



March 2, 2023

Rebecca Westover
Mountain View Whisman School District
1400 Montecito Avenue
Mountain View, CA 94043

RE: Theuerkauf Elementary School Electrical Upgrade Project

In our capacity as the District's Construction Manager, we have completed a review of the Bid Proposals submitted by all prospective bidders of the **Theuerkauf Elementary School Electrical Upgrade Project** that was bid on Tuesday, January 31, 2023, at 2:00 pm. In our review, we found that S&H Construction, Inc., has submitted the responsive and responsible low bid for the subject project.

- 1) S&H Construction, Inc., has a valid California Contractor's License with a B- General Building, C20-Warm Air Heating, Ventilation and Air Conditioning, C39-Plumbing, C9-Drywall and C10-Electrical classifications. The License is current and active. S&H Construction, Inc., has a current DIR Registration #1000000362.
- 2) Their proposed surety company, United States Fire Insurance Company, is licensed to do business in California and is rated A (Excellent) by A.M Best Rating Center.
- 3) Their recent and past experience indicates that they are financially capable and possess the resources to perform on a project of this magnitude.
- 4) Their bid documents appear to be in order with all required submissions.
- 5) After publishing this project in the Daily Post twice and providing outreach to known school contractors, seven (7) bids were received:

<u>Contractor</u>	<u>Base Bid</u>
Zara Construction	\$335,000.00
S&H Construction, Inc.	\$468,600.00
ELECCO	\$469,500.00
ARAM Electric	\$545,000.00
NEMA Construction	\$545,600.00
Atlas Pellizzari Electric	\$587,000.00
Zolman Construction	\$897,500.00

Subsequent to the bid, and within the timeframe allotted by Public Contract Code, Zara Construction withdrew their bid for the project citing a clerical error, leaving S&H Construction, Inc as the lowest responsible and responsive bidder.

After which, ELECCO, the now second lowest responsible and responsive bidder, filed a protest letter against S&H Construction, Inc, mainly citing S&H's lack of a civil contractor's license or lack of a listed civil subcontractor, in order to perform the civil scope of this project. After reviewing all protest letters and subsequent response letter from S&H, District legal counsel and Greystone West Company determined that the civil scope for this project was incidental to the main scope of work for this project and noted that S&H self-performing this scope was permissible.

The construction budget for this project was \$455,000.00. S&H Construction, Inc's bid exceeds this budget by \$38,600.00, After speaking with bidders for this project the overage is primarily attributed to recent increases in material cost due supply-chain issues, specifically with the new electrical switchgear. The excess funds would be pulled from the overall program contingency to cover the overage.

In conclusion, based upon the above, it is our recommendation that the District award the contract for the **Theuerkauf Elementary School Electrical Upgrade Project** in the amount of \$493,600.00 to S&H Construction, Inc. which includes S&H's base bid amount of \$468,600.00 and a \$25,000.00 allowance for unforeseen conditions.

Please do not hesitate to contact Greystone West Company with any questions or concerns.

Sincerely,
Greystone West Company

Juan Sagarra
Project Manager

Encl: CSLB License Check
DIR Registration
CA DOI
AM Best Rating
Bid Results
Zara Construction's Bid Withdrawal letter
District's response to Zara Construction's Bid Withdrawal letter
ELECCO's Bid Protest Letters
S&H's Response to ELECCO's protest letter
District's response letter to ELECCO's Protest letter



Contractor's License Detail for License # 786358

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 click on link that will appear below for more information. Click [here](#) for a definition of disclosable actions.
- ▶ Only construction related civil judgments reported to CSLB are disclosed (B&P 7071.17).
- ▶ Arbitrations are not listed unless the contractor fails to comply with the terms.
- ▶ Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 11/10/2022 4:06:43 PM

Business Information

S & H CONSTRUCTION INC
 5560 BOSCELL CMN
 FREMONT, CA 94538
 Business Phone Number:(510) 579-7382

Entity Corporation
Issue Date 10/24/2000
Reissue Date 06/06/2006
Expire Date 06/30/2024

License Status

This license is current and active.

All information below should be reviewed.

Classifications

- ▶ B - GENERAL BUILDING
- ▶ C-9 - DRYWALL
- ▶ C20 - WARM-AIR HEATING, VENTILATING AND AIR-CONDITIONING
- ▶ C10 - ELECTRICAL
- ▶ C36 - PLUMBING

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with [SURETEC INSURANCE COMPANY](#).

