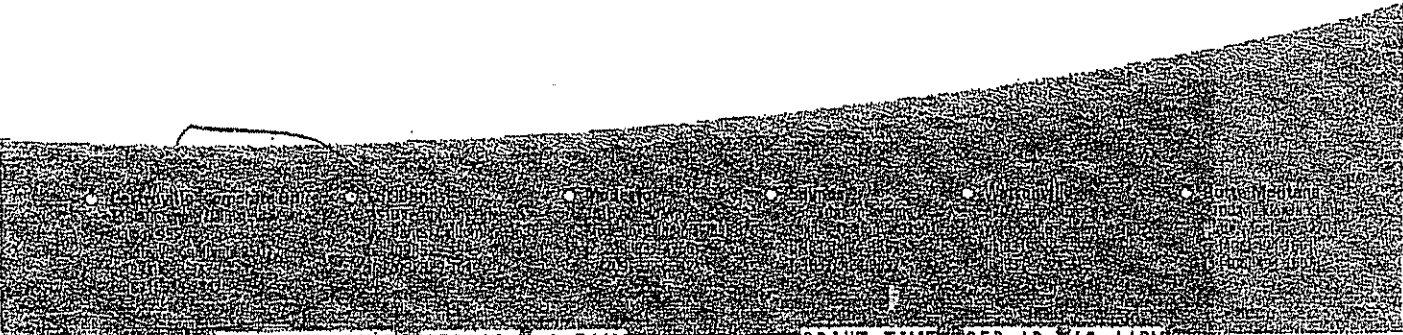


EXHIBIT 7

ATTACHMENT J

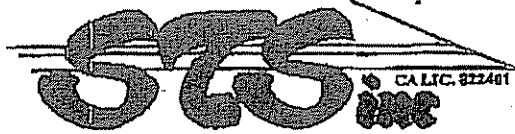


09/12/2012 13:45

9168472352

CORP STS INC

PAGE 01/01



Field Office:
3241 Fitzgerald Road, Ste 1
Rancho Cordova, CA 95742
Ph: (916) 858-0488
Fax: (916) 631-4257

BID PROPOSAL

Date: 9/12/12

Attn: Estimating Department

Project: Judy K. Souza Operations Facility, 1200 River Street, Santa Cruz, CA

Scope of Work:

Section 07180 – Traffic Coatings - Provide labor & material to install approx. 16,324 sf Elasto-Deck 5000 system by Pacific Polymers, Inc. Caulk approx. 1,636 lin. ft. existing joints.

We would be pleased to submit our proposal based on the following:

1. Others to clear application area of excessive construction debris and obstructions. Reasonable access will be provided for areas requiring application.
2. Prepare, prime & fill w/ caulking approx. 1,636 lin. ft. of existing joints.
3. Surface to be smooth, dry, clean of dirt, oil and all other contaminants. This by others.
4. Manufacturer suggests water cure concrete with no curing compounds.
5. When scheduling, **environmental conditions must be considered** for proper installation. Do not apply traffic coatings to damp or wet substrates, when temperatures are below 40°, when relative humidity exceeds 85%, or when temperatures are less than 5° above dew point.
6. **All markings by others. Moisture test of substrate by others.**
7. **Material manufacturer:** Pacific Polymers, Inc. – primer, base coat, intermediate coat, top coat
8. **Protection by others.**

Work process: (1 mobilization lasting 5-7 days)

1. Prep concrete surface & existing joints
2. Apply primer
3. Apply base coat
4. Apply intermediate coat w/ sand broadcast
Note: Heavy traffic areas (approx. 3,674 sf) will have second intermediate coat
5. Apply topcoat

PRICE.....
*Price based on one mobilization only lasting 5-7 days
Bid as prevailing wage job*

The above price includes all labor, materials & clean-up. All proposals are subject to pricing reviews and authorization after 90 days from date stated at top of page one.

Gary Garland, Estimator, STS, Inc.

Ph: (916) 858-0488, Fax: (916) 631-4257 Email: Garyg@stscorp.biz

~A certified UDBE/ WBE/ DBE #36721
WOSB/ SBE company ~

RECEIVED TIME SEP. 12. 1:44PM

8.j38

EXHIBIT 8

ATTACHMENT J



DEPARTMENT OF CONSUMER AFFAIRS

Contractors State License Board

Contractor's License Detail - License # 388361



DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

CSLB complaint disclosure is restricted by law (B&P 7124.6) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.

