Received May 20 2013 03:35pm

SYNERGY
PROJECT MANAGEMENT, INC.

150 Executive Park Blvd., Suite 4100
San Francisco, CA 94134
www.synergypm.com

May 17th, 2013

Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
P.O. BOX 168041
Sacramento, CA 95816-8041
Phone (916) 227-8300
Fax (916) 227-6282

Attn: **Mr. John McMillan**
Deputy Division Chief

Subject: **01-491214 State Highway in Lake County Near Lower Lake From Coyote Creek Bridge to 1.2 Miles South of route 53**

Re: **Response to Formal Protest Response Submitted by Windsor Fuel Company dated 5/14/13**

Dear Deputy Division Chief,

This letter constitutes Synergy Project Management, Inc.'s written response to Windsor Fuel response submitted dated May 14th, 2013. Regardless of the statements made by Windsor Fuel Company in their response, the fact remains that the section below from Title 49 of the California Public Contracting Code Section 4104 (a) (1) reads as follows...

"4104. Any officer, department, board or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:

(a) (1) The name and the location of the place of business of each **subcontractor** who will **perform work or labor or render service to the prime contractor in or about the construction of the work or improvement,** or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, **in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars ($10,000), whichever is greater"**

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As stated in our original Protest letter dated 5/6/13, Windsor Fuel Company only listed Linear Options as a subcontractor and failed to list Global Environment, Wells Sweeping, and Mike Arthur & Sons as required by the bid form instructions and the public contracting code. All three unlisted subcontractors **will perform work or labor or render service** to Windsor Fuel Company per the public code. We request that Windsor Fuel Company's bid be rejected and that Synergy Project Management, Inc. be found as the lowest responsive bidder and awarded contract 01-491214.

Sincerely,

Manuel Arce

Director of Construction

Phone: (415) 467-3000 FAX: (415) 467-3001

Received

May 20 2013 03:36pm

WFC
Windsor Fuel Co.

General Engineering Contractors – Paving, Chip Seal, Oil Spreading

1150 Willow Pass Road • Pittsburg, CA 94565 • TELEPHONE (925) 427-5266 FAX (925) 427-1216

STATE CONTRACTORS LICENSE #776848

May 14, 2013

Via U.S. Mail and Facsimile (916) 227-6282

Mr. John C. McMillan
MSC 43
Office Engineer Contracts Award Branch Chief
California Department of Transportation
1727 30th Street
Sacramento, Ca 95816-7005

Attn: John C. McMillan, Deputy Division Chief

Re: 01-Lak-29-11.9/19.1 Cold Plane & Surface HMA Surfacing (Bonded Wear Course)
Caltrans Contract No. 01-491214
WFC Bid No. P13069

Subject: Response to Bid Protest by Chester Bross and Synergy Project Management

Dear Mr. McMillan:

Please consider this letter to be a response to the protests by Synergy Project Management Inc. (SPMI) the second low bidder and Chester Bross Construction (CBC), the third low bidder in connection with Contract No. 01-491214. Nothing submitted in SPMI and CBC protest alters the fact that Windsor Fuel Co. is the low and responsive bidder and materially fails to prove that WFC failed comply with Caltrans' bidding requirements. Synergy is second low bidder and Chester Bross Construction remains third bidder.

Both SPMI and CBC contend that Windsor Fuel Company did not comply with the "Subcontractors List" by listing Global Environmental Services, Wells Sweeping or Mike Arthur Water Truck Service as Subcontractors on form DES-OE-0102.2 at the time of bid or within 24 hours after bid opening. We did in fact include Global Environmental Service, Wells Sweeping and Mike Arthur Water Truck Service as part of our DVBE Participation Summary and our Certified Small Business Listing for the Non-Small Business Preference.

The fact of the matter is that Global Environmental Service, Wells Sweeping and Mike Arthur Water Truck Service are not Subcontractors and do not possess a California Contractors license. These firms only offer hourly services for specialized operated and non operated equipment or provide

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STATE CONTRACTORS LICENSE # 776848

compliance documents such as Water Pollution Control Programs. None of these Services or Programs require a Contractor License or a Sub Contract Agreement.

The definition of a Subcontractor is, "One who takes a portion of a contract from the principal contractor or from another subcontractor. Subcontractors sign contracts with the general contractor, that typically incorporate the agreement between the general contractor and the owner. A subcontractor who fails to complete work on time or whose work is not acceptable under the general contract may be required to pay damages if the project is delayed because of these problems. When an individual or a company is involved in a large-scale project, a contractor is often hired to see that the work is done. The contractor, however, rarely does all the work. The work that remains is performed by subcontractors, who are under contract to the contractor, who is usually designated the general or prime contractor. Subcontractors may, in turn, hire their own subcontractors to do part of the work that they have contracted to perform." Global Environmental Service, Wells Sweeping and Mike Arthur Water Truck Service are not required to meet any of the above stated criteria.

Windsor Fuel Company is the low and responsible bidder. We have properly complied with the bidding requirements set forth in the bid documents as we listed our Subcontractors as required. We achieved the DVBE goal as stated with the correct percentage of 3% utilizing current active DVBE and Certified Small Business Firms achieving the required 25% Non Small Business Preference.

In conclusion, Windsor Fuel Co. should be awarded the subject project because we are the lowest responsive bidder. We request for an open hearing in the event it is the intention of Caltrans to award the project to anyone other than Windsor Fuel Co.

If I can be of further assistance, do not hesitate to contact me.

Sincerely,

MARC ARMSTRONG
Estimator/Project Manager

cc: A. Robert Rosin, Esq., Leonidou and Rosin
Mr. Mike Fain; Mr. Karl Meyers, Job Folder
Via facsimile: Synergy Project Management, Inc. Chester Bross Construction