Bond Number: 468992

Bond Amount: \$15,000

Effective Date: 05/07/2020

[Contractor's Bond History](#)

Bond of Qualifying Individual

- ▶ The qualifying individual SAMUEL AIBUEDEFE OGHOGHO certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.
Effective Date: 08/02/2021
- ▶ The qualifying individual HARMEET SINGH ANAND certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.
Effective Date: 06/05/2018
[BQI's Bond History](#)
- ▶ The qualifying individual SANTOS SANCHEZ CHAVEZ certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.
Effective Date: 05/23/2022

Workers' Compensation

This license has workers compensation insurance with the [STATE COMPENSATION INSURANCE FUND](#)

Policy Number:9164605

Effective Date: 01/01/2017

Expire Date: 01/01/2023

[Workers' Compensation History](#)

Miscellaneous Information

- ▶ 06/06/2006 - LICENSE REISSUED TO ANOTHER ENTITY

Other

- ▶ Personnel listed on this license (current or disassociated) are listed on other licenses.

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Contractor Information

Legal Entity Name
S&H CONSTRUCTION, INC.

Legal Entity Type
Corporation

Status
Active

Registration Number
1000000362

Registration effective date
07/01/22

Registration expiration date
06/30/23

Mailing Address
5560 BOSCELL COMMON FREMONT 94538 CA Unit...

Physical Address
5560 BOSCELL COMMON FREMONT 94538 CA Unit...

Email Address
shconstructioninc@sbcglobal.net

Trade Name/DBA

License Number (s)
CSLB:786358
CSLB:786358

Registration History

Effective Date	Expiration Date
05/15/18	06/30/19
05/17/17	06/30/18
05/09/16	06/30/17
08/10/15	06/30/16
07/11/14	06/30/15
07/01/19	06/30/20
07/01/20	06/30/21
07/01/21	06/30/22
07/01/22	06/30/23

Legal Entity Information

Corporation Entity Number: C2464229

Federal Employment Identification Number:

President Name: Harmeet Anand

Vice President Name:

Treasurer Name:

Secretary Name:

CEO Name: Harmeet Anand

Agency for Service:

Agent of Service Name: Harmeet Anand

Agent of Service Mailing Address: 5560 Boscell Common Fremont 94538 C

Worker's Compensation

Do you lease employees through Professional Employer Organization (PEO)?: No

Please provide your current worker's compensation insurance information below:

PEO Information	Name	Phone	Email
PEO	PEO	PEO	

Insured by Carrier

Policy Holder Name:

Insurance Carrier:

Policy Number:

Inception date:

Expiration Date:

S&H CON

STATE CO

9164605

01/01/17

01/01/23



- Company Profile
- Company Search
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- Company Information
- Old Company Names
- Agent for Service
- Reference Information
- NAIC Group List
- Lines of Business
- Workers' Compensation
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- Company Complaint
- Company Performance & Comparison Data
- Company Enforcement Action
- Composite Complaints Studies
- Additional Info
- Find A Company Representative In Your Area
- View Financial Disclaimer

COMPANY PROFILE

Company Information

UNITED STATES FIRE INSURANCE COMPANY
305 MADISON AVE
MORRISTOWN, NJ 07960-6117

Old Company Names	Effective Date
MJR FIRE INSURANCE COMPANY	12/31/2003

Agent For Service

AMANDA GARCIA
 330 N Brand Blvd Ste 700
 Glendale CA 91203

Reference Information

NAIC #:	21113
California Company ID #:	4821-5
Date Authorized in California:	12/31/2003
License Status:	UNLIMITED-NORMAL
Company Type:	Property & Casualty
State of Domicile:	DELAWARE

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NAIC Group List

NAIC Group #: **0158** FAIRFAX FIN GRP

Lines Of Business

The company is authorized to transact business within these lines of insurance. For an explanation of any of these terms, please refer to the [glossary](#).

- AIRCRAFT
- AUTOMOBILE
- BOILER AND MACHINERY
- BURGLARY
- COMMON CARRIER LIABILITY
- CREDIT
- DISABILITY
- FIRE
- LIABILITY
- MARINE
- MISCELLANEOUS
- PLATE GLASS

SPRINKLER

SURETY

TEAM AND VEHICLE

WORKERS' COMPENSATION

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AM Best Rating Services

United States Fire Insurance Company

BestLink 

AMB #: 002136 NAIC #: 21113 FEIN #: 135459190

Administrative Office

305 Madison Avenue
Morristown, New Jersey 07960

[United States](#)

Web: www.cfins.com

Phone: 973-490-6600

Fax: 973-490-6612

[View Additional Address Information](#)

AM Best Rating Unit: [AMB #: 018245 - Crum & Forster Insurance Group](#)

Assigned to insurance companies that have, in our opinion, an excellent ability to meet their ongoing insurance obligations.



