

# MASSA CONSTRUCTION COMPANY, INC.

BUILDING & ENGINEERING CONTRACTOR

June 13, 2017 2:00 PM

David Carey  
VPCS Project Manager  
San Rafael City Schools

## Re: Bid Protest - Bahia Vista Elementary School Shade Structure

Massa Construction Co., Inc. requests that the proposal submitted on June 8, 2017, by JCP Industries for the Bahia Vista Elementary School Shade Structure, Project No. RFQP PM-04-17 be declared non-responsive to the bid requirements and that JCP Industries be disqualified as the apparent low bidder.

JCP Industries failed to list a subcontractor for the pier drilling scope of work for the installation of eight concrete piers required to support the shade structure columns. This action by JCP is in violation of the Project Manual requirements and the California Public Contract Code Section 4100 which prevents bid shopping of subcontractors by a prime contractor.

Based on the information presented in this protest, Massa Construction Co., Inc. should be designated as the actual low bidder and awarded the contract for the Bahia Vista School Shade Structure.

## Project Requirements allow the District to Disqualify the JCP Industries Proposal

The following conditions and requirements as stated in the Project Manual provide the basis for the rejection of the JCP Industries bid proposal by the San Rafael City Schools District:

### Section 00 21 13: Instructions To Bidders:

2<sup>nd</sup> Para: "San Rafael City Schools ("District") will evaluate information submitted by the apparent low Bidder and, if incomplete or unsatisfactory to District, Bidder's bid may be rejected at the sole discretion of District."

Item 27. "District reserves the right to reject any or all bids, including without limitation the right to reject any or all nonconforming, nonresponsive, unbalanced, or conditional bids, to re-bid, and to reject the bid of any bidder if District believes that it would not be in the best interest of the District to make an award to that bidder, whether because the bid is not responsive or the bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by District."

## Failure to List a Designated Subcontractor

The proposal by JCP Industries omitted the listing of a drilling subcontractor which creates the possibility for JCP Industries to bid shop the drilling operations after the bid submittal deadline. This potentially unlawful action would provide JCP Industries with a cost advantage over Massa Construction Co., Inc.

### Document 00 43 36, Designated Subcontractors List (Public Contract Code 4100-4114):

"Bidder acknowledges and agrees that it must clearly set forth below the name, location and California contractor license number of each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the Work...in an amount in excess of one-half of one percent (0.5%) of Bidder's total Base Bid and the kind of Work that each will perform."

## Qualifications & Experience Required by Drilling Subcontractor

Unless JCP Industries possesses the experience and the drill rig and the steel casing or slurry casing equipment required to professionally install the concrete piers, JCP Industries does not appear to be qualified or adequately experienced to self-perform the complicated installation of the drilled piers.

# MASSA CONSTRUCTION CO., INC.

Protest Letter-Bahia Vista Shade Structure  
June 13, 2017  
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## **Document 00 43 36, Designated Subcontractors List (Public Contact Code 4100-4114):**

"Bidder acknowledges and agrees that, if Bidder fails to list as to any portion of Work... Bidder must perform that portion itself or be subjected to penalty under applicable law."

The geotechnical report by Miller Pacific Engineering Group, dated April 18, 2017: Foundation & Seismic Design Criteria Update, states the complexity of the drilled pier installation into Bay Mud:

"Due to the presence of loose sandy fill and soft Bay Mud underlying the site and the risk of pier holes caving and/or squeezing is high, the upper pier holes should be cased."

As indicated by the soils conditions in Miller Pacific report, this drilling procedure is a complex operation which should only be undertaken by established drilling experts who possess the experience and the skills along with the drill rigs and the steel casing or drilling stabilization slurry equipment to install the drilled piers into bay mud conditions to prevent the unstable pier holes from collapse or uplift.

Therefore, the proposal by JCP Industries should be rejected based on the failure by JCP Industries to hold the acceptable qualifications and experience required for drilling the piers and for installing the steel or slurry casing with their own crew and equipment.

## **Potential Violation of the California Public Contract Code**

The bid proposal by JCP Industries may be in violation of the California Public Contract Code if JCP Industries attempts to "bid shop" a drilling subcontractor to circumvent the project subcontractor listing requirements or by arranging with a drilling contractor to lease their drilling equipment along with placing their drill operator and casing or slurry crew on the JCP Industries payroll.