Per B&P 7071.17, only construction related civil judgments reported to the CSLB are disclosed.

Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.

Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

License Number	388361	Extract Date	12/4/2012
MONTEREY MECHANICAL CO			
Business Information	Business Phone Number: (510) 632-3173		
	8275 SAN LEANDRO STREET OAKLAND, CA 94621		
Entity	Corporation		
Issue Date	03/28/1980		
Expire Date	03/31/2014		
License Status	ACTIVE		
	This license is current and active. All information below should be reviewed.		
Classifications	CLASS	DESCRIPTION	
	B	<u>GENERAL BUILDING CONTRACTOR</u>	
	C36	<u>PLUMBING</u>	
	A	<u>GENERAL ENGINEERING CONTRACTOR</u>	
	C-4	<u>BOILER, HOT WATER HEATING AND STEAM FITTING</u>	
	C12	<u>EARTHWORK AND PAVING</u>	
	C20	<u>WARM-AIR HEATING, VENTILATING AND AIR-CONDITIONING</u>	
	C42	<u>SANITATION SYSTEM</u>	
	C43	<u>SHEET METAL</u>	
C16	<u>FIRE PROTECTION CONTRACTOR</u>		
Certifications	CERT	DESCRIPTION	
	ASB	<u>ASBESTOS - (for bidding purposes only)</u>	
	HAZ	<u>HAZARDOUS SUBSTANCES REMOVAL</u>	
Bonding	CONTRACTOR'S BOND		


ATTACHMENT J



DEPARTMENT OF CONSUMER AFFAIRS

Contractors State License Board

Contractor's License Detail - License # 270761

 **DISCLAIMER:** A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.

Per [B&P 7071.17](#), only construction related civil judgments reported to the CSLB are disclosed.

Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.

Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

License Number	270761	Extract Date	12/4/2012
	FOUNDATION CONSTRUCTORS INC		
Business Information	Business Phone Number: (925) 754-6633 P O BOX 97 OAKLEY, CA 94561		
Entity	Corporation		
Issue Date	08/16/1971		
Expire Date	05/31/2013		
License Status	ACTIVE This license is current and active. All information below should be reviewed.		
Classifications	CLASS	DESCRIPTION	
	A	<u>GENERAL ENGINEERING CONTRACTOR</u>	
Bonding	CONTRACTOR'S BOND This license filed a Contractor's Bond with <u>WESTERN SURETY COMPANY</u> . Bond Number: 158775471 Bond Amount: \$12,500 Effective Date: 01/01/2007 <u>Contractor's Bond History</u>		
	BOND OF QUALIFYING INDIVIDUAL 1. The Responsible Managing Officer (RMO) BRANDL PETER certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A bond of qualifying individual is not required. Effective Date: 05/03/2000		
Workers' Compensation	WORKERS' COMPENSATION		


ATTACHMENT J



DEPARTMENT OF CONSUMER AFFAIRS

Contractors State License Board

Contractor's License Detail - License # 761104

 **DISCLAIMER:** A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.

Per [B&P 7071.17](#), only construction related civil judgments reported to the CSLB are disclosed.

Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.

Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

License Number	761104	Extract Date	12/4/2012
S G S RECYCLING ENTERPRISES INC			
Business Information	Business Phone Number: (831) 633-3379		
	P O BOX 955 CASTROVILLE, CA 95012		
Entity	Corporation		
Issue Date	04/05/1999		
Expire Date	04/30/2013		
License Status	ACTIVE This license is current and active. All information below should be reviewed.		
Classifications	CLASS	DESCRIPTION	
	C21	<u>BUILDING MOVING, DEMOLITION</u>	
CONTRACTOR'S BOND			
This license filed a Contractor's Bond with <u>FINANCIAL PACIFIC INSURANCE COMPANY.</u>			
Bond Number: 909965			
Bond Amount: \$12,500			
Effective Date: 02/07/2011			
Bonding	<u>Contractor's Bond History</u>		
BOND OF QUALIFYING INDIVIDUAL			
1. The Responsible Managing Officer (RMO) SILVA STANLEY GEORGE JR certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A bond of qualifying individual is not required.			
Effective Date: 06/03/2008			
Workers' Compensation	WORKERS' COMPENSATION		


ATTACHMENT J



DEPARTMENT OF CONSUMER AFFAIRS

Contractors State License Board

Contractor's License Detail - License # 822401

 **DISCLAIMER:** A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.

Per [B&P 7071.17](#), only construction related civil judgments reported to the CSLB are disclosed.

Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.

Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

License Number	822401	Extract Date	12/3/2012
Business Information	SPRAYTECH SYSTEMS INC dba S T S INC Business Phone Number: (916) 487-8804 4731 EL CAMINO AVENUE CARMICHAEL, CA 95608		
Entity	Corporation		
Issue Date	08/01/2003		
Expire Date	08/31/2013		
License Status	ACTIVE This license is current and active. All information below should be reviewed.		
Classifications	CLASS	DESCRIPTION	
	B	<u>GENERAL BUILDING CONTRACTOR</u>	
	D12	<u>SYNTHETIC PRODUCTS</u>	
Bonding	CONTRACTOR'S BOND This license filed a Contractor's Bond with <u>AMERICAN CONTRACTORS INDEMNITY COMPANY</u> Bond Number: SC6062104 Bond Amount: \$12,500 Effective Date: 03/02/2009 <u>Contractor's Bond History</u>		

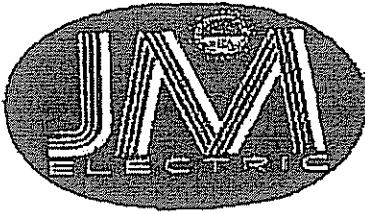
EXHIBIT 9

ATTACHMENT J

JMELECTRIC

PAGE 01

09/12/2012 13:56 8317589638



STATE LICENSE C-10 9276928 • PHONE (824) 422-7819
COMMERCIAL • INDUSTRIAL • RESIDENTIAL
400 GRIFFIN STREET, SALINAS, CA 93901 EST. 1948



MBCC NECA Standard Condition of Proposal

Date: 9/12/2012

To: Project Manager
Fr: Joel Floreza
Ph/Fax: 831-422-7819 / 758-9638
Re: Judy Souza Operations Facility in Santa Cruz

We are pleased to submit this proposal to perform subcontract work on the following project:
Judy Souza Operations Facility in Santa Cruz

The scope of work included in this proposal is as follows:
Electrical
Systems include Fire Alarm, Telecom, Access control and CCTV
Generator / transfer switch
Trenching, backfill, compaction included

The bid documents upon which this proposal is based are:
Electrical (E) Security (SY) Telecom (T) sheets dated 6/22/2012
Specification sections 16000- ... Sections 13700, 13710, 13720, 13770, 13780, 13790

Exceptions:
Permit and Bonds by others, Bond rate @ 2.5%
Utility charges by others
Waiver of Subrogation NIC
Hazardous material handling and disposal NIC
Ceiling wires and blocking for fixtures NIC
Structural design NIC
Cutting, coring, patching, painting by others
Any concrete or asphalt cutting, patching, replacement NIC
Pole bases NIC
Any housekeeping pad NIC
Temporary power & lighting NIC
Any allowances NIC
Illuminated handrail NIC

We propose to perform the work set forth in the above scope of work for the price shown below.
Base Bid - _____

Addenda noted:

1, 2

The condition of this proposal are as follows and as stated on the reverse side.

RECEIVED TIME SEP. 12. 1:42PM

8.j45

ATTACHMENT J



MURPHY AUSTIN
ADAMS SCHOENFELD LLP

ATTACHMENT K

Fax: Dec 5 2012 10:43am P001/026
304 "S" Street, Sacramento, California 95811-6906
P O Box 1319, Sacramento, California 95812-1319
Tel: (916) 446-2300
Fax: (916) 503-4000
Web: murphyaustin.com

FACSIMILE TRANSMITTAL COVER SHEET

DATE:	December 5, 2012
RE:	Supplemental Response on behalf of Lewis C Nelson and Sons, Inc to Bid Protests of Overaa and Carpenters Union
OUR FILE NO:	1347.003
FROM:	D Michael Schoenfeld

Please deliver the following page(s) immediately to:

NAME	ORGANIZATION	FAX NO.	PHONE NO.
Margaret Gallagher General Counsel	Santa Cruz Metropolitan Transit District	831-469-3658	831-426-6080
Gordon Tesson Dwight Nelson	Lewis C. Nelson and Sons, Inc.	559-896-8609	559-896-1443

Total Number of Page(s), including This Cover Sheet: 26

CLAIM OF PRIVILEGE

****WARNING TO RECIPIENT****

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If you do not receive all pages or have any problems with receiving this facsimile, please call Receptionist at (916) 446-2300.