View additional [news, reports and products](#) for this company.

Based on AM Best's analysis, [058364 - Fairfax Financial Holdings Limited](#) is the **AMB Ultimate Parent** and identifies the topmost entity of the corporate structure. View a list of [operating insurance entities](#) in this structure.

Best's Credit Ratings

Financial Strength [View Definition](#)

Rating (Rating Category):	A (Excellent)
Affiliation Code:	p (Pooled)
Outlook (or Implication):	Stable
Action:	Affirmed
Effective Date:	July 14, 2022
Initial Rating Date:	February 14, 1906

Best's Credit Rating Analyst

Rating Office: A.M. Best Rating Services, Inc.
Senior Financial Analyst: Dan Hofmeister, CFA, FRM, CAIA, CPCU, ARe, AIS, AIAF
Associate Director : Gregory Dickerson
Note: See the Disclosure information Form or Press Release below for the office and analyst at the time of the rating event.

Long-Term Issuer Credit [View Definition](#)

Rating (Rating Category):	a (Excellent)
Outlook (or Implication):	Stable
Action:	Affirmed
Effective Date:	July 14, 2022
Initial Rating Date:	May 20, 2005

Disclosure Information

Disclosure Information Form

View AM Best's [Rating Disclosure Form](#)

Press Release

[AM Best Affirms Credit Ratings of Crum & Forster Insurance Group's Members and Monitor Life Insurance Company of New York](#)
July 14, 2022

View AM Best's [Rating Review Form](#)

Financial Size Category [View Definition](#)

Financial Size Category:	XIV (\$1.5 Billion to \$2 Billion)
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u Denotes [Under Review Best's Rating](#)

Rating History

AM Best has provided ratings & analysis on this company since 1906.

Financial Strength Rating

Long-Term Issuer Credit Rating

Effective Date	Rating
July 14, 2022	A
July 14, 2021	A
July 10, 2020	A
April 30, 2019	A
February 28, 2018	A

Effective Date	Rating
July 14, 2022	a
July 14, 2021	a
July 10, 2020	a
April 30, 2019	a
February 28, 2018	a

Related Financial and Analytical Data

The following links provide access to related data records that AM Best utilizes to provide financial and analytical data on a consolidated or branch basis.

AMB #	Company Name	Company Description
019449	Crum & Forster Insurance Group (CS)	Represents Property/Casualty business of this legal entity.
018245	Crum & Forster Insurance Group (SG)	Represents the AM Best Consolidated financials for the Property/Casualty business of this legal entity.

Rating Unit

Best's Credit & Financial Reports



[Best's Credit Report](#) - financial data included in Best's Credit Report reflects the data used in determining the current credit rating(s) for AM Best Rating Unit: AMB #: [018245 - Crum & Forster Insurance Group](#).



[Best's Credit Report - Archive](#) - reports which were released prior to the current Best's Credit Report.



[Best's Financial Report](#) - financial data included in Best's Financial Report reflects the most current data available to AM Best, including updated financial exhibits and additional company information, and is available to subscribers of Best's Insurance Reports.

View additional [news, reports and products](#) for this company.

Press Releases

Date	Title
Jul 14, 2022	AM Best Affirms Credit Ratings of Crum & Forster Insurance Group's Members and Monitor Life Insurance Company of New York
Jul 14, 2021	AM Best Affirms Credit Ratings of Fairfax Financial Holdings Limited and Its Core Subsidiaries
Feb 11, 2021	AM Best Places Credit Ratings of Monitor Life Insurance Company of New York Under Review With Developing Implications
Jul 10, 2020	AM Best Affirms Credit Ratings of Fairfax Financial Holdings Limited and Its Core Subsidiaries
Apr 30, 2019	AM Best Affirms Credit Ratings of Fairfax Financial Holdings Limited and Majority of Its Subsidiaries
Oct 01, 2018	A.M. Best Assigns Credit Ratings to C&F Cayman SPC
Feb 28, 2018	A.M. Best Affirms Credit Ratings of Fairfax Financial Holdings Limited and Majority of Its Subsidiaries

European Union Disclosures

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MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT
Theuerkauf Elementart School Electrical Upgrades

