
DATE : March 26, 2026

TO : Georgeanne White, City Manager

FROM: Michael D. Flores, Independent Administrative Hearing Officer

Subject: FINDINGS AND RECOMMENDATION TO CITY COUNCIL ON PROTEST OF SECURITY PAVING COMPANY, INC., REGARDING THE CONTRACT FOR FRESNO-YOSEMITE INTERNATIONAL AIRPORT RUNWAY 11L-29R RECONSTRUCTION PROJECT BID FILE NO. 12502600.

Procedural History

The City of Fresno (“City”) invited bids for the “full depth reconstruction” of Runway 11L-29R at the Fresno Yosemite International Airport, Bid File no. 1252600 (“BF 1252600”). After receiving all bids, City staff issued a determination dated February 18, 2026 that designated “DeSilva-Gates Construction- Vanguard Construction, a Joint Venture” (“DeSilva”, or “DeSilva-Gates”) as the lowest responsible and responsive bidder, in compliance with the specifications set forth in the Bid File and City Charter.

The second lowest bidder, Security Paving Company, Inc. (“Security”), timely protested the City’s determination on February 23, 2026. A hearing was conducted on March 18, 2026 at 9:27 A.M., in Fresno City Hall by Independent Administrative Hearing Officer Michael D. Flores.

Summary of Protest- Security Paving Company, Inc.

Security’s Legal Counsel David Nemeth (“Mr. Nemeth”) provided a Pre-Hearing Brief dated March 13, 2026 (“Security’s Pre-Hearing Brief”) Security’s protest letter dated February 23, 2026 (“Appeal and Protest of the DeSilva Gates Construction-Vanguard Bid for Fresno-Yosemite International Airport Runway 11L-29R Reconstruction Project, Bid File No. 12502600” (“Security Protest Letter”) Security’s Pre-Hearing Brief, Exhibit #B) contended that DeSilva’s bid was Non-Responsive under the terms of the Bid Specifications, and must be rejected. Security contended that the bid specifications all bidders must bid all items to eligible for the award of the contract. Security contended that because DeSilva’s bid left the cost amount for unit item #162 “Remove In-Pavement Fire Hydrants” blank, DeSilva’s bid was rendered “non-responsive” and therefore ineligible. Security noted that DeSilva (and all bidders) were required to read and initial a paragraph entitled “Completion of Bid Proposal Form to be Eligible for Award” requiring that all bidders fill in “all dollar amounts and information called for on this Bid Proposal Form” (Security’s Pre-Hearing Brief, Exhibit #B, p. 2), and by DeSilva’s failure to

fill in the dollar amount for unit item #162 DeSilva's mistake was material, rendering the bid non-responsive and therefore requiring it to be rejected.

Security also contended that DeSilva's bid was non-responsive pursuant to the City's "Precedence of Bid Prices" language included in their Bid Proposal Form. Security noted that the City's "Precedence of Bid Prices" required that in the event of a discrepancy between the bid total, summaries of totals, and unit price extensions, the unit price "correctly extended" will control over the summaries of totals, and the summaries of totals "correctly added" will control over the total [bid amount], whether the summaries of totals are extended unit prices or lump sums. Security argued that the "unit price correctly extended" in DeSilva's bid results in DeSilva's total bid being \$20,000.00 less than the bid total "accepted" by the City. Security contended that under the "Precedence of Bid Prices" included in the City's Bid Proposal Form, the unit price "correctly extended" which does not and should not include the \$20,000 missing from unit line #162 takes precedence over the summaries of totals and over the total bid amount determined by the City. Therefore, under the "Precedence of Bid Prices" the total Bid Amount should have been calculated at \$98,868,888.00 instead of the improperly "adjusted amount" of \$98,888,888.00. Security argued that the \$20,000 adjustment made by the City was made in violation of the "Precedence of Bid Prices" language contained in the Bid Proposal Form.

Security also contended that even if the City found that the failure of DeSilva to fill in the dollar amount for unit item #162 was an immaterial defect, Security argued that an arithmetical or typographical error that a bidder could use as a basis to withdraw their bid constitutes an "impermissible competitive advantage". Security noted that Public Contract Code section 5103 allows a bidder to withdraw its bid after bids are opened where the bidder can argue an error made the bid materially different than intended. Security argued that had DeSilva wished to, they could have withdrawn their bid due to the discrepancy between the unit price extensions total and the total bid amount (\$20,000.00) under Public Contract Code section 5103 and would not be required to forfeit its bid security establishing DeSilva's impermissible competitive advantage".

Security also contended that DeSilva's omission of the dollar amount for unit line #162 cannot be considered a "minor irregularity" as claimed by the City because it contains a "monetary consideration. Security notes that in the City's Bid Proposal Form under "Minor Irregularities" the City reserves the right to waive "any informality or minor irregularity that does not have a monetary consideration when it is in the best interest of the public and of the City to do so." (Security's Pre-Hearing Brief, p. 3). Security also points out that language in the City's Bid Proposal Form requires that, "A discrepancy that offers a Bidder an unfair advantage will cause the bid to be nonresponsive." (Id., Ex. #F, p. 1.26) Security contends that the omission of the dollar amount of the unit line #162 is an irregularity that clearly has a monetary consideration as it changes the total bid amount by \$20,000.00. Security contends that the City's argument that the omission is "minor" and can be waived because it need only consider the total bid price derived from DeSilva's bid proposal submitted electronically through "Planet Bid" is "patently false".