1347.003-1300313



MURPHY AUSTIN
ADAMS SCHOENFELD LLP

Fax:
ATTACHMENT K

Dec 5 2012 10:43am P002/026

D MICHAEL SCHOENFELD
(919) 446-2300 EXT 3089
mschoenfeld@murphyaustin.com

December 5, 2012

VIA E-MAIL AND FACSIMILE

Margaret Gallagher
General Counsel
Santa Cruz Metropolitan Transit District
110 Vernon Street
Santa Cruz, CA 95060

Re: Supplemental Response on behalf of Lewis C Nelson and Sons, Inc
Our File No. 1347 003

Dear Ms Gallagher:

Yesterday I sent to you on behalf of our client, Lewis C Nelson and Sons, Inc ("LCN"), a letter responding to the bid protests submitted by counsel for Overaa and the Carpenters union in response to this submission we have spoken by phone to address your questions and then you sent me an email earlier this morning (reprinted as Exhibit A to this letter) The purpose of this letter is to respond to your email earlier this morning. Your email included two requests for information:

- 1 That I provide evidence that Pacific Metal Fabricators is in fact a division of Monterey Mechanical; and
- 2 Legal authority that LCN may subcontract with Monterey Mechanical

Summary Response

As to item 1, the answer is yes. See Exhibit B which is the fictitious business name statement filed by Monterey Mechanical in San Joaquin County in 2011 registering the name of Pacific Metal Fabricators as a dba of Monterey Mechanical. Note that the filing indicates it is a re-filing of a dba that commenced as early as January 1, 2007 so this is a continuing business of long standing.

Further, see Exhibit C which are copies of pages printed out from Monterey Mechanical's website showing that Pacific Metal Fabricators is indeed a division of Monterey Mechanical. On page 2 of Exhibit C the website states: "Pacific Metal Fabricators, a division of MMC..." (emphasis added)

As to item 2, the answer is that as a result of the fact that Pacific Metal Fabricators is indeed a registered fictitious business name of Monterey Mechanical, the subcontract to be issued by LCN is properly issued to Monterey Mechanical dba Pacific Metal Fabricators as I discussed with you last evening. Please see further information below

1347 003-1360792 1

MURPHY AUSTIN ADAMS SCHOENFELD LLP
1000 1/2 Street, Suite 200, Santa Cruz, CA 95060
Tel: (919) 446-2300 Fax: (919) 303-4000 www.murphyaustin.com

Margaret Gallagher
December 5, 2012
Page 2

Issue #1

Attached to this letter is the fictitious business name filing of Monterey Mechanical with San Joaquin County which substantiates that the business that submitted the bid to LCN in September, 2012 for the structural steel portion of the project, Pacific Metal Fabricators, is indeed a viable, legal division of Monterey Mechanical with the proper ability to perform the work and receive the subcontract. Exhibit B should erase any question in your mind that there is any doubt as to the propriety of the bidder.

Issue #2

Given that Pacific Metal Fabricators is indeed a viable, legal division of Monterey Mechanical, and which was properly listed in the bid of LCN to the District, LCN will issue the subcontract to Monterey Mechanical dba Pacific Metal Fabricators, which is the licensed entity. As we discussed last evening, LCN can only issue a subcontract to a licensed entity, and thus the ultimate entity to receive the subcontract will be Monterey Mechanical through its registered dba known as Pacific Metal Fabricators. This fully comports with California law and, respectively, should resolve any and all remaining questions or doubts in the mind of the District.

In furtherance of the position of LCN, I also attach as Exhibit D the recent case of *D H Williams Construction, Inc. v. Clovis Unified School District* (2007) 146 Cal.App.4th 757 which supports the conclusions stated above. This case holds that the issues raised by the listing of Pacific Metal Fabricators does not affect or concern the responsiveness of the LCN bid.

Further, the case holds that the listing of an unlicensed subcontractor (which is not presented by the facts in this matter), if that is the case, only concerns the responsibility of the bidder. However, in order for there to be a responsibility issue (which in this case there is not), it must be shown that the prime contract bidder, in this case LCN, intentionally or knowingly listed an unlicensed subcontractor in its bid form to the District with the intent to substitute them out.

The facts disclose that this is certainly not the case and therefore the bid of LCN is responsive and there is no responsibility issue.