A bid proposal which is in violation of the California Public Contract Code is unlawful and should be rejected by the San Rafael City School district as non-responsive.

## **California Public Contract Code Sections 4100-4114 states:**

4101. The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.

4106. If a prime contractor fails to specify a subcontractor ...the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.

Therefore, based on the presented information in this bid protest letter, Massa Construction co., Inc. should be awarded the contract for the construction of the Bahia Vista School Shade Structure.

Sincerely,

*Ken Massa*

**BID FORM AND PROPOSAL**

San Rafael City Schools ("District" or "Owner")

From: MASSA CONSTRUCTION CO INC.  
(Proper Name of Bidder)

The undersigned declares that Bidder has read and understands the Contract Documents, including, without limitation, the Notice to Bidders and the Instructions to Bidders, and agrees and proposes to furnish all necessary labor, materials, and equipment to perform and furnish all work in accordance with the terms and conditions of the Contract Documents, including, without limitation, the Drawings and Specifications of Bid No. \_\_\_\_\_.

PROJECT: BAHIA VISTA SCHOOL SHADE STRUCTURE

("Project" or "Contract") and will accept in full payment for that Work the following total lump sum amount, all taxes included:

One Hundred Eighty EIGHT THOUSAND	dollars	\$ 188,400 <sup>00</sup>
BASE BID	FOUR HUNDRED and NO/100	

1. The undersigned has reviewed the Work outlined in the Contract Documents and fully understands the scope of Work required in this Proposal, understands the construction and project management function(s) is described in the Contract Documents, and that each Bidder who is awarded a contract shall be in fact a prime contractor, not a subcontractor, to the District, and agrees that its Proposal, if accepted by the District, will be the basis for the Bidder to enter into a contract with the District in accordance with the intent of the Contract Documents.
2. The undersigned has notified the District in writing of any discrepancies or omissions or of any doubt, questions, or ambiguities about the meaning of any of the Contract Documents, and has contacted the Construction Manager before bid date to verify the issuance of any clarifying Addenda.
3. The undersigned agrees to commence work under this Contract on the date established in the Contract Documents and to complete all work within the time specified in the Contract Documents.
4. The liquidated damages clause of the General Conditions and Agreement is hereby acknowledged.
5. It is understood that the District reserves the right to reject this bid and that the bid shall remain open to acceptance and is irrevocable for a period of ninety (90) days.

6. The following documents are attached hereto:

- Bid Bond on the District's form or other security
- Designated Subcontractors List
- Site Visit Certification
- Non-Collusion Declaration

7. Receipt and acceptance of the following Addenda is hereby acknowledged:

No. _____, Dated _____	No. _____, Dated _____
No. _____, Dated _____	No. _____, Dated _____
No. _____, Dated _____	No. _____, Dated _____

8. Bidder acknowledges that the license required for performance of the Work is a B license.
9. The undersigned hereby certifies that Bidder is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the Work.
10. Bidder specifically acknowledges and understands that if it is awarded the Contract, that it shall perform the Work of the Project while complying with all requirements of the Department of Industrial Relations.
11. The Bidder represents that it is competent, knowledgeable, and has special skills with respect to the nature, extent, and inherent conditions of the Work to be performed. Bidder further acknowledges that there are certain peculiar and inherent conditions existent in the construction of the Work that may create, during the Work, unusual or peculiar unsafe conditions hazardous to persons and property.
12. Bidder expressly acknowledges that it is aware of such peculiar risks and that it has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the Work with respect to such hazards.
13. Bidder expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, Gov. Code, § 12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act. It may also be considered fraud and the Contractor may be subject to criminal prosecution.
14. The undersigned Bidder certifies that it is, at the time of bidding, and shall be throughout the period of the Contract, licensed by the State of California to do the type of work required under the terms of the Contract Documents and registered as a public works contractor with the Department of Industrial Relations. Bidder further certifies that it is regularly engaged in the general class and type of work called for in the Contract Documents.