Security also contended that the courts have held that governmental entities when opening the bidding process to the public must be held to strict compliance to the bidding requirements set

out in the bidding proposal, and the process is subject to close judicial scrutiny to “eliminate favoritism, fraud and corruption; avoid misuse of public funds and stimulate advantageous market place competition (citing Public Contract Code sect. 10300). Security argued that the courts have held that such contracts awarded without strict compliance with bidding requirements have been set aside, even when there has been no evidence of corruption or adverse effect on the bidding process and the deviations would save the governmental entity money (citing Terminal Const. Corp. v. Atlantic Cty. Sewer Auth. (1975) 341 A.2d 327, 330. and L. Pucillo & Sons V. May and Council, etc., 375 A.2d. at p. 605).

Security also pointed out another “irregularity” in DeSilva’s bid proposal after it received the documents requested from the City through a request pursuant to the California Public Records Act (“CPRA”). Security pointed out that DeSilva’s bid proposal also failed to include a fully completed DBE (“Disadvantaged Business Enterprises”) Bidders’ List in that DeSilva failed to include its name, address, and other required information as Prime Contractor even though they designated themselves as the “Prime Contractor” on the document. Instead, they included the name, address and other relevant information of a sub-contractor, “Austin Enterprise” in the section reserved for the “Prime Contractor” information (Security’s Pre-Hearing Brief, Ex. #F, p. 1.45). Security contended that the City contacted DeSilva twice after the three-day deadline provided in the Bid Proposal Form for submitting a complete and accurate DBE Bidders’ List to obtain clarification from DeSilva and receive the correct information. Security contends that this irregularity and the City’s contact with DeSilva (emails between City Senior Procurement Specialist and DeSilva were provided in “Exhibit #G” of Security’s Pre-Hearing Brief) after the three-day deadline to obtain the correct information establishes that the City “favored” DeSilva in violation of the law. Security also noted that Ms. Torrence in her emails to DeSilva advised them of the omission of the dollar amount in unit line #162 and asked them whether the admission “was an oversight” or whether it was meant to reflect a “\$0” dollar amount (Id., p. 2). In response to this email, DeSilva’s Chief Estimator Jack Shewmaker’s September 29, 2025 email stated that DeSilva’s “hard copy and save file” had the \$20,000 amount entered in unit line #162 and noted that DeSilva’s Total Net Base Bid” of \$82,805,598 includes the \$20,000 amount for unit line #162. Mr. Shewmaker’s email also requested a copy of the City’s documents (Ibid). Security contends that the City allowing DeSilva to change the information on their DBE Bidders’ List and to “ignore” the mistake regarding missing dollar amount in unit line #162 (or the City correcting the mistake themselves as contended by Security) when the language in the City’s Bid Proposal for the Project prohibited such conduct and provides that such mistakes are material, rendering the Bid non-responsive and requiring the City to declare DeSilva’s bid non-responsive as the court held in Valley Crest Landscape, Inc. V. City Council (1996). 41 Cal.Ap.4th 1432, in which the court dismissed the awarding of a bid proposal in which the City of Davis allowed the bidder after the opening of the bids to change its bid in order to correct a material mistake, which the City of Davis had deemed a “minor irregularity”.

Security also contended that the omission and subsequent correction of the omission by the City creates an unfair competitive advantage pursuant to Public Contract Code section 5013 and the Valley Crest case. Security argued that omitting a required line price amount provides a bidder the “flexibility” to either withdraw their bid should it find after the bid opening that the “incorrect bid” would not be “advantageous” to their bottom line, and allow them to withdraw their bid (or possibly attempt to obtain some “mistake relief”) or should the incorrect total bid

price result in an advantageous bid total, they can take advantage of the “mistake” and be awarded the bid (based on their supposed “material mistake”). Security argued that this scenario is the very definition of an unfair competitive advantage and allows the bidder with the “suspect” bid a “second look” under Public Contract Code section 5103 and the Valley Crest case. Security argued that if there is a defect in a bid by a bidder that allows that bidder the right to withdraw their bid under Public Contract Code section 5103, that defect is becomes material and subject to waiver by the governmental entity as “immaterial”. Security argues that under its previous arguments (failure to enter the dollar amount in unit line #162, deeming the omission a “minor irregularity” even though it was a monetary consideration; relying on the “electronic” submission of the bid proposal of the total bid amount in violation of the City’s own “Precedence of Bid Prices” language”) DeSilva and the City have created an unfair competitive advantage for DeSilva.

In their Pre-Hearing Brief, Security requested that the Hearing Officer find that, 1) DeSilva’s bid was non-responsive “based on the plain language of the Bid Form and their failure to include a required unit price; 2) the City cannot waive that mistake as it involves a “monetary consideration, and provides an unfair competitive advantage; and 3) award the Project contract the next highest responsive bidder, Security Paving Company, Inc.

City’s Response

In response to Security’s contentions assertions, City Purchasing Manager Melissa Perales issued a letter on behalf of the City dated February 24, 2026 entitled “Protest and Request for Hearing for the International Airport Runway 11L-29R Reconstruction (Bid File No. 12502600)” (“City’s Response Letter”) (Security Pre-Hearing Brief, Exhibit #C). In the Response, the City asserted that none of the four circumstances required under the Public Contract Code and relevant case law constituting a “material deviation” (a deviation affecting the bid price, a bid that impacts the quality or scope of the project, a bid that gives the bidder a competitive advantage; or a bid that prevents fair comparison of the bids) was present in DeSilva’s bid. The City’s Response Letter argued that the clerical omission found by Security did not affect the total bid price, the bidder DeSilva could not change their bid, and therefore DeSilva had no discretion to change their bid once the bids were opened.