Regarding who LCN will subcontract with for the steel portion of the project, the *D H Williams* case is controlling: it provides that if Pacific Metal Fabricators is a viable division of Monterey Mechanical (which it is) then the subcontract will be issued to Monterey Mechanical dba Pacific Metal Fabricators. The *Williams* case further provides that if the facts presented do not yield the conclusion that Pacific Metal Fabricators is a viable division of Monterey Mechanical (which result is undermined by the facts presented) then the remedy is for LCN to self-perform or obtain the consent of the owner pursuant to Public Contract Code section 4107 to substitute another in its place.

1347 000-1550792

Margaret Gallagher
December 5, 2012
Page 3

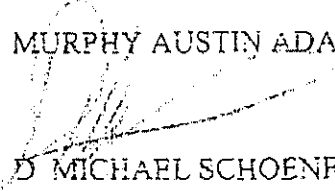
Conclusion

The facts now before the District demonstrate that the protests filed relating to Pacific Metal Fabricators are unfounded and that the questions raised in your email are also addressed. Pacific Metal Fabricators is a properly registered dba of Monterey Mechanical and LCN's reliance on the Pacific bid, on bid day, and listing of Pacific, was proper and appropriate and LCN's conduct in this regard does not raise any issues of responsiveness. As such, the award of the contract to LCN is proper and appropriate, and upon receipt of the award LCN shall issue the steel subcontract to Monterey Mechanical dba Pacific Metal Fabricators.

Please advise me if there are any further questions that I can answer to assist your evaluation.

Very truly yours,

MURPHY AUSTIN ADAMS SCHOENFELD LLP


MICHAEL SCHOENFELD

DMS/cw
Enclosures
cc: Lewis C Nelson and Sons, Inc (w/encs)

EXHIBIT A

D. Michael Schoenfeld

From: Peg Gallagher [peggy@scmid.com]
Sent: Wednesday, December 05, 2012 8:00 AM
To: D. Michael Schoenfeld
Subject: Lewis C. Nelson's Subcontractors

Good Morning:

It would be helpful if you could provide evidence that Pacific Metal Fabricators is in fact a division of Monterey Mechanical. At this point, all we know is that Pacific Metal Fabricators listed the same license number as Monterey Mechanical on the bid that it submitted to Lewis C. Nelson. Additionally, if you have any legal authority for the Santa Cruz METRO to allow the subcontract to be executed with Monterey Mechanical under these circumstances, please forward that as well. Thank you for your attention to this matter. peg

Margaret Gallagher
District Counsel
Santa Cruz METRO
110 Vernon Street
Santa Cruz, CA 95060

This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, is confidential, and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received this message in error, and then delete it. Thank you.

12/5/2012

8.k6

EXHIBIT B

ATTACHMENT K

Fax:

Dec 5 2012 10:44am P008/026

Kenneth W Biskemora Recorder / County Clerk
 County of San Joaquin
 44 North San Joaquin Street, Suite 260
 Stockton, CA 95202
 (209) 466-3939

Doc #: 2011-106396
 9/12/11 10:03 AM

San Joaquin County Recorders

SEE REVERSE SIDE FOR INSTRUCTIONS

File # _____
 Original Refile (Change(s) in facts from previous filing)
 Refile (No Change(s) in facts from previous filing)
 Previous File # 2006-24735

- REMEMBER**
1. Type or print legibly in black ink
 2. Submit original and 2 copies
 3. The S26 filing fee includes one owner and one business name
 4. Add \$5 for each additional owner or partner
 5. Add \$5 for each additional business name located at the same address
 6. If filing by mail, enclose a self-addressed stamped return envelope
 7. Attach separate page for additional names

Space above for use of County Clerk only

FICTITIOUS BUSINESS NAME STATEMENT

The following person (persons) is (are) doing business as:

A. FICTITIOUS BUSINESS NAME(S)
Pacific Metal Fabricators

B. Street Address of Principal place of Business (P.O. Box not acceptable) City State Zip
2420 So. CALIFORNIA ST STOCKTON CA 95206

C. Mailing Address (if different) City State Zip

<p><input checked="" type="radio"/> Full Name of Registrant (if Registrant is a Corporation, show Corporation name) <u>Monterey Mechanical</u></p> <p>Residence Street Address (P.O. Box not acceptable) <u>8275 San Leandro St</u></p> <p>City State Zip <u>Oakland CA 94621</u></p> <p>(if corporation or LLC, print state of incorporation/organization) <u>CA</u></p>	<p><input type="radio"/> Full Name of Registrant</p> <p>Residence Street Address (P.O. Box not acceptable)</p> <p>City State Zip</p> <p>(if corporation or LLC, print state of incorporation/organization)</p>
---	--