Company	Base Bid	Bid Signed	Bid Bond	Sub Listing	Addendum #1	Non-Collusion Affidavit	Iran Contra Certification	Site Walk
Zara Construction	\$ 335,000 .00	✓	✓	✓	✓	✓	✓	✓
NEMA Construction	\$ 545,000 .00	✓	✓	✓	✓	✓	✓	✓
Zoleman Construction	\$ 897,500 .00	✓	✓	✓	✓	✓	✓	✓
Atlas Peltizzari Electric	\$ 587,000 .00	✓	✓	✓	✓	✓	✓	✓
ELECCO	\$ 469,500 .00	✓	✓	✓	✓	✓	✓	✓
ARAM Electric	\$ 545,000 .00	✓	✓	✓	✓	✓	✓	✓
S&H Construction	\$ 468,600 .00	✓	✓	✓	✓	✓	✓	✓



Rebecca Westover
Mountain View Whisman School District
1400 Montecito Ave
Mountain View, CA 94943

Zara Construction Inc. (the “contractor”) would like to withdraw our bid for the Mountain View Whisman School District (the “owner”) THEUERKAUF ELEMENTARY SCHOOL ELECTRICAL UPGRADES (the “project”) due to a clerical error made when estimating for the bid amount.

Due to human error, a vendor provided incorrect pricing for the required switchgear. The bid amount reflects a switchgear not capable of supporting Theuerkauf Elementary School's needs.

Prior to bidding, we reached out to clarify any confusion regarding the scope of work and were informed that the purchase of a switchgear was indeed within our scope. However, due to urgency in providing a bid we were unable to confirm the model of the switchgear prior to submitting our bid. Upon being notified of the significantly higher cost, we immediately informed Mr. Saggara and respectfully request that our bid be withdrawn. We value the opportunity to work with your district in the future and would be happy to provide references from our previous state and federal projects, where similar incidents have not occurred.

Sincerely,

Atif Zahoor

Atif Zahoor



@ZaraConstructionGroup



Atif@ZaraConstructionGroup.com



www.ZaraConstructionGroup.com



650-353-8485

February 7, 2023

VIA E-Mail

Atif Zahoor
President
Zara Construction, Inc.
3058 Montview Way
Sacramento, CA 95833

Re: Mountain View Whisman School District
Theuerkauf Elementary School Electrical Upgrades Project
Request to Withdraw Bid

Dear Mr. Zahoor:

The District received your February 6, 2023, correspondence clarifying Zara Construction's request for relief from its bid on the above-referenced Project.

The District acknowledges that per the requirements of Public Contract Code section 5103 et seq.: (1) a mistake was made in Zara Construction's bid for the Project; (2) proper and timely notice to the District of the mistake was provided; (3) the mistake made Zara Construction's bid materially different than intended; and (4) the mistake was not the result of an error in judgment or carelessness in inspecting the site of the work, or in reading the plans or specifications.

Accordingly, the District consents to Zara Construction's being relieved of its bid for the Project.

The District appreciates Zara Construction's interest in District projects and hopes that Zara Construction will continue to bid on future projects.

Sincerely,



Dr. Rebecca Westover
Chief Business Officer
Mountain View Whisman School District



1104 Wrigley Way, Milpitas, CA 95035
Email: contact@elecco.us
Web: www.elecco.us
CSLB#1066372: A, B, C10

Date: February 02nd, 2023

Mountain View Whisman School District
1400 Montecito Avenue
Mountain View, CA 94043

Attention: Rebecca Westover, Ed. D., Chief Business Officer

Re: Theuerkauf Elementary School Electrical Upgrade Project
Formal Bid Protest

Dear Ms. Westover:

Please accept this letter as a formal Bid Protest in relation to the above noted project. It is our opinion that the bidder, S & H Construction, Fremont, CA is not the lowest responsible bidder for the following reasons:

- 1) S & H Construction is not licensed nor qualified to perform civil work scope specified in Sheet A1.1, Sheet S2, and excavation and restoration per Sheet E1.1 for work under building footing.
- 2) AAA Fence Co. is the only subcontractor specified for the (chain link) fence scope. So there is no subcontractor (listed) that is licensed and qualified to perform the civil work scope.
- 3) S & H Construction and its subcontractors (AAA Fence Co.) are not Disabled Veteran Business Enterprise (DVBE). We understand the District has a participation goal for DVBE of 3% per year on projects that receive state funding.

In view of the reasons listed above, we believe that the bid of S & H Construction, Fremont, CA should be disqualified and the project should be awarded to the next lowest responsive, responsible bidder, Elecco, Milpitas, CA, and its subcontractor (Raposo Engineering, Inc.) who is a registered DVBE.