The City’s Response Letter stated that all bids were evaluated based on the total bid amount which was fixed and certain therefore causing no competitive advantage, making the clerical error (the omission of the dollar amount in unit line #162) a “minor clerical irregularity” (City’s Response Letter, p. 2). The City’s Response Letter contends that their review of the total bid amount (\$98,888,888.00) is “mathematically supported” when the “intended value” for unit line item #162 (\$20,000.00) is included in total bid calculation, as the total bid amount is the controlling figure for the award of the bid. The City argued that because the bid amount is “objectively determinable” from the face of the Proposal and does not permit post-bid modification, DeSilva’s bid does not create uncertainty on price or an uncompetitive advantage. As to Security’s argument regarding DeSilva’s bid violating Public Contract Code section 5103 allowing DeSilva a “second look” and the opportunity to withdraw their bid, the City contended that section 5103 applies only when the bidder can demonstrate that a clerical error resulted in a “materially different bid than what was intended”. The City contended that there was no

evidence in DeSilva's case that DeSilva's bid was intended to be materially different and DeSilva could not selectively revise its price after bid opening or alter the total amount submitted. The City concluded that on those facts the "second look" theory posited by Security in their protest documents did not apply. As to Security's contention that because the omission of the dollar amount for unit line #162 violated the Bid Proposal language that requires bidders to "bid all items" the City argued that even when bid forms use mandatory language, public agencies retain discretion to waive immaterial defects that do not affect price, fairness, or competitive standing. The City contended that because the omission by DeSilva was immaterial and did not affect the integrity of the competitive process, it exercised its discretion to waive the defect.

The City Attorney's Office also submitted a Pre-Hearing Brief on March 13, 2026, entitled "Respondent's Brief". In their Pre-Hearing Brief, the City noted that they are a "Charter City" that derives their authority from the California Constitution which grants a Charter City "supreme authority in the area of municipal affairs" such as administration of public works which includes the procedure for municipal contracting pursuant to Cal. Constitution Article XI, Section 5 (Respondent's Brief, p. 3, n. 8-9). The City also asserted that as a Charter City it is not subject to the Public Contract Code in whole or in part unless the City Council agrees to be by Ordinance (Respondent's Brief, p. 3, citing Fresno City Charter sect. 1208). The City also noted that while under the Bid Specifications for Bid File 12502600 all documents on the listed on the "Bidder's Checklist" must be completely filled out and signed by the Bidder to be delivered to the City Purchasing Manager by a date and time certain, the Bid Specifications also contain language providing that in the event of a discrepancy in which the City receives both written and electronic bid proposals submitted for the same contract, the City will use and accept the electronic version at the authorized submittal (Respondent's Brief, p. 4, n. 14). The City noted that while DeSilva omitted the dollar amount in unit line #162 in its handwritten bid their total bid amount remained consistent for both their handwritten and "authorized" electronic bid submittals. The City argued that while the dollar amount of the unit line item was omitted, the total bid amount was submitted by DeSilva "as if [the dollar amount unit line item #162] had been expressly listed (Respondent's Brief, p. 6). The City contended that under the Bid Specifications for Bid File 12502600, the electronic version of the bid submittal controls, and DeSilva's electronic bid total included the amount provided for unit line item #162, which makes the omission in the handwritten bid a "minor irregularity" and which the City under the terms of Bid File 12502600 was within their authority to waive (Respondent's Brief, p. 6, n. 27).

The City argued that because DeSilva's electronic total bid price (which under the terms of the Bid Specifications is the "authorized", controlling version) was consistent with the \$20,000 price that was omitted in their unit line #162 in the handwritten version of the bid proposal, the total bid price was fixed and consistent thereby making the omission a "minor deviation"; providing DeSilva no competitive advantage and making it subject to waiver by the City (Respondent's Brief, p. 6, n. 28, citing, Ghilotti Construction co. v. City of Richmond (1996) 45 Cal.App.4th 897, 903). The City contended that municipalities like the City of Fresno have the discretion to disregard minor bid defects that do not affect the bid's price or create ambiguity regarding the bidder's legal commitment (Respondent's Brief, p. 7, n. 29, citing Bay Cities Paving & Grading, Inc. v. City of San Leandro (2014), 223 cal.App.4th 1181, 1188). The City contended that because they were required under Bid File 12502600 to prioritize the electronic submittal of the

bid over the written bid should there be a discrepancy (BF 12502600, p. 1.26), they had no discretion to do otherwise, and their awarding of the contract to DeSilva was therefore a “lawful adherence to the governing terms of the Bid File (Respondent’s Brief, p. 7). The City also argued that to allow Security to prevail in this matter, would be to allow a losing bidder to “weaponize minor technicalities to secure a higher-priced contract”, resulting in a disservice to the public (Security’s bid was \$482,492.75 higher than DeSilva’s bid). The City added that the higher cost is “contrary to established public policy and the City’s mandate to award to the lowest responsive bidder (Respondent’s Brief, p. 7, n.32, citing, MCM Construction, Inc. v. City and County of San Francisco, (1998), 66 Cal.App.4th 359, 369).

