



June 17, 2015

**Via Facsimile Transmission 916-227-6282 and US Mail**

Mr. John McMillan  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES  
Office Engineer, MS 43  
1727 30<sup>TH</sup> Street  
P.O. Box 168041  
Sacramento, CA 95816

RE: CalTrans Contract #01-262064, for Construction adjacent to the State Highway in Mendocino County near Willits at Assessor's Parcel Number 108-030-0500 in District 01 on Route 101

**FORMAL PROTEST OF BID SUBMITTED BY HABITAT RESTORATION SCIENCES, INC.**

Dear Mr. McMillan:

Please accept this letter to be a formal protest of the bid submitted by Habitat Restoration Sciences, Inc. (HRS), the apparent Third low bidder on the project noted above. The bid turned in by HRS is non-responsive and therefore must be rejected based on the Department's bidding requirements, strictly enforced policies and governing applicable Federal Regulations.

**#1 HRS delinquent submission of DBE Commitment form**

Per CalTrans Spec Section 2-1.33D(2)(b), in order for a bidder to receive credit for DBE Incentives, the bidder must submit the DBE Commitment and/or DBE Good Faith Efforts Documentation by the submittal deadline of no later than 4:00pm on the 4<sup>th</sup> business day after bid opening. With this project's bid date of April 28, 2015, the deadline for bidders to submit these forms is 4:00pm, May 4, 2015. Per the date and time stamp included on HRS' DBE Commitment form, this form was not received by the Department until 11:21am on May 29, 2015 – 19 days late.

As part of HRS' DBE documentation submittal, HRS included a letter dated May 28, 2015 wherein HRS acknowledged that DBE forms had not been posted on the CalTrans site for the project. In that letter HRS did not provide any substantive proof that these DBE documents were delivered to CalTrans' office by the May 4, 2015 deadline, other than a letter dated April 29,

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2015 purportedly mailed on, or around, that date. Per CalTrans Spec Section 2-1.15C(2), the requirements of submitting these documents is that the documents must be received at the Office Engineer by the deadline, not mailed, as HRS is apparently contending. Without clear evidence of a proof of delivery to the Office Engineer by May 4, 2015, the DBE documentation must be considered non-responsive as this violated a mandatory requirement of the CalTrans bid process.

### **#2 HRS failure to include written confirmation of DBE participation**

Per CalTrans Spec Section 2-1.33, in order for a DBE company to be included in a bidder's DBE Commitment calculations, the bidder must submit written confirmation from each DBE shown on the form stating that it will be participating in the Contract. That confirmation is to be included with the DBE Commitment Form and may be a copy of the DBE's quote. Reviewing the DBE submittal available on the Caltrans website, HRS noted that Ahtna would be performing work on items 4 (Prepare Storm Water Pollution Prevention Plan), 5 (Rain Event Action Plan), 6 (Storm Water Sampling and Analysis), 7 (Storm Water Annual Report), and 18 (Plant, Group M).

Although HRS included in its DBE submittal a letter from the California Unified Certification Program dated May 19, 2014, that Ahtna was recognized on that date as a certified DBE, HRS did not include written confirmation from Ahtna that Ahtna would be participating in the Contract, as specifically required. Without this written confirmation in the form of a letter from Ahtna or a written quote, as allowed, it is impossible for the Department to ascertain Ahtna's contractual obligation to participate in this project, or confirmation that Ahtna provided a written quote and confirmation prior to HRS' submission of their bid on April 28, 2015. Additionally, without this written confirmation, or a bid proposal from Ahtna, the Department has no means of evaluating the correct amount included on HRS' DBE Commitment form, nor appraising the correct, or incorrect, percentage of work being performed on items 4 through 7 and 18, as noted on HRS' subcontractor list.

As a result of this failure, Ahtna must be removed from the DBE Commitment form, thereby reducing HRS' DBE participation to 0%, and resulting in a non-responsive bid from HRS, and subsequent required bid rejection.