If you have any questions or concerns, please contact me. We look forward to hearing from you in due course.

Sincerely,

Danh Lai, President

1104 Wrigley Way, Milpitas, CA 95035
Email: danh@elecco.us
Mobile: (510) 579-5293

Home



CONTRACTORS STATE LICENSE BOARD



Contractor's License Detail for License # 786358

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- ▶ Only construction related civil judgments reported to CSLB are disclosed (B&P 7071.17).
- ▶ Arbitrations are not listed unless the contractor fails to comply with the terms.
- ▶ Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 2/1/2023 9:20:57 PM

Business Information

S & H CONSTRUCTION INC
5560 BOSCELL CMN
FREMONT, CA 94538
Business Phone Number:(510) 579-7382

Entity Corporation
Issue Date 10/24/2000
Reissue Date 06/06/2006
Expire Date 06/30/2024

License Status

This license is current and active.

All information below should be reviewed.

Classifications

- ▶ B - GENERAL BUILDING
- ▶ C-9 - DRYWALL
- ▶ C20 - WARM-AIR HEATING, VENTILATING AND AIR-CONDITIONING
- ▶ C10 - ELECTRICAL
- ▶ C36 - PLUMBING

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with SURETEC INSURANCE COMPANY.

Bond Number: 468992

Bond Amount: \$25,000

Effective Date: 01/01/2023

[Contractor's Bond History](#)

Bond of Qualifying Individual

- ▶ The qualifying individual SAMUEL AIBUEDEFE OGHOGHO certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.
Effective Date: 08/02/2021
- ▶ The qualifying individual HARMEET SINGH ANAND certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.
Effective Date: 06/05/2018
[BQI's Bond History](#)
- ▶ The qualifying individual SANTOS SANCHEZ CHAVEZ certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.
Effective Date: 05/23/2022

Workers' Compensation

This license has workers compensation insurance with the STATE COMPENSATION INSURANCE FUND

Policy Number: 9329889

Effective Date: 01/01/2023

Expire Date: 01/01/2024

[Workers' Compensation History](#)

Miscellaneous Information

- ▶ 06/06/2006 - LICENSE REISSUED TO ANOTHER ENTITY

Other

- ▶ Personnel listed on this license (current or disassociated) are listed on other licenses.

I certify and declare under penalty of perjury under the laws of the State of California that all the information listed on the following page(s) is complete, true, and correct.

Date: 01-31-23

Proper Name of Bidder: S&H Construction, Inc.

Signature: 

Print Name: Harmeet Anand

Title: CEO

Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
AAA Fence Co. Inc.	Fence	P.O. BOX 358 Santa Clara CA 95052	522762
			DIR No.: 100 000 2526
			If DVBE, % of Work: N/A
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:

Mountain View Whisman School District
 Theuerkauf Elementary School Electrical Upgrade
 Project
SUBMIT AS PART OF BID

DESIGNATED SUBCONTRACTORS LIST
 DOCUMENT 00 43 36- 2

I certify and declare under penalty of perjury under the laws of the State of California that all the information listed on the following page(s) is complete, true, and correct.

Date: 1/30/2023

Proper Name of Bidder: Zara Construction

Signature: 

Print Name: Atif Zahoor

Title: President

Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
NONE			
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:

I certify and declare under penalty of perjury under the laws of the State of California that all the information listed on the following page(s) is complete, true, and correct.

Date: 01/31/2023

Proper Name of Bidder: ELECCO

Signature: *Danh Lai*

Print Name: DANH LAI

Title: PRESIDENT

Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.: 1043771
Raposo Engineering, Inc	Concrete and Mason for foundation and enclosure, Metal gates, and trenching	2613 Erskine Ln Hayward, CA 94545	DIR No.: 1000408703
			If DVBE, % of Work: 25% SB/DVBE# 2021913
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:
			If DVBE, % of Work:
Subcontractor Name	Portion of Work (Scope)	Location of Business	CSLB No.:
			DIR No.:

Mountain View Whisman School District
 Theuerkauf Elementary School Electrical Upgrade
 Project
SUBMIT AS PART OF BID

DESIGNATED SUBCONTRACTORS LIST
 DOCUMENT 00 43 36- 2

VARELA, LEE, METZ & GUARINO, LLP

333 BUSH STREET, SUITE 1500, SAN FRANCISCO, CA 94104
415.623.7000 (T) | 415.623.7001 (F)

Andrew Van Ornum
avanornum@vlmglaw.com

February 8, 2023

VIA EMAIL(juan@greystonewest.com)

Mountain View Whisman School District
c/o Juan Sagarra
Greystone West Company
621 West Spain Street
Sonoma, CA 95476

Re: Theuerkauf Electrical Upgrade Project
Mountain View Whisman School District
S&H Construction Inc.'s Response to Elecco's Bid Protest

Mr. Sagarra:

This firm represents S&H Construction, Inc. ("S&H") in connection with the above Project, and this will serve as S&H's response to the bid protest of Elecco. This letter is being directed to you as the Mountain View Whisman School District's ("District") representative identified in the Notice to Bidders / Invitation to Bid ("ITB"). If this should be directed to some other person at the District, please advise or pass this along to the appropriate person.