The City then argued that Security failed to establish that the City abused their discretion in awarding the Airport 11L-29R Runway reconstruction contract to DeSilva, as the evidence establishes that DeSilva’s omission of the dollar amount in unit line item #162 was missing only in DeSilva’s written bid, but not in their electronic bid (which under the terms of the Bid File controls when there is a discrepancy between the written and electronic bid submittals, the omission did not affect the total bid price, and the omission did not give DeSilva an unfair competitive advantage over the other bidder). The City requested that protest by Security Paving Company, Inc. be denied and the award of the Airport 11L-29R Runway Construction Project contract to DeSilva-Gates Construction be upheld.

DeSilva-Gates Construction Response

Prior to the March 18, 2026 Bid Protest hearing, the parties were served with a four-page document (not including attachments) dated March 13, 2026, in support of the City’s Response from Michael Gates, Vice President- Estimating (signing the letter as “Attorney-in-Fact”) on behalf of “DeSilva-Gates Construction- Vanguard Construction, a Joint Venture” (“DeSilva Response”).

DeSilva’s response in great part mirrored the arguments submitted by the City; the omission of the dollar amount unit line item #162 in the written bid was a minor irregularity and did not constitute a monetary consideration, as the electronic bid total included the total bid amount reflecting the correct and consistent bid which included the omitted \$20,000 amount for unit line item #162. DeSilva noted that under the Bay Cities Paving case (cited above), the court held that the omission of an entire page of the required bid bond was found to be an immaterial mistake. DeSilva also cited Menefee v. County of Fresno (1985), 163 Cal.App.3d 1175, 1181 which held that “courts have routinely rejected bid challenges when omitted information (including required bid pricing) can be inferred from other portions of the bid.” (DeSilva Response, p. 2). DeSilva also cited a Federal case ManTech Advanced Systems Int’l, Inc. v. U.S. (Fed. Cl. 2019), 141 Fed.Cl. 493, 507, in which the court held that a bid can be corrected if when submitted, the bid indicates the “probability of error, the nature of error, and the [missing] amount intended” caused by the omission. The ManTech went on to state that, “To hold that the (bid with the omission) is non-responsive would be to convert what appears to be an obvious clerical error of omission to a matter of nonresponsiveness”. The DeSilva Response also disagreed with Security’s interpretation of Konica Business Machines U.S.A., Inc. v. Regents of Univ. of Cal. (1988) 206 Cal.App.3d. 449, 454, arguing that the Konica court did not “mandate bid precision, [but] instead

recognized that inconsequential defects are waivable.” Further, DeSilva noted that the Konica court also held that “it is inconceivable that inconsequential departures will not appear.”

DeSilva also argued that Public Contract Code section 5103 was not applicable to the case as 5103 is only applicable if the mistake (or in the case omission) made the bid materially different than the bidder intended it to be. DeSilva argued that because they could not have withdrawn their bid due to the correct total bid amount being included in their electronic bid submission to the City through “PlanetBids”, there was no actual grounds for their withdrawal, no unfair competitive advantage, the creation of only an “inconsequential deviation from the competitive bidding requirements, and therefore no violation of 5103.

DeSilva also requested that Security’s protest be denied and the City’s awarding of the contract to DeSilva be upheld.

Findings

At the March 18, 2026 hearing, Security Paving Company, Inc. (“Security”) was represented by David E. Nemeth, esq., Rogers, Nemeth, Germain. The City was represented by Deputy City Attorney Christine C. Charitar, and Chief Assistant City Attorney Brandon Collette. DeSilva-Gates Construction- Vanguard Construction, a Joint Venture (“DeSilva”) was represented by Stephen Pessagno, Special Counsel, Pillsbury, Winthrop, Shaw, Pittman, LLP.

Deputy Charitar requested that she be allowed to make an opening statement on behalf of the City. The opening statement mirrored the City’s Pre-Hearing Brief.

Mr. Nemeth reserved the right to make an opening statement on behalf of Security until after Security’s presentation.

Mr. Nemeth then called Joe Ferndino as a witness (“Mr. Ferndino”). Mr. Ferndino was sworn in and in summary, Mr. Ferndino testified that he is a Vice President with Security Paving and is involved with the estimating for bid contracts and has been involved in the construction business since June of 1982. Mr. Ferndino testified that he has handled public works bids for Security since 1986 which involves thousands of bids and does include the Airport 11L-29R Runway Reconstruction Project for the City of Fresno. Mr. Ferndino testified that it took approximately three weeks to put together the bid for the Airport Project. Mr. Ferndino testified that the bid required numerous “line items” to be filled in accurately and double-checked, and those tasks were to be completed by he and his team very close to the time the bid for the Project was to be submitted to the City of Fresno. Mr. Ferndino testified that he was aware of the language in the “Bid Proposal”, page 1.25 that required all bidders to “bid all items”, and fill in all terms, all dollar amounts, and all other information, and failure to do so would result in the bid being designated “non-responsive”. Mr. Ferndino testified that the City never informed Security that their bid was “non-responsive”. Mr. Ferndino testified that he knew of no reason for Security’s bid to be deemed “non-responsive” and not to be accepted by the City should DeSilva-Gates’ bid be deemed “non-responsive” as their bid was the second lowest bid after DeSilva-Gates’ bid. Mr. Ferndino testified that he received no communication from the City regarding any questions

they had regarding Security's bid or to fill in a missing item in the bid proposal. Mr. Nemeth stated that he had no further questions for Mr. Ferndino.

In response to Deputy Charitar's questions on cross-examination, Mr. Ferndino testified that he was aware of the language in the Bid File that stated the City in the case of a discrepancy would use the bid proposal submitted electronically as the authorized submittal. Deputy Charitar stated she had no further questions for Mr. Ferndino.