### **#3 HRS listing an unlicensed subcontractor**

A review of the HRS bid included on CalTrans' bid results page, specifically, the subcontractor list included Ahtna Design Build, Inc. for work to be performed on 4 (Prepare Storm Water Pollution Prevention Plan), 5 (Rain Event Action Plan), 6 (Storm Water Sampling and Analysis), 7 (Storm Water Annual Report), and 18 (Plant, Group M). Although no contractor licenses are required for work to be performed on items 4-7, item 18 work, per the California Business and Professions Code, Division 3, Chapter 9, Contractors, Article 4 Classification, Item 18, Planting, must be done by a licensed contractor, unless this work is less than \$600. Although no Ahtna quotation or proposal was provided by HRS as part of their DBE documentation, assuming that Ahtna is going to perform 8% of the item 18 work, as noted on the HRS subcontractor form, the value of Ahtna's work (including HRS' profit and overhead) would be \$118,020 (total value of HRS' item 18 \$1,475,250 x .08). Clearly even after deducting HRS' profit and overhead, Ahtna's subcontract value for item 18 would be greater than \$600.

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Per a review of the California State License Board, Ahtna possesses a valid Class B, General Building Contractor license. With this license, as noted in California Code 7057(a), Ahtna is a contractor whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of at least two unrelated building trades or crafts, or to do or superintend the whole or any part thereof. In Section (b) of the same Code, a general building contractor shall not take a subcontract involving trades other than framing or carpentry, unless the subcontract requires at least two unrelated trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification.

By this definition, a Class B general contractor cannot perform unrelated trades, other than framing or carpentry, unless the general building contractor holds an appropriate license classification for the unrelated work being performed. In the instance of Item 18, Planting, the license classification required to be possessed in order to perform this work would be a C-27, Landscaping Contractor. Because Ahtna only holds a Class B license and not a Class C-27 landscaping license, Ahtna is unable to perform the Item 18 planting work as a licensed contractor. By HRS subcontracting Ahtna to perform the Item 18 work, the Department would be allowing an unlicensed contractor to execute work improperly.

Accordingly, since Ahtna is not correctly licensed to perform item 18 planting work, this causes HRS' subcontractor list to be improperly completed, and as such, is grounds for considering their bid non-responsive.

### CONCLUSION

Based on the information presented herein, governing regulations and specifications, the bid provided by HRS should be rejected as non-responsive on three separate accounts. There are material irregularities with the HRS bid in that the required DBE submittal was received by the Department late, there was no DBE confirmation letter attached to the DBE submittal, and HRS' subcontractor list included an improperly licensed contractor to perform work. Taken individually, any of these deficiencies would be grounds to determine HRS' bid as non-responsive, however, collectively these peculiarities make it impossible for the Department to ascertain the accuracy, completeness and lawful bid submission from HRS. Therefore, Pacific Parks Landscaping, Inc. respectfully and formally requests that the Department uphold and validate our bid protest.

On May 22, 2015, Pacific Parks Landscaping, Inc. forwarded a bid protest for the apparent low bidder, Empire Landscaping and requested their bid be considered non-responsive for a multitude of reasons. On June 15, 2015, Pacific forwarded a bid protest for the Second apparent low bidder, Bortolussi & Watkins and requested their bid be considered non-responsive for several reasons. This letter, submitted today, indicates that Habitat Restoration Sciences, Inc., the Third apparent low bidder's, bid should be considered non-responsive due to material irregularities. Pacific Parks is the Fourth apparent low bidder and has successfully submitted all proper documents. Because the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> apparent low bidders' bid were incorrectly submitted to the Department either late, incomplete, or with material mistakes on the bid documents, we ask that our protests be sustained and this project be awarded to Pacific Parks Landscaping, Inc., as the lowest responsible bidder.

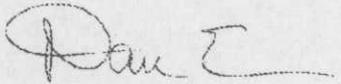
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Pacific Parks is an experienced and qualified contractor with an impeccable history and reputation. Pacific Parks and CalTrans have worked together successfully on a number of projects and are hopeful that this trend of success can continue.

In the event there are any meetings or hearings held to discuss these protests, we would appreciate your advising us of these meetings so that we may attend and/or advise us of the intent of the Department relative to the award of the project so that we may be given the opportunity to present evidence and participate in any dialogue during the decision process.

If we can provide any further information regarding this matter, please feel free to contact me at 916-253-0204. We look forward to receiving CalTrans' determination of these protests.

Very truly yours,  
PACIFIC PARKS LANDSCAPING, INC.

A handwritten signature in cursive script, appearing to read "Dan E.", with a horizontal line extending to the right.

Dan McElvain, CPA  
Chief Financial Officer