In short, Elecco asserts that S&H's bid is not responsive because Elecco claims that S&H does not have the proper license, lists only one subcontractor and is not a DVBE. Contrary to Elecco's assertions, S&H's bid is responsive to the ITB and is consistent with the Public Contract Code governing competitive bidding requirements.

A. S&H is Properly Licensed and Authorized to Perform the Contract

Elecco claims that S&H is not properly licensed to be awarded and perform the Contract. That is incorrect. Business and Professions Code section 7059(b) provides: "the awarding authority shall determine the license classification necessary to bid and perform the project." The ITB details that "[t]o bid on this Project, the Bidder is required to possess one or more of the following State of California contractor licenses: A - General Engineering Contractor[,], B - General Building Contractor[,], C - Electrical Contractor." (See also, *M & B Const. v. Yuba County Water Agency* (1999) 68 Cal.App.4th 1353, 1360-1361, [recognizing that the legislature intended to "allow the bidding authority to determine the licensing classification necessary" to provide the awarding authority "flexibility and control in deciding who it will be doing business with"].) S&H, as a Class B licensed contractor, or as a C-10 Electrical contractor, was thereby authorized to bid and perform the work.

B. Under the Subcontracting Fair Practices Act, S&H is Properly Licensed and Authorized to Self-Perform Where it Does not List a Subcontractor

There is nothing wrong with S&H intending to self-perform portions of the work, including “the civil work scope.” Elecco’s objection and description of “civil work” is vague and lacks definition. However, as detailed above, the District detailed that a Class B or Class C10 Electrical license was sufficient to bid and perform the work, and S&H has both licenses.

In addition, the “civil work” that Elecco objects to S&H self-performing is so minor as to be incidental to the main work scope – Electrical upgrades. The only civil work is digging a small 30 foot trench and minor concrete work. S&H intends to self-perform that incidental work, which is authorized under 16 Cal. Code Regs. sections 831 and 834. Section 834 authorizes a specialty contractor to self-perform incidental and supplemental work, which is work “essential to accomplish the work in which the contractor is listed.” (16 Cal. Code Regs., § 831.) That is precisely what S&H intends to do for the minor “civil work” to complete the essential electrical work.

Last, Business and Professions Code section 7057 clarifies that a Class B licensed general building contractor may perform a primer contract where “the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry.” By Elecco’s own admission, the contract requires at least some civil (concrete and trenching) as well as electrical work. Therefore, S&H is authorized to perform the contract with its Class B license.

C. S&H’s Bid was Responsive and there was no DVBE Requirement

Elecco’s last objection is that S&H is not a DVBE certified contractor and should not be awarded the Contract because of Elecco’s purported understanding of some District DVBE goal of 3%. In public works contracting, bidders are required to submit responsive bids in order to be awarded a contract. Here, the ITB advised, “[t]he District shall award the Contract, if it awards it at all, to the lowest responsive responsible Bidder based on: The base bid amount only.” Moreover, Document 00 43 36, “Designated Subcontractors List,” only required that “Bidder must indicate which, if any, of its subcontractors are disabled veteran business enterprises (DVBE) and the estimated percentage of the Work those subcontractor(s) will perform.” Document 00 45 55, “Disabled Veteran Business Enterprise Participation Certification” (which was expressly not to be

2. **DVBE Participation Policy.** The District is committed to achieving this DVBE participation goal. The District encourages Contractor to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.
3. **DVBE Participation Goal.** The three percent (3%) participation goal is not a quota, set-aside or rigid proportion.
4. **Certification of Participation.** At the time of execution of the Contract, the Contractor will provide a statement to the District of anticipated participation of DVBEs in the contract.