<p><input type="radio"/> Full Name of Registrant</p> <p>Residence Street Address (P.O. Box not acceptable)</p> <p>City State Zip</p> <p>(if corporation or LLC, print state of incorporation/organization)</p>	<p><input type="radio"/> Full Name of Registrant</p> <p>Residence Street Address (P.O. Box not acceptable)</p> <p>City State Zip</p> <p>(if corporation or LLC, print state of incorporation/organization)</p>
--	--

D. This Business is conducted by (Check only one):

<input type="checkbox"/> an individual	<input type="checkbox"/> joint venture	<input type="checkbox"/> a limited partnership	<input type="checkbox"/> an unincorporated association other than a partnership
<input type="checkbox"/> husband and wife	<input checked="" type="checkbox"/> a corporation	<input type="checkbox"/> a general partnership	<input type="checkbox"/> a limited liability company
<input type="checkbox"/> co-partners	<input type="checkbox"/> a trust	<input type="checkbox"/> limited liability company	<input type="checkbox"/> a limited liability partnership
<input type="checkbox"/> State or Local Registered Domestic Partners			

E. The registrant commenced to transact business under the fictitious business name or names listed above on 11/10/11 (insert N/A above if you haven't started to conduct business)

I declare that all information in this statement is true and correct (A registrant who declares to true information which he or she knows to be false is guilty of a crime)

Paul Moreira
 SIGNATURE OF REGISTRANT

NOTICE: IN ACCORDANCE WITH SUBSECTION (d) OF SECTION 17922, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK EXCEPT AS PROVIDED IN SUBSECTION (d) OF SECTION 17922 WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCY ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THE STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE OR COMMON LAW (SEE SECTION 14411 ET SEQ. BUSINESS AND PROFESSIONS CODE).

F. THIS STATEMENT WAS FILED WITH THE RECORDER, COUNTY CLERK OF SAN JOAQUIN COUNTY ON THE DATE INDICATED BY THE FILE STAMP IN THE UPPER RIGHT CORNER.

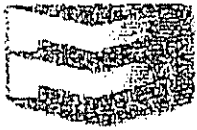
Print name of person signing (if corporation, also print corporate title of officer; if LLC, also print title of officer or manager)
 Registrant's Name PAUL MOREIRA
 (Please Print)

Office's Title CEO
 (Please Print)

I hereby certify that this copy is a correct copy of the original statement or file in my office.

Assessor/Recorder/County Clerk
[Signature]
 Deputy

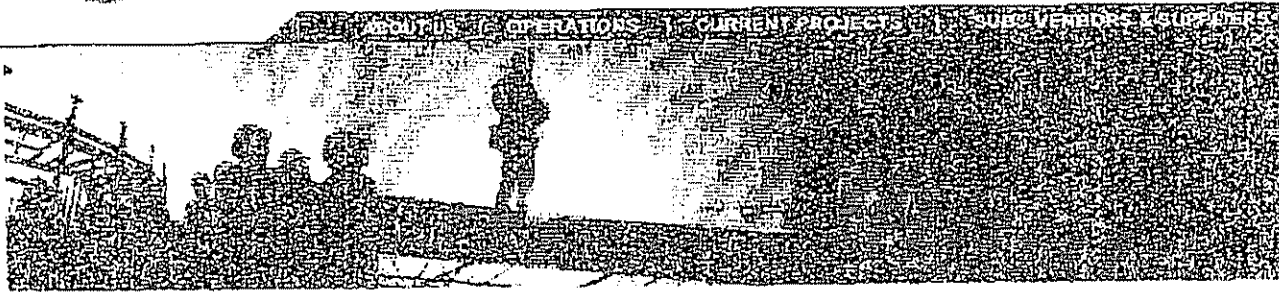
EXHIBIT C



Monterey Mechanical Co.

HOME | CONTACT US | EMPLOYEE LOGIN

ABOUT US | OPERATIONS | CURRENT PROJECTS | SUB VENDOR & SUPPLIERS



wednesday 5 December 2012

LATEST NEWS / EVENTS

SFPUC SEWPCP Dewatering Facility Cor. Repairs has started in SF

SBSA Project for Power Reliability and SBSA Project for Activated Sludge Automation are both active

Monterey Mechanical Completes the Delta Water Project in Stockton CA

Also completes the Berryman Project ERMUD in Oakland



ABOUT US

- About Monterey Mechanical
- History
- Quality Control
- Systems
- Organization & Personnel
- Safety
- Hasp

OPERATIONS

- The General Engineering
- Pipe Fabrication
- Machinery Installation
- Contra Costa Metal Fab
- Pacific Metal Fab
- Monterey Metal Fab
- Industrial Metal
- HVAC
- Service

CURRENT PROJECTS

- Current Projects
- Satisfied Clients

SUB VENDOR & SUPPLIERS

- Subcontractors
- Vendors
- Suppliers



Monterey Mechanical Co.