In response to Mr. Nemeth's questions on re-direct examination, Mr. Ferndino testified that Security's bid was submitted electronically with all required items filled in on the bid form and then uploaded to the City through "PlanetBids". Mr. Ferndino testified that it was his understanding that should a bidder submit both a "written" and "electronic" version of the bid form, in case of a discrepancy, the electronic bid would be used as the authorized version.

Mr. Nemeth stated he had no further witnesses.

The City stated they had no witnesses.

Mr. Nemeth requested that he be allowed to call witnesses from the City. The Hearing Officer granted Mr. Nemeth's request pursuant to Section 6(e)(2) of Council Resolution 2003-129.

Mr. Nemeth called City Senior Procurement Specialist Tamra Torrence ("Ms. Torrence"). Ms. Torrence was sworn in and in summary testified that she reviewed and the bids for the Project that were submitted through "PlanetBids". Ms. Torrence testified that City did not receive any bids in person or through the mail that she could recall. Ms. Torrence testified that she believed the City was "bound" to accept the total bid amount of DeSilva-Gates' bid as provided on the "PlanetBids" printout (Security Pre-Hearing Brief, Exhibit #H). Ms. Torrence testified that because DeSilva-Gates submitted their bid via "PlanetBids" only, the City relied only on the information provided within that electronically submitted bid. Ms. Torrence testified that as part of her evaluation, she checked to make sure that all items on the "Bidder's Checklist" were included in all bids submitted (Bid File, p. 1.1). Ms. Torrence testified that the City evaluates the line item and total bid amounts from the "PlanetBids" printout. Ms. Torrence testified that she is aware that in the "Bid Proposal" on page 1.25 that there is language that required all bidders to "bid all items", and fill in all terms, all dollar amounts, and all other information, and failure to do so would result in the bid being designated "non-responsive". Ms. Torrence testified that she did communicate with DeSilva-Gates by email in September of 2025 in order to either confirm information provided on their bid proposal, or to clarify information in the bid proposal (Security Pre-Hearing Brief, Exhibit G). Mr. Nemeth stated he had no further questions for Ms. Torrence.

In response to Deputy Charitar's questions on cross-examination, Ms. Torrence testified that the \$20,000 amount for unit line item #162 was included in the total bid amount of the bid proposal submitted electronically by DeSilva-Gates. Ms. Torrence testified that DeSilva-Gates total bid price did not change either before or after the public bid opening. Ms. Torrence testified that she was aware that the language of the Bid Files (page iv) allows that in the case of bid proposals being accepted by written or electronic methods in the case of a discrepancy, the electronic version will be accepted by the City as the authorized version of the bid. Ms. Torrence also

testified that she is aware that the language of the Bid File allowed the City to correct any minor discrepancy in the bid. Deputy Charitar stated that she had no further questions for Ms. Torrence.

In response to Mr. Nemeth's questions on re-direct examination, Ms. Torrence testified that the unit line-item amounts are entered electronically through "PlanetBids", but the individual line-item dollar amounts (Bid Proposal pp. 1.1-1.24) are only submitted by "paper" and not entered individually through "PlanetBids". Ms. Torrence testified that the request to communicate with DeSilva-Gates regarding the missing unit line item was done after consultation with the City Attorney's Office. Ms. Torrence testified that she communicated with DeSilva-Gates in September of 2025 by email to confirm that the bid total was correct. Mr. Nemeth stated he had no further questions.

In response to Deputy Charitar's questions on re-cross examination, Ms. Torrence testified that her duties in this case were to confirm each bidder submitted all required documents per the checklist and match the information in the "PlanetBids" totals with the "Cost Proposals".

At that time DeSilva-Gates Special Counsel Mr. Pessagno was allowed to examine Ms. Torrence. In response to Mr. Pessagno's questions, Ms. Torrence testified that regardless of whether the documents are "handwritten", if they were submitted via "PlanetBids" they are considered electronic bids.

In response to Mr. Nemeth's follow-up question, Ms. Torrence testified that one of the unit line items in the handwritten version of the bid proposal submitted by DeSilva-Gates is missing a dollar amount, but the "electronic version" of the total for those line items as provided in the "PlanetBids" version is consistent with the total bid amount.

Ms. Torrence was then excused, and Mr. Nemeth requested to examine City Purchasing Manager Melissa Perales ("Ms. Perales"). Ms. Perales was sworn in and in summary testified that she reviewed a signed her Declaration in support of the City's position in this case (Respondent's Pre-Hearing Brief, "Declaration of Melissa Perales in Support of Respondent's Brief"). Ms. Perales testified that it was her decision in consultation with the City Attorney's Officer to deny Security's request for appeal and protest of the awarding of the Project to DeSilva-Gates (Security's Pre-Trial Brief, Exhibit #C). Ms. Perales testified that as to the "Preference of Bid Prices" (Bid File, p. 1.25), she believed that if there is a discrepancy between the bid totals, summaries of totals, and unit price extensions, the "unit price correctly extended", would prevail over the bid totals and summary of totals. Ms. Perales testified that as to DeSilva-Gates bid, the "missing" dollar amount in unit line #162 would prevail under the "Preference of Bid Prices" rule for DeSilva-Gates "paper" bid, but would not prevail for their electronic bid submission through "PlanetBids" as the City considers the unit price extension totals from the "electronic" submissions the bidders submit through "PlanetBids" as the "authorized" version. Ms. Perales testified that the bidders must provide all required forms and documents to the City through "PlanetBids" if they are submitting their bids "electronically", but for purposes of awarding the bid, the City looks at the totals (bid totals, and summaries of totals, and unit price extensions), as they are entered by the bidders into the "PlanetBids" system. Ms. Perales testified that she did not recall if this particular Project allowed bidders to enter each unit line-item dollar amount

“electronically” through “PlanetBids” or just to accept the handwritten “paper” bid form with each unit line item filled out. Ms. Perales testified that the Bid File allows for the City in the case of a discrepancy in the information received between paper and electronic bids, the City will use and accept the electronic version as the authorized version of the bid, and all totals entered into “PlanetBids” are the totals used to determine the lowest, responsible, responsive bidder. Mr. Nemeth stated he had no further questions for Ms. Perales.