Furthermore, Bidder hereby certifies to the District that all representations, certifications, and statements made by Bidder, as set forth in this bid form, are true and correct and are made under penalty of perjury.

Dated this 8th day of June 20 17

Name of Bidder: MASSA CONSTRUCTION Co Inc

Type of Organization: S Corporation

Signed by: Kenneth Massa Kenneth Massa

Title of Signer: President

MAIL ADDRESS: P.O. Box 150097 SAN RAFAEL CA 94915

Taxpayer Identification No. of Bidder: 94-3348678

Telephone Number: 415 459-0400

Fax Number: 415 459-0277

E-mail: Kmassa@massa-construction.com Web Page: —

Contractor's License No(s): No.: 344050 Class: A+B Expiration Date: 11-30-18

No.: \_\_\_\_\_ Class: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

No.: \_\_\_\_\_ Class: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Public Works Contractor Registration No.: 1000004848

END OF DOCUMENT

**DESIGNATED SUBCONTRACTORS LIST**  
**(Public Contact Code Sections 4100-4114)**

PROJECT: BAHA VISTA SCHOOL SHADE STRUCTURE

Bidder acknowledges and agrees that it must clearly set forth below the name, location and California contractor license number of each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the Work or who will specially fabricate and install a portion of the Work according to detailed drawings contained in the plans and specifications in an amount in excess of one-half of one percent (0.5%) of Bidder's total Base Bid and the kind of Work that each will perform. Vendors or suppliers of materials only do not need to be listed.

Bidder acknowledges and agrees that, if Bidder fails to list as to any portion of Work, or if Bidder lists more than one subcontractor to perform the same portion of Work, Bidder must perform that portion itself or be subjected to penalty under applicable law. In case more than one subcontractor is named for the same kind of Work, state the portion of the kind of Work that each subcontractor will perform.

If alternate bid(s) is/are called for and Bidder intends to use subcontractors different from or in addition to those subcontractors listed for work under the Base Bid, Bidder must list subcontractors that will perform Work in an amount in excess of one half of one percent (0.5%) of Bidder's total Base Bid plus alternate(s).

If further space is required for the list of proposed subcontractors, attach additional copies of page 2 showing the required information, as indicated below.

**Subcontractor Name:** PCDC

CA Cont. Lic. #: 539855 Location: JANTA ROSA

Portion of Work: DRILLING

**Subcontractor Name:** ABLE FENCE

CA Cont. Lic. #: 409607 Location: Petaluma

Portion of Work: FENCE + GATE

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

CA Cont. Lic. #: \_\_\_\_\_ Location: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

Date: June 8 2017

Proper Name of Bidder: MASSA CONSTRUCTION CO INC

Signature: 

Print Name: Kenneth Massa

Title: President

END OF DOCUMENT

**SITE VISIT CERTIFICATION**

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID  
IF SITE VISIT WAS MANDATORY

PROJECT: BAYLA VISTA SCHOOL SHADE STRUCTURE

Check option that applies:

☒ I certify that I visited the Site of the proposed Work and became fully acquainted with the conditions relating to construction and labor. I fully understand the facilities, difficulties, and restrictions attending the execution of the Work under contract.

☐ I certify that \_\_\_\_\_ (Bidder's representative) visited the Site of the proposed Work and became fully acquainted with the conditions relating to construction and labor. The Bidder's representative fully understood the facilities, difficulties, and restrictions attending the execution of the Work under contract.

Bidder fully indemnifies the San Rafael City Schools, its Architect, its Engineer, its Construction Manager, and all of their respective officers, agents, employees, and consultants from any damage, or omissions, related to conditions that could have been identified during my visit and/or the Bidder's representative's visit to the Site.