Mr. Juan Sagarra
February 8, 2023
Page 3

submitted with the bid per 00 21 13, ¶ 8), further details the voluntary or aspirational nature of DVBE participation:

There was no DVBE minimum participation or other DVBE goal stated in the ITB, and S&H's bid and subcontractor list was fully responsive to the ITB, including the limited requirements related to listing of any potential DVBE participation in the Subcontractor's list. Elecco's objection should be disregarded.

As the District may be aware, S&H has been in business performing construction in the commercial and public works arenas, including for numerous schools, for over 20 years. S&H has constructed and self-performed significant portions of more than 25 school projects of values significantly exceeding S&H's bid on this Project. In short, S&H is experienced in this type of construction and capable of carrying out and successfully completing this Project, including substantial portions by self-performance. As further evidence of this fact, its bid bond demonstrates that S&H's surety has confirmed that S&H is financially capable with the character and experience to perform this Project, as it has provided a guarantee that that S&H can sign the Contract to perform the Project at S&H's price.

In sum, S&H respectfully demands that the protest be denied in its entirety because S&H submitted the lowest bid that was responsive to all of the bid requirements..

Very truly yours,

**VARELA, LEE, METZ
& GUARINO, LLP**



Andrew Van Ornum

cc: Harmeet Anand (via email)
Elecco c/o Danh Lai (danh@elecco.us)
Maria Jarcia (mariajshca@yahoo.com)

Date: February 10th, 2023

Mountain View Whisman School District
1400 Montecito Avenue, Mountain View, CA 94043

c/o Juan Sagarra (via email: juan@greystonewest.com)

Greystone West Company
621 West Spain Street, Sonoma, CA 95476

Re: Theuerkauf Elementary School Electrical Upgrade Project - Formal Bid Protest
Response to the S&H's Letter (4860-8208-9296) dated February 8, 2023.

Dear Mr. Sagarra:

We reviewed the response from S&H Construction, Inc. ("S&H") and found that to be unsatisfactory for the reasons we provide below:

Claim A: S&H is Properly Licensed and Authorized to Perform the Contract

Even though it is correct that S&H is properly licensed to bid (as prime contractor) for the project, S&H and its subcontractor(s) need to have appropriate license(s) to perform the work. The California Contractors State License Board (CSLB) requires that "... *the general building contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor to perform the work.*" (see Description of CSLB License Classification). In this case, S&H and its subcontractor (AAA Fence) are not licensed nor qualified to perform civil work scope specified in Sheet A1.1, Sheet S2, and excavation and restoration per Sheet E1.1 for work under building footing, a significant work scope of this project.

Claim B: Under the Subcontracting Fair Practices Act, S&H is Properly Licensed and Authorized to Self-Perform Where it Does not List a Subcontractor

The civil work scope of this project (detailed in the drawings contained in the plan) constitutes a significant portion of the project (about 25 percent) and should not be characterized as minor and/or incidental work. A subcontractor performs work in an amount in excess of one-half of 1 percent of the prime contractor's total bid shall be listed in the bid proposal or shall be subject to penalties per the California Public Contract Code Sec 4104 and 4106. The Business and Professions Code 7057 does require that "*A general building contractor shall not take a subcontract involving trades other than framing or carpentry ... unless the general building contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor to perform the work*".

Claim C: S&H's Bid was Responsive and there was no DVBE Requirement

The project specification section 00 21 13 (Instruction to Bidders) states preference for Disabled Veteran Business Enterprises ("DVBE") with the participation goal of at least three percent (3%). Document 00 43 36 and Document 00 45 55 provide information on DVBE participation.

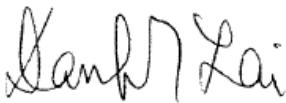
Supporting the stated goal of the District with the "modestly low" participation value of three percent, the value of Elecco's bid price is better than that of S&H's bid price.

	S&H	ELECCO
Net Bid Price	\$ 468,600.00	\$ 469,500.00
Eligible DVBE (3% of participation value)	\$ -	\$ 3,521.25
Subtotal	\$ 468,600.00	\$ 465,978.75

In view of the reasons listed above, we believe that the project should be awarded to the best value, responsive, responsible bidder, Elecco, Milpitas, CA, and its subcontractor (Raposo Engineering, Inc.) who is a registered DVBE.

If you have any questions or concerns, please contact me. We look forward to hearing from you in due course.

