



February 25, 2022

Hector M Leuterio
City of Hayward Public Works
777 B St
Hayward, CA 94541

RE: **HAYWARD MUNICIPAL PARKING LOT NO. 1 IMPROVEMENT PROJECT**
City Project No. 05286

SUBJ: Response to Bid Protest Submitted by Catos General Engineering Inc

Bear Construction Inc. (Bear) Is in receipt of a protest letter sent by Catos General Engineering Inc (Catos), contesting the responsibility and responsiveness of our bid submitted on Tuesday, February 22, 2022, for the above referenced project. The letter, dated February 22, 2022, provided by Catos, suggests that Bear's bid is non-responsive by the following:

1. Not listing "the proper subcontractors required to perform the special provisions work".

Bear did list subcontractors required to perform the special provisions work in conformance with section 2-1.06 "Subcontracting" *each bidder shall list in his proposal the name and the location 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.*

By lack of experience "lacked the require certifications and lacks the experience to self-perform the painting of electrical light poles which is part of upgrading the electric light poles of the bid item no: 14, per the requirements of California State Licensing Board (CSLB)"

Bear does not intend to self-perform the painting of electrical light poles. Bear listed Bear Electrical Solutions as a subcontractor and in their proposal, it includes the painting for the light poles. Please see the attached.

2. By not meeting the Section 2-1.34 Bidder's Security item 3 "the proposal submitted by Bear Construction Inc, they provided with a copy of Bidders Bond instead of original Bid



Bond and forgot to have company seal stamped on the bid bond which is generic for all the bid bonds to be submitted for public works bidding”.

Bear did submit a copy of the Bidder’s bond however there is no specification where it says it needs to be original at time of bidding nor it says it needs to have a company seal.

3. Page number p-6 “Bear Construction Inc also incompletely filled the proposal page number p-6”.

The total bid was included in page P-2.2

4. “Bear Construction Inc forgot to mention the amount of bid proposal for the 10% of bid bond”.

Bear did not forget to include the amount on page p-7 and In the notice to contractors it says: ***each bid must be accompanied by certified or cashier’s check, or bidder’s bond duly executed by a responsible corporate surety authorized to issue such bonds in the State of California, made payable to the City of Hayward for an amount equal to at least ten (10) percent of the amount bid.*** 10% is an amount equal to at least ten (10) percent of the amount bid.

Bear acknowledges the lack of Catos’s compliance with the protest procedures as outlined in the project specifications:

Section 3-1.04A Bid Protest Procedures

The party filling the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving or being denied an award depending upon the outcome of the protest.

The procedure and time limits set forth in this paragraph are mandatory and are the bidder’s sole and exclusive remedy in the event of a bid protest. The Bidder’s failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a challenge of the award pursuant to the California Public Contracts Code, filing of a claim pursuant to the California Government Code, or filing of any other legal proceedings.



Bear Construction Inc, who would be considered a party who would have a direct financial interest that may be adversely affected by the outcome of the protest, did not receive any certified mail, and or email of notification indicating Cato's intent to protest. Catos instead hand the letter to someone who has no affiliation with Bear Construction Inc. This failure to comply with the protest procedures causes "a waiver of any right to further pursue the protest"

Based on these reasons, Bear Construction Inc therefore requests the City of Hayward to reject the bid protest presented by Catos General Engineering Inc as it does not comply with the protest procedures as outlined in the project's specifications.

Respectfully submitted,

Miguel Lopez

Secretary

Bear Construction Inc.

1160 D St, Hayward, CA 94541

510-690-7136



1252 State St, PO Box 924, Alviso, CA 95002-0924
 Tel: 408-449-5178 Fax 408-449-5147

Contractors License No. 982079
 A – General Engineering
 C-10 Electrical
 DIR # 1000002158

ESTIMATE No. V181

PROPOSAL

DATE: February 22, 2022
 FROM: Victor Cruz
 PHONE: 408-826-2779
 EMAIL: victor@bear-electrical.com

BID/ PROJECT:

**MUNICIPAL PARKING LOT NO. 1 IMPROVEMENT
 PROJECT**

ITEM	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
14	Upgrade Existing Streetlighting	EA	16	\$ 3,615.00	\$ 57,840.00
TOTAL:					\$ 57,840.00

INCLUSIONS:

- Per plans and specs, and Addendums #1
- Furnish and install (16) Lighting Fixtures on Existing Poles
- Pole painting for (10) Parking lot poles
- Traffic Control for our work only
- Assumes existing conductors are existing to remain
- Assumes one mobilization. Additional mob costs are \$3,500.00
- Long lead items are approx. 6- 8 weeks

EXCLUSIONS:

- Staking and layout
- Testing and inspection fees
- Permits and bonds
- Conduit installation
- Sidewalk and asphalt removal and replacement
- Regulatory signs and striping
- On-site facilities for restroom/handwashing
- Handling of any hazardous materials and dust control
- Overtime/Weekend work
- Removal of concrete foundations/bases
- Potholing for utilities not shown on plans.
- Off haul spoils
- Private locating for utilities not marked by USA