The City had no questions for Ms. Perales.

There being no more witnesses for either party, the parties were allowed to make closing statements, which again mirrored the arguments provided in their respective, very thorough Pre-Trial Briefs.

The hearing was then adjourned at approximately 11:20 A.M.

Analysis of Issues in Contention:

As provided in greater detail above, and as summarized in the witnesses’ testimony at the March 18 hearing, the issue being contested by Security Paving Company, Inc., is relatively simple. Security contends that the bidder awarded the Airport 11L-29R Runway Reconstruction Project (“Airport Project”) “DeSilva-Gates Construction-Vanguard, a Joint Venture” (“DeSilva Gates”) made a material mistake under the Bid Specifications found in City Bid File #12502600 (“Bid File”) by failing to fill in dollar amount for unit line item #162 for the removal in-pavement fire hydrants. Security contends that by failing to do so, they violated the paragraph contained in the Bid Proposal Form entitled “Completion of Bid Proposal Form to be Eligible for Award” requiring that all bidders fill in “all dollar amounts and information called for on [the] Bid Proposal Form”, which all bidders, including DeSilva-Gates initialed. Security contends that DeSilva’s mistake was material, rendering the bid non-responsive and therefore requiring it to be rejected.

Security also contended that DeSilva’s bid was non-responsive pursuant to the City’s “Precedence of Bid Prices” language included in their Bid Proposal Form which requires that in the event of a discrepancy between the bid total, summaries of totals, and unit price extensions, the unit price “correctly extended” will control over the summaries of totals, and the summaries of totals “correctly added” will control over the total [bid amount]. Security provided evidence that the “unit price correctly extended” in DeSilva’s bid for unit item #162 was left blank (or in essence \$0) thereby resulting in DeSilva’s total bid being \$20,000,00 less than the bid total “accepted” by the City.

Security further contended that DeSilva-Gates’ \$20,000 “clerical error” could have been used as a basis to withdraw their bid under Public Contract Code section 5103 without requiring DeSilva-Gates to forfeit their bid security constituting an “impermissible competitive advantage”.

Security also contends that because DeSilva’s omission of the dollar amount for unit line #162 involves a “monetary consideration” it cannot be considered a “minor irregularity” as claimed by

the City. Security notes that in the City's Bid Proposal Form under "Minor Irregularities" the City's right to waive any minor irregularity is limited to those irregularities without monetary consideration.

Security also contends that the City contacted DeSilva-Gates twice after the bid opening, once regarding information contained in the DBE Form, and once regarding the bid total, evidencing "favoritism" by the City toward DeSilva-Gates in violation of the law, and pointing out that the courts have held that governmental entities when opening the bidding process to the public must be held to strict compliance to the bidding requirements set out in the bidding proposal, and the process is subject to close judicial scrutiny to "eliminate favoritism, fraud and corruption; avoid misuse of public funds and stimulate advantageous market place competition (citing Public Contract Code sect. 10300).

The City contends that DeSilva-Gates' failure to fill in the dollar amount for unit line item #162 did not constitute a "material deviation" (e.g., a deviation affecting the bid price, a bid that impacts the quality or scope of the project, a bid that gives the bidder a competitive advantage; or a bid that prevents fair comparison of the bids) under the Public Contract Code, as DeSilva could not change their bid, and therefore DeSilva had no discretion to change their bid once the bids were opened.

The City contends that all bids were evaluated based on the total bid amount which was fixed and certain therefore causing no competitive advantage, making the clerical error (the omission of the dollar amount in unit line #162) a "minor clerical irregularity". And because the bid amount is "objectively determinable" from the face of the Proposal and does not permit post-bid modification, DeSilva-Gates' bid does not create uncertainty on price and thereby an uncompetitive advantage.

Further, the City contends that while under the Bid Specifications for the Bid File require that all documents listed in the "Bidder's Checklist" must be completely filled out and signed by the Bidder to be delivered to the City Purchasing Manager by a date and time certain, the Bid Specifications also contain language stating that in the event of a discrepancy in which the City accepts both written and electronic bid proposals for the same contract, the City will use and accept the electronic version at the authorized submittal. The City also contends that because DeSilva's electronic total bid price (which under the terms of the Bid Specifications is the "authorized", controlling version) was consistent with the \$20,000 price that was omitted in their unit line #162 in the handwritten version of the bid proposal, the total bid price was fixed and consistent thereby making the omission a "minor deviation"; providing DeSilva no competitive advantage and making it subject to waiver by the City.

