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February 9, 2012

Ms. Rachel Brownell
RAP Distributors
P.O. Box 1329
Martinez, CA 94553

RE: Disabled Veterans Business Enterprise (DVBE) #1511980

Dear Ms. Brownell:

This letter is regarding the evaluation of RAP Distributors (RAP) in the performance of its Commercial Useful Function (CUF) as a certified Disabled Veterans Business Enterprise (DVBE), as well as the site visit conducted by the Department of Transportation (Caltrans), Contract Evaluation Unit (CEU) staff, on January 19, 2012. Based on CEU's review and site visit, it is determined that RAP is not performing a CUF in providing Polyester Polymer Concrete and Methacrylate. Sufficient supporting documentation was not provided demonstrating that RAP takes possession or control of materials or products for Caltrans DVBE projects. Further, sufficient supporting documentation was not provided to demonstrate that RAP performs a distinct element of the work in a manner that is normal for its business services and function. Our finding is that RAP merely acts as a "pass-through", and does not perform, supervise or manage the material or elements involved in contracts.

Our finding is that RAP's role is that of an extra or unessential participant on Caltrans DVBE projects in the purchase and delivery of the material or elements. As a result, RAP is not performing a CUF, therefore deemed as adding no value to Caltrans DVBE contracts.

Based on the review of the information and documentation obtained as a result of the site visit, pursuant to Military & Veterans Code §999(b) (5) (B) (i) and (ii), your firm does not perform a CUF when providing the following type of service:

Classification Number	Description
301217	Road and Railroad Construction Materials

Military and Veterans Code §999 (b) (5) (B) states:

(B) "Disabled veteran business enterprise contractor, subcontractor, or supplier" means any person or entity that has been certified by the administering agency pursuant to this article and that performs a "commercially useful function," as defined below, in providing services or goods that contribute to the fulfillment of the contract requirements:

(i) A person or an entity is deemed to perform a "commercially useful function" if a person or entity does all of the following:

(I) (aa) Is responsible for the execution of a distinct element of the work of the contract.
(ab) Carries out the obligation by actually performing, managing, or supervising the work involved.
(ac) Performs work that is normal for its business services and functions.

(II) Is not further subcontracting a portion of the work that is greater than that expected to be

subcontracted by normal industry practices.

(ii) *A contractor, subcontractor, or supplier will not be considered to perform a "commercially useful function" if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of a disabled veteran business enterprise participation.*

Furthermore, Military and Veterans Code §999 (b) (7) (B) (ii) states: "*The management and control of the daily business operations are by one or more disabled veterans*". The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business (emphasis added).

The following describes in detail our findings supporting our decision to conclude that RAP does not perform a CUF:

- *RAP is not carrying out the obligation by actually performing, managing, or supervising the work involved.*

  Our review has concluded that RAP's sole operation is structured to meet prime contractors' DVBE goal requirements, and that the firm does not sell products to the general public in its normal course of operation. This was confirmed by Ms. Brownell during the recent site visit conducted by CEU staff.

  Kwik Bond Polymers (KBP), a firm based in Benicia, California, is the only manufacturer of Polyester Polymer Concrete and Methacrylate. RAP is located within minutes from KBPs facility in Benicia. When a prime contractor needs products for bridge deck treatment or repairs, it orders the product directly from KBP. While the prime has the ability to get all of the items directly from KBP, it will seek a quote from RAP for the portion that meets the prime's DVBE goal requirement.

  For example, a state contract may require $100,000 worth of Methacrylate for bridge deck repairs. If the contract has a 5 percent DVBE goal, our findings show that the prime contractor will often place an order for $95,000 directly with KBP, and then place an order for $5,000 through RAP to meet the 5 percent DVBE goal requirement. RAP then forwards (i.e. passes through) a purchase order to KBP and sends an invoice to the prime contractor. Once the contract is complete, RAP collects on the invoice from the prime and then makes a payment to KBP. The product is then shipped out by KBP on a common carrier, with KBP providing support for Hazmat license. With the exception of providing a quote, placing a purchase order and invoicing the transaction, RAP does not *perform, manage or supervise* the material supply or its use, from KBP facility to prime contractor's project site. This pass through relationship is not normal for its business services and function, and RAP functions as an extra participant in the transaction. A list of contracts in which RAP is listed as a sub contractor is provided to illustrate the above example.

Contract Number	DV Goal	Bid Item #* & Total Amount	Prime's order with RAP	Prime's order directly from KBP
04- e2604	5%	24 - $207,060	$52, 095	$154,965
04- e2504	5%	17- $231,900	$43,260	$188,640
04- e3104	5%	21 - $271,320	$30,980	$240,340
*Bid Items 24, 17, 21 – Bridge Deck Treatment Material manufactured by Kwik Bond Ploymers				

This illustrates that RAPs involvement in the process is that of an extra participant since prime contractors have the ability to source the material directly from KBP, and RAP did not provide

evidence demonstrating that the partial purchase of supplies through RAP provided a business benefit to the contractor beyond meeting DVBE goal...

Furthermore, we have established that the 49 per cent owner of RAP, Ms. Patti Fonseca, is also an employee of KBP. A majority of our interactions regarding RAPs affairs has been with Ms. Fonseca as she is actively involved in the business operation. We note that she signs off on most of RAPs checks and handles all the transactions with KBP. We note that Ms. Fonseca is not a disabled veteran. We found the other owner of RAP, Rachel Brown, who is a disabled veteran, was not the person who actually performed, managed or supervised the work. Accordingly, we find that the manner in which the business is managed and controlled does not satisfy the requirements of Military and Veterans Code §999 (b) (7) (B) (ii), which requires in part that" [t]he management and control of the daily business operations are by one or more disabled veterans."

We have therefore determined that your firm is not providing a CUF for the specified classification (301217), and the DVBE credit will not be given toward the DVBE goal on a Caltrans State funded contract when it comes to these products.

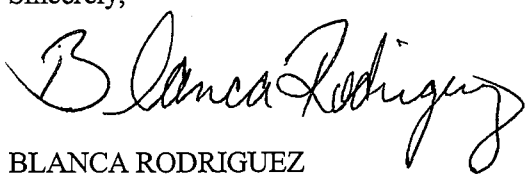
You may review your firm's information on the Department of General Services (DGS) website at http://www.bidsync.com/DPXBisCASB. It is your responsibility to maintain correct information regarding your firm's name, address, phone/fax number, and e-mail address on the DGS website.

Caltrans CEU is amiable to re-visit your firm to determine if work classifications and updated information reflect actual practices. The time and date of a re-visit will be based on availability of Caltrans CEU staff.

Caltrans does not provide an appeal hearing on determinations of commercially useful functions.

If you have questions or need further assistance or clarification, please contact Ryan Jeske, Contract Evaluation Analyst, CEU at (916) 324-0462 or email at ryan_jeske@dot.ca.gov.

Sincerely,



BLANCA RODRIGUEZ
Acting Deputy Director
Office of Business and Economic Opportunity

c: Janice Salais, Contract Evaluation Manager
Ryan Jeske, Contract Evaluation Analyst
Department of General Services
Office Engineer