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April 3, 2015

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John C. McMillan, Deputy Division Chief  
Department of Transportation, Division of Engineering Services  
Office of the Engineer, MS 43  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816  
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RE: Contract No. 03-0G2604 Hwy 162 in Butte County  
Bids Opened: March 17, 2015  
Bid Protest Response

Dear Mr. McMillan:

In response to the Bid Protest filed by Pave-Tech Inc. regarding the percentage of credit given to small businesses, Knife River would like to point out that the 60% rule for material and supplies obtained from a regular dealer is limited to federal aid contracts with DBE goals. This rule can be found in Section 2-1.12B Disadvantaged Business Enterprise goal of the Revised Standard Specifications.

Small business and DVBE suppliers receive 100% credit on this contract as long as they are performing a commercially useful function (CUF). Dragon Material Transport has always passed the CUF review by Caltrans.

As a follow up to our formal bid protest dated March 23, 2015 of the bid submitted by Pave-Tech Inc. (PTI) Knife River would add the following:

PTI has listed WEI Industries (WEI) as a small business on their Certified Small Business Listing form for the purpose of supplying Hot Mix Asphalt for this project. Knife River contends that WEI is not serving a commercially useful function on this project and therefore should not be given any small business credit towards the small business goals listed by PTI.

**Wei Industries is not a manufacturer or a regular dealer of Hot Mix Asphalt.** In researching WEI's classifications listed in their small business profile, the only classification that comes close to Hot Mix Asphalt is UNSPSC code 301216 – Asphalts and this refers only to a component (asphalt oil) of Hot Mix Asphalt, not the product as a whole.

The understanding of Knife River is that in order for a supplier to be considered a regular dealer, the supplier must be able to store and distribute the product in question. In the case of petroleum based products, a regular dealer does not have to be able to store the product, but must own all the trucks that deliver the product.

WEI will not manufacture or store Hot Mix Asphalt and they do not own the trucks that will be required to deliver Hot Mix Asphalt to the project.

WEI will have to buy the Hot Mix Asphalt from a local manufacturer that specializes in the production of Hot Mix Asphalt and transport the mix in as many as 30 trucks that it does not own to the project each day of paving. WEI will not perform, manage or supervise the production of the Hot Mix Asphalt, as that is the responsibility of the manufacturer. WEI will not perform, manage or supervise the quality control and specialized testing required for producing a specialized Caltrans Superpave Hot Mix Asphalt for this project as this will also be the responsibility of the manufacturer.

In addition, WEI will not determine how much Hot Mix Asphalt needs to be delivered and placed on the roadway nor will WEI determine how many trucks are required for the delivery of the Hot Mix Asphalt. All of this will be the responsibility of PTI as they are the paving contractor who will be placing the Hot Mix Asphalt on the project. Also, WEI will not be on the project performing quality control testing as this will be done by highly trained professionals certified by Caltrans.

In this case, WEI is strictly an extra participant in the transaction through which funds will be passed in order to achieve the appearance of small business participation, and therefore WEI does not perform a CUF.

As requested before, Knife River Construction hereby requests that Pave-Tech Inc., be denied their request for Non-Small Business Preference and that Pave-Tech, Inc., be deemed non responsive for not listing a subcontractor in excess of ½ of 1% of the bid as required by the Specifications.

If you have any questions, please do not hesitate to call Andy Lanier at (530) 891-6555.

Sincerely,



Knife River Construction  
Richard A. Lanier  
Estimating manager



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April 2, 2015

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Re: Contract No.03-0G2604 HWY 162 in Butte County  
Blds Opened March 17th, 2015

Subject: Bid Protest of Knife River Construction  
Non Small Business Preference Percentage

Dear Mr. McMillan,

Pave-Tech is protesting Knife River Construction's (KRC) utilization of Dragon Materials Transport's (DMT) dollar value for DMT's participation as a small business. DMT is considered a Non-Manufacturer Dealer therefore DMT's value for small business utilization should be equal to 60% of the total dollar value of the services they provide. KRC is claiming the value of \$299,925 worth of Asphalt Oil to be purchased from DMT which is 100% of the services provided by DMT. KRC can only get credit for 60% of that \$299,925 which is \$179,955. This decrease's KRC's claimed small business participation amount by \$119,970. KRC claimed a total of \$609,965, but their actual small business participation total should be \$489,995. Their total bid is \$2,377,881 and their percentage of small business participation should be 20.61%. KRC's bid should not be considered for the non-small business preference of 5% in comparison to the lowest responsible bidder Pave-Tech Inc.

Attached is a copy of what KRC submitted to the State.

If you have any questions please feel free to call me.

Very Respectfully,

Rudy C. Zavalani  
President