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

Date:

June 8 2017

Proper Name of Bidder:

MASSA CONSTRUCTION CO INC

Signature:



Print Name:

Kenneth Massa

Title:

president

END OF DOCUMENT



**NON-COLLUSION DECLARATION**  
**(Public Contract Code Section 7106)**

The undersigned declares:

I am the President of Massa Construction Co, Inc, the party making the foregoing bid.  
[Title] [Name of Firm]

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on June 8 2017,  
[Date]  
at Hanford, CA.  
[City] [State]

Date:

June 8 2017

Proper Name of Bidder:

Massa Construction Co Inc

Signature:

[Signature]

Print Name:

Kenneth Massa

Title:

President

END OF DOCUMENT

**BID BOND**

**(Note: If Bidder is providing a bid bond as its bid security, Bidder must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned, Massa Construction Company, Inc., as Principal ("Principal"),

and Great American Insurance Company, as Surety ("Surety"), a corporation organized and existing under and by virtue of the laws of the State of California and authorized to do business as a surety in the State of California, are held and firmly bound unto the San Rafael City Schools ("District") of Marin County, State of California, as Obligee, in an amount equal to ten percent (10%) of the Base Bid plus alternates, in the sum of

Ten Percent of Bid Amount Dollars (\$ 10% of Bid Amount)

lawful money of the United States of America, for the payment of which sum well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted a bid to the District for all Work specifically described in the accompanying bid for the following project: Bahia Vista Elementary School Shade Structure ("Project" or "Contract").

NOW, THEREFORE, if the Principal is awarded the Contract and, within the time and manner required under the Contract Documents, after the prescribed forms are presented to Principal for signature, enters into a written contract, in the prescribed form in accordance with the bid, and files two bonds, one guaranteeing faithful performance and the other guaranteeing payment for labor and materials as required by law, and meets all other conditions to the Contract between the Principal and the Obligee becoming effective, or if the Principal shall fully reimburse and save harmless the Obligee from any damage sustained by the Obligee through failure of the Principal to enter into the written contract and to file the required performance and labor and material bonds, and to meet all other conditions to the Contract between the Principal and the Obligee becoming effective, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect. The full payment of the sum stated above shall be due immediately if Principal fails to execute the Contract within seven (7) days of the date of the District's Notice of Award to Principal.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation under 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 the call for bids, or to the work, or to the specifications.

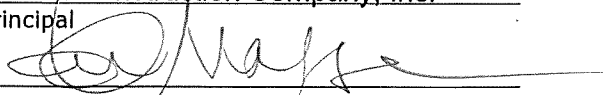
In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorneys' fee to be fixed by the Court.

If the District awards the bid, the security of unsuccessful bidder(s) shall be returned within sixty (60) days from the time the award is made. Unless otherwise required by law, no bidder may withdraw its bid for ninety (90) days after the date of the bid opening.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the 6th day of June, 2017.

Massa Construction Company, Inc.

Principal

  
By Kenneth Massa, President

Great American Insurance Company

Surety

  
By Richard G. Boldt, Jr., Attorney-In-Fact

Vantreo Insurance Brokerage

Name of California Agent of Surety

100 Stony Point Rd, #160, Santa Rosa, CA 95401

Address of California Agent of Surety

(800) 967-6543

Telephone Number of California Agent of Surety

**Bidder must attach Power of Attorney and Certificate of Authority for Surety and a Notarial Acknowledgment for all Surety's signatures. The California Department of Insurance must authorize the Surety to be an admitted Surety Insurer.**

END OF DOCUMENT

**GREAT AMERICAN INSURANCE COMPANY®**

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by  
this power of attorney is not more than TWO

No. 0 13454

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
RICHARD G. BOLDS JR.      RON BOLDS	BOTH OF SAN RAFAEL, CALIFORNIA	BOTH \$100,000,000.00

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 11TH day of MARCH 2015

Attest

GREAT AMERICAN INSURANCE COMPANY



*Atty L C. B.*  
Assistant Secretary

*David C. Kitchen*  
Divisional Senior Vice President

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this 11TH day of MARCH

DAVID C. KITCHIN (877-377-2405)

2015, before me personally appeared DAVID C. KITCHIN, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



JENNIFER MARIE RIPPY  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires 6-20-19

*Jenny Rippy*

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

**RESOLVED:** That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

**RESOLVED FURTHER:** That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

**CERTIFICATION**

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this

day of



*Atty L C. B.*  
Assistant Secretary

## ALL PURPOSE ACKNOWLEDGMENT

United States **Apostille Service**, authentication, legalization, Sacramento Notary [www.CaliforniaApostille.US](http://www.CaliforniaApostille.US) Tel 1-707-992-5551