

*Tullis Inc.*GENERAL ENGINEERING CONTRACTORS
License #295418

John C McMillan, Deputy Division Chief
Department of Transportation, Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
P.O. Box 168041
Sacramento, CA 94581-08041

November 6, 2015

Reference: Bid Protest
Contract 03-0F3704
Bid Date 10/28/2015

Dear Mr. McMillan,

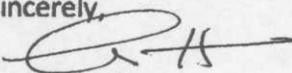
Tullis, Inc. is the apparent second low bidder on the above referenced project. With this letter, Tullis, Inc. formally protests the bid submitted by the apparent low bidder Knife River Construction.

Knife River Construction has listed Chavez Trucking to Supply and Haul Asphalt Binder as part of their DBE Commitment to the Contract. Chavez Trucking quote to Supply and Haul Asphalt Binder is conditioned with the Note: "Quote is subject to manufacturer credit terms of a joint check with contractor being required or advance pay of each load." When determining if a DBE is serving a Commercial Useful Function when evaluating DBE participation the Fact Sheet for Contract Evaluation states, "A DBE does not perform a commercially useful function if its 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 DBE participation." The Fact Sheet for Contract Evaluation also states, "To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating a price, determining quality and quantity, order the material, and installing where applicable and paying for the material itself."

It is not Tullis, Inc.'s position to evaluate DBE's for Caltrans, but it is our responsibility to make sure we utilize subcontractors and suppliers for DBE Utilization that are serving a Commercial Useful Function. In reviewing the Fact Sheet for Contract Evaluation of a DBE, it appears that Chavez Trucking is not serving a Commercial Useful Function to supply asphalt binder, but rather being used as a pass through for participation.

Tullis, Inc. requests that Caltrans consider the possible finding when evaluating conditions for award of Contract 03-0F3704.

Sincerely,



Chris Handley,
Vice President, Tullis, Inc.

CHAVEZ



TRUCKING

955 Vaughn Road, Dixon, CA 95620
 Phone (707) 678-0514, Fax (707) 678-5154

Project Bid

Date: Tuesday, October 27, 2015

Project Name: I-5 Contract 03-0F3704

Location: I-5 near Orland

Destination	Product	Tons			Per Ton Delivered Rate
KRC Orland	PG 64-16	+/-650			\$476.28

Notes:

- Quantities above are approximate, actual quantities will be based on delivery
- Quote does NOT include applicable sales tax
- ~~Quote is subject to manufacturer credit terms of a joint check with contractor being required or advance pay of each load~~
- Chavez Trucking is a certified Small Business (No. 1028603) and UDBE Supplier (No. 7974)
- Bridge toll fee is included where applicable
- Quote is based on CA crude oil price index of 5%

$$650 \text{ Tons} \times \$476.28 / \text{Ton} \times 0.60$$

$$= \$185,749.20$$

FACT SHEET
Federally Funded Contracts
Monitoring DBE Participation
During Construction
May 2013

Role of the Division of Construction

California Department of Transportation (Caltrans) resident engineers and inspectors monitor the contract work to ensure the DBEs listed on the approved CALTRANS Bidder-DBE Commitment form perform the items of work specified at the time of bid opening and that no improper substitutions occur. Monitoring includes documenting the work DBEs perform by completing inspection reports. Resident engineers and inspectors ensure that all DBEs are performing a commercially useful function (CUF).

CUF is a matter of contract compliance that achieves two objectives: (1) ensures that dollars counted towards DBE goals are merited, and (2) ensures the Federal Government that funds entrusted to the State of California meet federal requirements.

Code of Federal Regulations 49, Part 26.55(c)(1)(2) states, "A DBE performs a commercially useful function when it is responsible for execution of the work on the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved."

* To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating a price, determining quality and quantity, ordering the material, and installing where applicable and paying for the material itself.

* A DBE does not perform a commercially useful function if its 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 DBE participation.

To ensure DBEs are performing a CUF, the resident engineer or inspector documents the DBE's work in inspection reports and reviews additional documentation that verifies the DBE's participation. Some examples of the types of documents are:

- certified payroll records
- paid supplier invoices
- monthly trucking verification reports
- supplier bills of lading or purchase requests
- leases

Service and Architect and Engineering Contracts

Monitoring DBE participation, including whether a DBE is performing a CUF, are subject to the same guidelines as stated above [49 CFR, Part 26.55(c)(1)(2)].

For further details, please refer to 49 CFR, Part 26.55.



TULLIS, INCORPORATED

"PAYING THE PLANET SINCE 1970"



FAX TRANSMISSION

DATE: NOVEMBER 6, 2015 FROM: CHRIS HANDLEY
 TO: JOHN MCMILLAN
 COMPANY: CALTRANS OFFICE ENGINEER
 FAX#: (916) 227-6282
 SUBJECT: BID PROTEST - CONTRACT 03-0F3704

WE ARE TRANSMITTING 4 PAGES, INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE THE COMPLETE FAX OR HAVE A PROBLEM IN READING THE FAX, PLEASE CALL (530) 241-5105.

COMMENTS:

Contact 03-0F3704 - Bid Protest

If you should have any questions or concerns, please do not hesitate to give me a call at (530) 241-5105.

Thanks,

Chris Handley
Vice President
Tullis, Inc.