Sincerely,



Danh Lai, President

1104 Wrigley Way, Milpitas, CA 95035

Email: danh@elecco.us

Mobile: (510) 579-5293

Cc: VLMG c/o Andrew Van Ornum (via email: avanorum@vlmglaw.com)
S&H c/o Harmeet Anand (via email: shcalifornia@yahoo.com)

February 10, 2023

**VIA U.S. Mail
and E-Mail: danh@elecco.us**

Danh Lai
President
Elecco
1104 Wrigley Way
Milpitas, CA 95035

Re: Mountain View Whisman School District
Theuerkauf Elementary School Electrical Upgrade Project
Bid Protest

Dear Mr. Lai:

The Mountain View Whisman School District (“District”) received Elecco’s February 2, 2023, bid protest challenging the bid submitted by the apparent low bidder, S&H Construction, Inc. (“S&H”) ¹ on the above referenced Project.

The District carefully reviewed and considered Elecco’s bid protest, S&H’s February 8, 2023 response to Elecco’s bid protest (a copy of which was received by Elecco), Elecco’s further correspondence dated February 10, 2023, the pertinent bid documents, and applicable law. For the reasons outlined below, the District **rejects** Elecco’s bid protest.

Elecco raises three arguments in its protest of S&H’s Bid.

1. S&H is Allegedly Not Properly Licensed to Perform the Civil Scope of Work of the Contract

¹ Zara Construction Inc.’s bid was withdrawn per Public Contract Code § 5103.



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The District's Invitation to Bid for this Project required bidders to possess one or more of the following State of California contractor licenses: A (General Engineering Contractor), B (General Building Contractor), and/or C (Electrical Contractor). S&H has both a Class B and C10 license and therefore met the licensing requirements to bid this Project – including the civil work.

2. S&H Allegedly Failed to List a Licensed and Qualified Subcontractor to Perform the Civil Work Scope/AAA Fence is Not Licensed or Qualified to Perform the Civil Scope of Work.

First, S&H did not need to list a subcontractor to perform the civil scope of work for this Project. S&H under its B license is lawfully permitted to self-perform portions of the work, including the civil scope of work. As detailed above, S&H has both a Class B and C10 license, which qualify it to bid and self-perform the civil scope of work on the Project. As a Class B general building contractor, S&H may perform a prime contract if the contract "requires at least two unrelated building trades or crafts other than framing or carpentry." Elecco acknowledges that the Project requires at least some civil work (concrete and trenching) and electrical work, all of which S&H may self-perform.

As S&H did not list a subcontractor for the civil work, Public Contract Code § 4106 dictates that if a prime contractor (here S&H) fails to specify a subcontractor for a portion of work valued in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor (S&H) 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. Although S&H clarified in its February 8, 2023, letter that it will self-perform the civil work, S&H's bid was not nonresponsive for not listing a subcontractor for the civil scope of work because S&H is properly licensed to self-perform this scope of work, and indeed is required to do so pursuant to Public Contract Code § 4106. Furthermore, AAA Fence Co. is not performing the civil work on this Project.

For these reasons, Elecco's challenge that S&H failed to list a subcontractor to perform the civil scope of work fails, and



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therefore the District rejects Elecco's bid protest as to this second point of Elecco's bid protest.

3. S & H Construction and its Subcontractors (AAA Fence Co.) Are Not Disabled Veteran Business Enterprises (DVBE).

First, the District's Bid Documents for this Project do not require bidders or their subcontractors to be DVBE contractors. Elecco's bid protest asserts that the District "has a participation goal for DVBE of 3 % per year on projects that receive state funding", intimating that bidders must include DVBE subcontractors as part of their bid. Elecco has misinterpreted the District's Bid Documents. Bid Document 00 43 36 (Designated Subcontractors List) only required that the bidder "indicate which, if any, of its subcontractors are disabled veteran business enterprises (DVBE) and the estimated percentage of the Work those subcontractor(s) will perform". Document 00 45 55 (Disabled Veteran Business Enterprise Participation Certification) was not to be submitted with the bid per 00 21 13, ¶18. This Project and the Bid Documents do not mandate minimum participation of DVBE subcontractors for *this* Project. As noted by Elecco, and the Bid Documents, DVBE participation of 3% is a *yearly* goal not a minimum requirement for *this* Project. S&H's Bid and its subcontractor list was responsive to the District's Invitation to Bid.

For these reasons, the District also rejects Elecco's bid protest as to Elecco's DVBE argument.

Conclusion

For the reasons outlined above, the District rejects Elecco's bid protest in its entirety. Please be assured that the District appreciates Elecco's interest in District projects and hopes that it will continue to bid on District projects in the future.

Sincerely

A handwritten signature in blue ink, appearing to read "Rebecca Westover".

Mountain View Whisman School District
Dr. Rebecca Westover, Chief Business Officer
cc: S&H Construction, Inc.