DeSilva-Gates through their Special Counsel also contended that the courts have held that the omission of an entire page of the required bid bond was found to be an immaterial mistake. DeSilva-Gates also cited Menefee v. County of Fresno (1985), 163 Cal.App.3d 1175, 1181 which held that "courts have routinely rejected bid challenges when omitted information (including required bid pricing) can be inferred from other portions of the bid." DeSilva-Gates also argued that Public Contract Code section 5103 was not applicable to the case because they could not have withdrawn their bid due to the correct total bid amount being included in their

electronic bid submission to the City through "PlanetBids" as Section 5103 is only applicable if the mistake (or in the case omission) made the bid materially different than the bidder intended it to be.

Discussion:

There is no dispute that DeSilva-Gates omitted the dollar amount for unit line item #162 "Remove In-Pavement Fire Hydrants" in their written submission of unit line items as part of their bid proposal for the Airport Project. And there is no dispute that pursuant to the "Completion of Bid Proposal For to be Eligible for Award" language found on page 1.25 of the Bid Proposal Form (which all bidders had to initial as part of their bid submittal), failure to "bid all items", and "completely fill in the Bid Proposal Form, including...all dollar amounts..." renders that bidder's bid "non-responsive and ineligible for award." Further, the Bid Proposal Form contains language ("Precedence of Bid Prices") basically stating that should there be a discrepancy in the "bid total, summaries of totals, and unit prices extensions" the unit price "correctly extended has precedence over the summary of totals, and the summary of totals correctly added will have control of the [bid] total". And assuming that Security's argument is valid, this "rule" would require that the "blank" or "\$0" unit line price for item #162 would be the controlling "number", causing a discrepancy, and thereby constituting a "material irregularity" (as described below) which would render DeSilva-Gates' bid submission non-responsive and ineligible for award.

However, the Bid Proposal Form also contains language that allows the City the right to waive "any informality or minor irregularity" that does not have a "monetary consideration". As discussed above, while the City argues that the omission of the dollar amount of unit line item #162 is a "minor irregularity" which can be waived by the City, Security disagrees contending that because the omission is in fact an omission of a required dollar amount, the omission involves a "monetary consideration" and is therefore not a minor, but a material irregularity, which the City cannot waive.

The City's argument that DeSilva-Gates' omission is a "minor" irregularity allowing the City to waive it is chiefly based on the language found on page iv of the Bid Specifications which clearly states that "*In the event that both paper and electronic bid for the same project are submitted, the City will use and accept the electronic version as the authorized submittal.*" Like the "Completion of Bid Proposal" language found on the Bid Proposal Form, and the "Precedence of Bid Prices" language found on page 1.25 of the Bid Proposal Form, the language regarding the "electronic" version of a submitted bid being the "authorized" version for discrepancy issues was included in all copies of the Bid Proposal Forms provided to all bidders, and therefore all bidders were aware of this language as well as the other rules and regulations contained in the Bid Proposal Forms, Bid Specifications, and the entire Bid File. Both City Senior Procurement Specialist Tamra Torrence, and City Purchasing Manager Melissa Perales testified at the March 18 hearing that when evaluating and reviewing the bid proposals for the Airport Project, they reviewed the "summary totals" and "bid totals" submitted "electronically" by the individual bidders through "PlanetBids" and not the individual unit or alternate line items submitted "on paper". Both Ms. Torrence and Ms. Perales testified that the "totals" submitted by the bidders were what was reviewed and evaluated, and DeSilva-Gates' "totals" were consistent

with their bid total. Because of the consistency in the totals submitted electronically, DeSilva-Gates could not withdraw their bid, and unlike the original bidder in the Valley Crest Landscape v. City Council case cited by both Security and the City, DeSilva-Gates was not allowed to change their bid, nor did they attempt to change their bid after the opening of the bids. Therefore DeSilva-Gates' omission was not "material to cost or performance" as held in Valley Crest Landscape and would be subject to waiver by the City. [It is important however to note that even though Ms. Perales testified that the bidders on this project could enter the unit line and alternate line **totals** electronically through "PlanetBids", she could not recall if this particular project would allow for bidders to enter **individual** unit and alternate line items electronically through "PlanetBids".] Because the unit line item totals were consistent with the bid total when looking at the "electronic" version of DeSilva-Gates' bid as allowed by the Bid Proposal, it could be argued that the omission or "clerical error" while involving a "cost" did not, because of the consistency of the unit line total and bid total amounts constitute a "monetary consideration", and would therefore be a minor irregularity that is waivable by the City pursuant to the Bid Proposal Form. Even if that were not true, because the unit line total and the bid total submitted electronically by DeSilva-Gates were consistent and showed no discrepancy, there is no evidence that the original omission by DeSilva-Gates affected the final, total bid price, and as such it provides no unfair competitive advantage to DeSilva-Gates. Pursuant to Ghilotti Construction co. v. City of Richmond cited above, such a "deviation" is waivable by the City.