HOME | CONTACT US | EMPLOYEE LOGIN



- The General Engineering
- Pipe Fabrication
- Machinery Installation



Pacific Metal Fabricators
 2420 South California Street
 Stockton, CA 95206
 209 464 8674 ph
 209 467 6473 fax



- Contra Costa Metal Fab
- Pacific Metal Fab
- Monterey Metal Fab
- Industrial Metal
- HVAC
- Service

Pacific Metal Fab

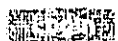
Pacific Metal Fabricators, a division of MMC, specializes in the fabrication of structural steel and miscellaneous metals for their commercial and industrial clients. PMF employs skilled craftsmen with experience in welding and fabricating steel structures and buildings to include stainless steel and aluminum fabrication. To complement our skilled craftsmen, PMF has the capability to perform in-house detailing, working closely with project design teams to insure contract drawings are transferred to a working set of shop drawings. Each shop drawing is individually checked for accuracy, proper material classifications, feasibility of fabrication, feasibility of installation, along with special requirements of the contract drawings and specifications. Quality performance is one of the cornerstones of PMF's company culture, and is considered a personal responsibility of all employees. PMF maintains the American Institute of Steel Construction Certification for Fabricators of Steel Building Structures, which includes yearly audits from external Auditors who perform rigorous examinations to evaluate Pacific Metal Fabricator's quality management system. To maintain quality performance of all business units at the highest



EXHIBIT D



- [Home](#)
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US Cases & Codes California Cal.App.4th 146

D.H. Williams Construction, Inc. v. Clovis Unified School Dist. (Emmett's Excavation, Inc.) (2007) 146 Cal.App.4th 757 [53 Cal.Rptr.3d 345]

D.H. Williams Construction, Inc. v. Clovis Unified School Dist. (Emmett's Excavation, Inc.) (2007)146 Cal.App.4th 757 , 53 Cal.Rptr.3d 345

[Nos. F049526, F049632.

Fifth Dist.

Jan. 10, 2007.]

D.H. WILLIAMS CONSTRUCTION, INC., Plaintiff and Respondent, v. CLOVIS UNIFIED SCHOOL DISTRICT, Defendant and Appellant; EMMETT'S EXCAVATION, INC., Real Party in Interest and Appellant.

(Superior Court of Fresno County, No. 05CECG 01045MBS, M. Bruce Smith, Judge.)

(Opinion by Vartabedian, Acting P. J., with Harris, J., and Gomes, J.,
concurring.)

COUNSEL

Lozano Smith, Jerome M. Behrens, Christine A. Goodrich and Stephen A. Mendyk for Defendant and Appellant.

Coleman & Horowitz, Darryl J. Horowitz and Karel G. Rocha for Real Party in Interest and Appellant.

No appearance for Plaintiff and Respondent. **[146 Cal.App.4th 760]**

OPINION

VARTABEDIAN, ACTING P. J.-

This is an appeal from a judgment granting a petition for writ of mandate. The issue before us is whether a bid on a public agency contract can be declared nonresponsive by the public agency when the bidder has listed an unlicensed subcontractor on the bid forms. We agree **[146 Cal.App.4th 761]** with the trial court that such a bid, in the circumstances of the present case, could not be declared nonresponsive. However, the appropriate remedy is for the agency to conduct a due process hearing before awarding the contract to determine whether the bid is responsive. Accordingly, we reverse the judgment, which simply directed the awarding of the contract to the bidder in question.

Facts and Procedural History

Appellant Clovis Unified School District (the District) is building a \$126 million educational center. Instead of soliciting bids for a single prime contract, the District is using the services of a construction manager and is soliciting bids for multiple prime contracts for various phases of the project. The bids involved in the present case were for the concrete and fencing work at the educational center.

The District solicited bids pursuant to a project manual that contains instructions to bidders, general conditions of bidding, and a mandatory form for listing of subcontractors. Bids were due by March 3, 2005. Five bidders submitted proposals. The bid submitted by respondent D.H. Williams Construction, Inc. (Williams), was the lowest, at \$4,419,000. The bid submitted by appellant Emmett's Excavation, Inc. (Emmett), was next lowest, at \$4,439,724.

