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April 10, 2014

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER, MS 43  
1727 30<sup>th</sup> STREET  
P.O. BOX 168041  
SACRAMENTO, CA. 95816-8041  
PHONE (916) 227-6280  
FAX (916) 227-6282

ATTN: Mr. John C. McMillan  
Deputy Division Chief

Subj: 01-088404 DEL NORTE COUNTY ON ROUTE 199 FRDM 199/101 SEPERATION TO SMITH RIVER  
BRIDGE

Re: FORMAL PROTEST OF BID SUBMITTED BY WINDSOR FUEL COMPANY

Dear Mr. McMillan,

Please consider this letter to be a formal protest of the bid submitted by Windsor Fuel Company (Windsor), the second lowest bidder in connection with Contract No. 01-088404. Chester Bross Construction is presently the Third Lowest bidder on the subject project. The bid turned in by Windsor is nonresponsive and therefore must be rejected based on the Department's bidding requirements and strictly-enforced policies.

The Certified DVBE Summary form DES-OE-0102.5 (REV 3/2008) as submitted by Windsor states in part... *"Names of first tier DVBE subcontractors and their items of work listed must be consistent with the names and items of work in the Subcontractor List (Pub Cont Code § 4100 et seq.) submitted with the bid."*

The Subcontractor List form states in part... *"Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid"*



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*opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid." No other revisions to the form are permitted.*

On the Subcontractor List as submitted by Windsor, Titan DVBE of Redding California was listed for Bid item 3 Traffic Control for .09% of that bid item, **NO OTHER WORK WAS LISTED FOR TITAN DVBE.**

On the Certified DVBE Summary as submitted by Windsor, Titan DVBE was listed for Bid item 3 Traffic Control, Titan DVBE was also listed for Bid item 2 Construction Area Signs.

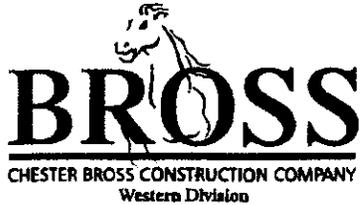
Windsor has effectively attempted to revise its Subcontractor list by adding work to Titan DVBE as evident and explained above. As such, Titan DVBE cannot be utilized on the subject project as a subcontractor for Windsor and Windsor must perform Bid items 2, and 3 with its own forces.

Windsor, by adding bid item 2 to the work to be subcontracted to Titan DVBE on its submitted Certified DVBE Summary has also gone against the clear and express directives clearly printed on the form itself as outlined above herein.

Given the information provided herein Windsor cannot utilize Titan DVBE as a subcontractor, as such, Windsor did not meet the DVBE goal of 5% for the subject project. Section 2-1.15B the 3<sup>rd</sup> paragraph states, "Meet the goal shown on the Notice to Bidders" and the 5<sup>th</sup> paragraph states, "List each 1<sup>st</sup>-tier DVBE subcontractor in the Subcontractor List form regardless of percentage of the total bid."

In keeping with the Caltrans strictly enforced bidding requirements and policies, the percentage now allowed on the Certified DVBE Summary submitted by Windsor is 3.10% when utilizing the only allowable dollars. Wells Sweeping, now the only qualifying entity, has been claimed for \$30,975.00 which is 3.10% of the Windsor total bid amount of \$999,000.00. **Windsor did not meet the goal shown on the notice to bidders of 5.00%**, as such, the bid turned in by Windsor Fuel Company for the subject project must be deemed nonresponsive and award must be issued to the lowest responsive and responsible bidder.

Caltrans has consistently found bidders to be nonresponsive for Subcontractor List revisions, or dis-allowed subcontractors in situations exactly and similar in nature to the errors found in the Windsor bid. The Department continues to enforce its bid requirements in a fair and uniform manner consistent with set precedence, and in keeping with the governing Subletting and Subcontracting Fair Practices Act



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of the Public Contract Code. Accordingly, because Windsor has violated the Department and governing bid requirements for reasons set forth herein, Windsor Fuel Company's bid for the subject project must be rejected as nonresponsive.

Based in no small part on the facts presented herein, it is respectfully and formally requested that the Department uphold and validate Chester Bross Construction's bid protest and award the contract to the lowest responsive and responsible bid for Contract No. 01-0B8404

Thank you for your attention to this matter and please feel free to contact me if you have any questions.

Very truly yours,

Shawn N. Simmons  
Western Division Manager

Via Facsimile to (916) 227-6282