The Hearing Officer also does not believe that Security established that DeSilva-Gates omission constituted a "post-opening second look" giving them an opportunity to withdraw their bid under Public Contract Code section 5013 and thus gaining an unfair competitive advantage. As provided in Security's Pre-Hearing Brief, under Public Contract Code section 5013, a bid can be withdrawn if the bidder can establish that 1) a mistake has been made; 2) timely notice regarding how the mistake was made is provided to the public entity in writing; 3) the mistake made the bid materially different than the bidder intended it to be; **and** 4) the mistake was not made due to error in judgement, carelessness in inspecting the work site, or in reviewing the plans and specifications [emphasis added]. There was no evidence provided to the Hearing Officer that DeSilva-Gates notified the City that a mistake had been made. In fact, DeSilva-Gates has consistently stated that there was no mistake made, and that their electronic submission of the unit line total was correct and consistent with the bid total accepted by the City. As such, DeSilva-Gates could not claim that the bid was "materially different" than they intended it to be (requirement #3 of section 5013). And DeSilva-Gates could not possibly claim that the omission was due to an error of judgement, carelessness in work site inspection, or reviewing the plans and specifications. Since DeSilva-Gates could not withdraw their bid under Public Contract Code section 5013, DeSilva-Gates gained no unfair competitive advantage under the section. Additionally, the Hearing Officer does not find that Security's argument regarding the email communication between DeSilva-Gates and Senior Procurement Specialist Torrence regarding their bid total (Security's Pre-Hearing Brief, Exhibit #G) does not establish "favoritism" as DeSilva-Gates did not amend and was not allowed to amend their bid. The communication was only to confirm that their bid was as intended. As to the DBE issue, as discussed at the hearing, the issue regarding the DBE information was not timely appealed and Security's right to appeal the DBE issue was waived.

And while the Hearing Officer agrees with Security that when it appears that if a error regarding price is deemed a “mistake”, the actual dollar amount of the mistake does not define whether the mistake is “material” he also recognizes that the courts have held that failure to submit a price for a bid item (“omission”) can be corrected if the submitted bid indicates “the probability (and exact nature) of the error and amount intended, and that “[w]here it is clear from the bid what price was intended...correction of a bid is allowed.” (ManTech Advanced Systems Int’l, Inc. v. U.S. (Fed. Cl. 2019), 141 Fed.CL. 493, 507; Marine Ways Corp., B-211788, 83-2 CPD para. 271 (Comp. Gen. Aug. 29, 1983)). In this case, the unit line and bid totals submitted electronically by DeSilva-Gates provided ample information for the City to determine what the “intended” price extension was for unit line item #162, and under the decisions cited above (and included in DeSilva Gates’ Pre-Hearing Brief) the City was authorized to “correct” the bid, although no actual “correction” was necessary, as DeSilva-Gates’ electronic submittals were correct and consistent with the bid designated by the City as the lowest responsive responsible bidder.

RECOMMENDATION

For the reasons provided above, the Hearing Officer recommends the following:

1. The City Council UPHOLD the staff determination that DeSilva-Gates Construction-Vanguard, a Joint Venture is the lowest responsible and responsive bidder for the Full Depth Reconstruction of Runway 11L-29R at the Fresno Yosemite International Airport, Bid File no. 1252600, and as provided in their “Notice of Staff Determination of Contract Award”, posted February 18, 2026.
2. The City Council DENY Security Paving Company, Inc’s protest of the City’s award of the Full Depth Reconstruction of Runway 11L-29R at the Fresno Yosemite International Airport, Bid File no. 1252600, to DeSilva-Gates Construction-Vanguard, a Joint Venture as the lowest responsible and responsive bidder, and as provided in their “Notice of Staff Determination of Contract Award”, posted February 18, 2026.

Date: March 26, 2026



Michael D. Flores
Independent Administrative Hearing Officer

cc:

Chief Assistant City Attorney Brandon Collette, City Attorney’s Office
Deputy City Attorney Christine C. Charitar
Melissa Perales, Purchasing Manager
David E. Nemeth, esq., Rogers, Nemeth, Germain
Stephen Pessagno, Special Counsel, Pillsbury, Winthrop, Shaw, Pittman, LLP

PROOF OF SERVICE

I, the undersigned declare:

I am a citizen of the United States over the age of eighteen years. I am employed as an independent contractor of the City of Fresno; my business address is 2600 Fresno Street, Fresno, California 93721.

On March 26, 2026, I caused to be served the foregoing documents described as **FINDINGS AND RECOMMENDATION TO CITY COUNCIL ON PROTEST OF SECURITY PAVING COMPANY, INC., REGARDING THE CONTRACT FOR FRESNO-YOSEMITE INTERNATIONAL AIRPORT RUNWAY 11L-29R RECONSTRUCTION PROJECT BID FILE NO. 12502600** on the interested parties to the within action by placing the original/a true copy thereof, enclosed in a sealed envelope, addressed as stated on the attached mailing list, as follows:

(BY CERTIFIED) I am "readily familiar" with the City's practice of collection and processing correspondence for certified mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Fresno, California in the ordinary course of business.

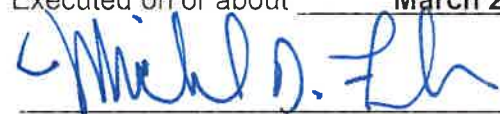
(BY FIRST CLASS MAIL) I am "readily familiar" with the City's practice of collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully paid at Fresno, California in the ordinary course of business.

(BY PERSONAL SERVICE) I delivered such document by hand to the interested parties.

(BY ELECTRONIC SERVICE) I delivered such document by electronic mail (e-mail) to the addressee(s) at: dnemeth@innclawfirm.com; stephen.pessagno@pillsburylaw.com

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

Executed on or about March 26, 2026, at Fresno, California.



Michael D. Flores

Subject: **FINDINGS AND RECOMMENDATION TO CITY COUNCIL ON PROTEST OF SECURITY PAVING COMPANY, INC., REGARDING THE CONTRACT FOR FRESNO-YOSEMITE INTERNATIONAL AIRPORT RUNWAY 11L-29R RECONSTRUCTION PROJECT BID FILE NO. 12502600**

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