**Please feel free to contact Victor Cruz for any questions regarding this quote.
 Cell: (408) 826-2779**

BIDDER'S BOND TO ACCOMPANY PROPOSAL

Know all men by these presents:

That we, Bear Construction Inc., as principal and, Granite Re, Inc. dba Granite Surety Insurance Company as corporate surety, duly authorized to issue bonds in the State of California, are held firmly bound unto the CITY OF HAYWARD in the sum of Ten Percent of Bid Amount dollars (\$ 10%), to be paid to the said City or its certain attorney, its successors, and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if the certain proposal of the above-bounden Bear Construction Inc. to construct Municipal Parking Lot No. 1 Improvement Project dated February 22, 2022, is accepted by the CITY OF HAYWARD, and if the above-bounden Bear Construction Inc., his heirs, executors, administrators, successors, and assigns shall duly enter into and execute a contract for such construction, and shall execute and deliver the two bonds described along with the executed contract within ten (10) days, not including Sundays and legal holidays, from the date of notification that contract was awarded to the above-bounden Bear Construction Inc. by and from the said City of Hayward, that said contract is ready for execution, then this obligation shall become null and void; otherwise, it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, we hereunto set our hands and seals this 22nd day of February, 2022.

Bear Construction Inc.

Miguel Lopez
Secretary

**Granite Re, Inc. dba
Granite Surety Insurance Company**

Kenneth D. Whittington
Kenneth D. Whittington, Attorney in Fact



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

ACKNOWLEDGMENT OF PRINCIPAL

State of California

County of Alameda

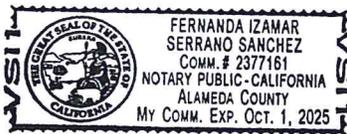
On this 25 day of February, 2022, before me Fernanda Izamar Serrano Sanchez, Notary Public personally appeared Miguel Angel Lopez Barajas, who proved to me on the basis of satisfactory evidence to be the person

Here insert Name and Title of Officer

Name of Signer
whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal



Signature _____
Signature of Notary Public

ACKNOWLEDGMENT OF SURETY

State of Oklahoma
County of Oklahoma

On this 22nd day of February, 2022 before me personally come(s) Kenneth D. Whittington, Attorney in-Fact of Granite Re, Inc. dba Granite Surety Insurance Company with whom I am personally acquainted, and who, being by me duly sworn, says that he reside(s) in Oklahoma City, Oklahoma that he is the Attorney in Fact of Granite Re, Inc. dba Granite Surety Insurance Company, the company described in and which executed the within instrument; that he know(s) the corporate seal of such Company; and that the seal affixed to the within instrument is such corporate seal and that it was affixed by order of the Board of Directors of said company, and he signed said instrument as Attorney(s)-in-Fact of the said Company by like order.



Allisyn Jackman
Allisyn Jackman, Notary Public

**GRANITE RE, INC. DBA GRANITE SURETY INSURANCE COMPANY
GENERAL POWER OF ATTORNEY**

Know all Men by these Presents:

That GRANITE RE, INC. DBA GRANITE SURETY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of MINNESOTA and having its principal office at the City of OKLAHOMA CITY in the State of OKLAHOMA does hereby constitute and appoint:

KENNETH D. WHITTINGTON; KYLE MCDONALD its true and lawful Attorney-in-Fact(s) for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said GRANITE RE, INC. DBA GRANITE SURETY INSURANCE COMPANY a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said GRANITE RE, INC. DBA GRANITE SURETY INSURANCE COMPANY through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said:

KENNETH D. WHITTINGTON; KYLE MCDONALD may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said GRANITE RE, INC. DBA GRANITE SURETY INSURANCE COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its President and Assistant Secretary, this 3rd day of January, 2020.

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)



[Signature]

Kenneth D. Whittington, President
[Signature]

Kyle P. McDonald, Assistant Secretary

On this 3rd day of January, 2020, before me personally came Kenneth D. Whittington, President of the GRANITE RE, INC. DBA GRANITE SURETY INSURANCE COMPANY and Kyle P. McDonald, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said, that they, the said Kenneth D. Whittington and Kyle P. McDonald were respectively the President and the Assistant Secretary of GRANITE RE, INC. DBA GRANITE SURETY INSURANCE COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order as President and Assistant Secretary, respectively, of the Company.

My Commission Expires:
April 21, 2023
Commission #: 11003620



[Signature]

Notary Public

**GRANITE RE, INC.
Certificate**

THE UNDERSIGNED, being the duly elected and acting Assistant Secretary of GRANITE RE, INC. DBA GRANITE SURETY INSURANCE COMPANY, a Minnesota Corporation, HEREBY CERTIFIES that the following resolution is a true and correct excerpt from the July 15, 1987, minutes of the meeting of the Board of Directors of GRANITE RE, INC. DBA GRANITE SURETY INSURANCE COMPANY and that said Power of Attorney has not been revoked and is now in full force and effect.

“RESOLVED, that the President, any Vice President, the Assistant Secretary, and any Assistant Vice President shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the Company in the course of its business. On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the Company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking.”

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate and affixed the corporate seal of the Corporation this February 22, 2022.



[Signature]

Kyle P. McDonald, Assistant Secretary