On its form for designation of subcontractors, Williams listed Patch Master of Central California as the subcontractor for "concrete, masonry,

ATTACHMENT L

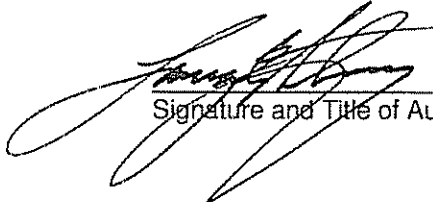
BID FORM – DOCUMENT 9

DESIGNATION OF SUBCONTRACTORS

To comply with the requirements of the California Subletting and Subcontracting Fair Practices Act, Bidder shall list the name and address of each Subcontractor, including Disadvantaged Business Enterprise (DBE) Subcontractors to whom bidder proposes to Subcontract more than 1/2 of 1 percent of the work, and description and portions of the Work or services Subcontracted.

Attach additional copies of this form if more space is required.

<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
1 ✓ Collins Electric	Marina, CA	Electrical	8
2 ✓ Landawazo	Hayward, CA	Concrete Placement including Site Concrete	6
3 ✓ Truysen K&P	West Sacramento, CA	Excavator	1
4 ✓ Amaris Salvias	Livermore, CA	Rebar	6
5 ✓ Peck & Miller	Mariposa, CA	Formwork	9
6 ✓ Foundation Constructors	Oakley, CA	Piles	9
7 ✓ Dorian & Venables	Milpitas, CA	Demo/earthwork/ Paving & Utilities	2


 Vice President
 Signature and Title of Authorized Official

ATTACHMENT L

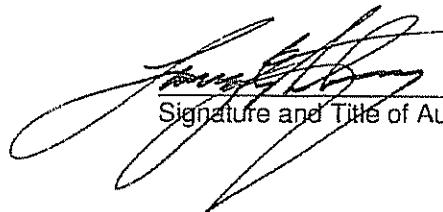
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	<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
8✓	Sheeman Lowehe	Sacramento, CA	traffic lighting	1
9✓	Alcal	Freemont, CA	Roofing	1
10✓	Pacific Glazing WINDSHIELD GLASS INC	San Jose, CA ^{1000 Morgan Hill, CA}	GLAZING	2
11✓	MSM	San Jose, CA	Framing: Drywall	2
12			_____	
13✓	Harry Morphy	San Jose, CA	Plumbing	1
14✓	Geo H Wilson	SANTA CRUZ, CA	HVAC: Plumbing	9


 Vice President
 Signature and Title of Authorized Official

ATTACHMENT L

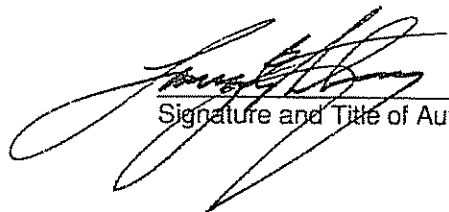
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Attach additional copies of this form if more space is required

<u>Name of Subcontractor</u>	<u>Business Address</u>	<u>Portion of Work Or Bid Item</u>	<u>% of Total Bid</u>
22			
23			
24			
25			
24			
27			
28			

 Vice President
Signature and Title of Authorized Official

ATTACHMENT L

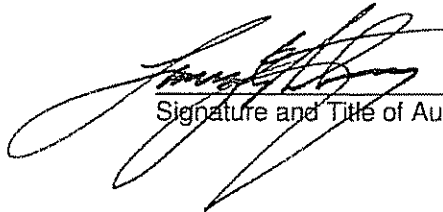
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29	_____	_____	_____	_____
30	_____	_____	_____	_____
31	_____	_____	_____	_____
32	_____	_____	_____	_____
33	_____	_____	_____	_____
34	_____	_____	_____	_____
35	_____	_____	_____	_____

 Vice President

Signature and Title of Authorized Official

ATTACHMENT L

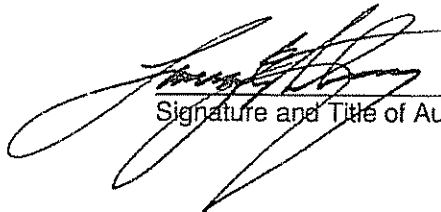
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 Vice President

Signature and Title of Authorized Official