



Contra Costa County
**Public Works
Department**

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February 7, 2022

Via Fax (510-733-0389) and U.S. Mail Certified [70183090000064542838]

Sam Rivinius, President
GradeTech, Inc.
10250 Crow Canyon Road
Castro Valley, CA 94552

**Re: Byron Highway at Byer Road Safety Improvements
County Project No.: 0662-6R4147
Federal Project No.: HSIPL-5928(143)**

Our office has reviewed the bid and DBE good faith effort documentation submitted by your firm on the above project. As a result of our review, we have made the following determination:

- (1) Your firm did not meet the 17% DBE goal for this project. As indicated in the Caltrans 15-G form submitted as part of your bid, your firm achieved DBE participation of 11.4% (\$109,729). Since you did not meet or exceed the DBE goal, your firm was required to demonstrate a good faith effort to meet the DBE goal.
- (2) Your firm failed to demonstrate adequate good faith efforts to meet the DBE goal, including without limitation the following deficiencies:
 - (a) Your firm did not adequately solicit DBE subcontractors/suppliers for this project. For the 11 contract areas identified in your firm's advertisements and notices (Trucking, Construction Materials, Striping, Signs, Survey, SWPPP, Traffic Control, Electrical, Slurry, Hydroseed, and Cold Plane), there were 575 DBE firms available to perform that work according to the CUCP database, yet your firm solicited only 33 DBE firms. Moreover, your firm did not properly document the solicitation as no fax transmission logs or reports were submitted to verify that the fax notifications were sent to the 33 DBE firms at least 10 days prior to bid opening. Your firm was also required to determine with certainty if the DBEs were interested by taking appropriate steps to follow up initial solicitations. Your firm submitted a phone call log indicating that you called all 33 firms on January 12, 2022 and that 24 of the 33 DBE firms said they would not submit a bid, only 2 of the 33 firms said they would provide a

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bid, and 7 of 33 firms indicated a maybe. The phone logs did not list the name of the person you spoke to within each business. Your documentation also lacked confirmation of the DBE status of the 33 DBE firms. Federal regulations require that bidders take all necessary and reasonable steps to achieve the DBE goal and actively and aggressively try to obtain DBE participation. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements (49 CFR, Part 26, Appendix A; see II and V). In this case, the documentation submitted by your firm shows minimal efforts to solicit DBE subcontractors/suppliers, not the active and aggressive efforts required by the federal regulations (49 CFR, Part 26).

- (b) Your firm rejected bids received from DBEs due to insignificant price differences. Federal regulations require that a bidder use a DBE quote unless it is excessive or unreasonable (49 CFR, Part 26, Appendix A; see IV.D.(2)). By accepting bids from additional DBEs, your firm could have increased its DBE utilization and could have demonstrated active and aggressive efforts to meet the 17% DBE goal. For example, Schotka Construction (DBE#33099) submitted a \$9,425 bid for signs. Your firm, a non-DBE firm, indicated you could install the signs at a lower cost for \$8,105. You could have accepted Schotka Construction's bid and increased your DBE utilization by 0.98%, while only increasing your bid by \$1,320. Another example is Columbia Electric (DBE #38529), which submitted a bid for \$76,355 for electric work. Your firm chose to use WBE, a non-DBE subcontractor, with a bid price of \$56,900. You could have accepted Columbia Electric's bid and increased your DBE utilization by 7.96% while only increasing your bid by \$19,455. If you had selected these two DBE firms, your DBE utilization would have been raised by 9%, thus exceeding the 17% DBE goal.
- (c) Your firm did not demonstrate that it adequately negotiated in good faith with DBE subcontractors and suppliers. Your firm chose to self-perform 5 of the 11 work categories listed in your firm's advertisements and faxed notices. Federal regulations provide that a bidder's desire to self-perform contract work with its own organization does not relieve the bidder of the responsibility to make good faith efforts with all interested DBEs (49 CFR, Part 26, Appendix A; see IV.D.(2)). For example, your firm received a bid from Western Traffic (DBE#40681) for Traffic Control but your firm chose to self-perform this work at a bid price of \$166,098. Although noting that Western Traffic's lane closure

work at \$1,650 per day was not low and your firm could perform lane closure work at \$1,069.38 per day, your firm's documentation did not include the costs to provide that and other self-performed work to enable comparison with the bids received from DBE subcontractors/suppliers.

- (d) Federal regulations also require that a review of good faith efforts include the performance of other bidders in meeting the contract DBE goal. When the apparent successful bidder fails to meet the DBE goal, but others meet it, the County may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal (49 CFR, Part 26, Appendix A; see V). In this case, the second lowest bidder (Granite Rock Company) sent fax notifications and emails to 498 DBE firms, resulting in DBE participation of 21.54%, thus exceeding the 17% DBE goal for this project and demonstrating that it was feasible to meet or exceed the DBE goal. By additional efforts, such as those described above, your firm likewise could have met or exceeded the DBE goal.
- (e) In the phone log, you noted that you contacted the San Francisco Human Rights Commission, a DBE-related agency, on January 10, 2022 and left a message on their phone. Documentation such as a fax transmittal confirmation or a fax log was not provided to verify a written request was sent to this agency.
- (f) Overall, the documentation submitted by your firm shows a pattern of going through the motions (i.e., pro forma efforts) to solicit DBE bids without any serious, meaningful efforts to maximize DBE participation on this project. The overall efforts by your firm thus fell short of the active, aggressive, comprehensive efforts required by the federal regulations (49 CFR, Part 26; see I) and the project specifications.

Based upon our review, we have determined that your firm has not demonstrated good faith efforts to comply with the DBE goal for this project, as required by the project specifications (Special Provisions, Section 2-1.12B(4)), the County's DBE Program, and federal regulations applicable to Department of Transportation Financial Assistance Programs (49 CFR, Part 26). Therefore, we plan to recommend that your bid be deemed non-responsive and that the contract be awarded instead to the second lowest bidder, Granite Rock Company, which attained DBE participation of 21.54%.

Should you disagree with our determination, you may submit a written appeal (request for administrative reconsideration) to Monica Nino, County Administrator, Contra Costa County Administrator's Office, 1025 Escobar Street, 4th Floor, Martinez, CA 94553. Your

appeal must be received at that address no later than 5:00 p.m. on Tuesday, February 15, 2022, and must include all detailed facts, arguments, and written documentation on which you rely.

It is anticipated that the contract will be awarded by the Board of Supervisors at their meeting on Tuesday, March 1, 2022, which begins at 9:30 a.m. If you wish, you may comment on this agenda item by calling in at 888-278-0254, followed by the access code 843298#, or by attending via Zoom at the following link: <https://cccouny-us.zoom.us/j/87344719204>. Any comments to the Board will be limited to the facts, arguments, and written documentation set forth in your appeal.

Sincerely,



Adelina Huerta
Division Manager
Design/Construction Division

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