



Granite Construction Company  
 1900 Glendale Avenue  
 Box 2087  
 Sparks, NV 89431  
 T 775.358.8792  
 F 775.358.0372  
 graniteconstruction.com

March 19, 2013

Mr. John McMillan  
 Deputy Division Chief  
 State of California  
 Department of Transportation  
 Division of Engineering Services  
 Office Engineer, MS 43  
 1727 30th Street  
 Sacramento, California 95816-8041  
 Phone: (916) 227-6280; Fax: (916) 227-6282

*Via Fax & Overnight Carrier*

RE: Caltrans Contract #03-3F0304

Subject: Bid Protest

Dear Mr. McMillan,

Granite Construction Company (Granite) hereby protests the potential award of the above referenced Contract to Sierra Nevada Construction (SNC). On February 27, 2013, SNC submitted the apparent low bid on the Contract. Granite submitted the second low bid, thus having standing for this protest.

While SNC's listed amounts on the "Caltrans Bidder - DBE - Commitment" form show that SNC purportedly met the DBE goal, discrepancies exist nullifying SNC's bid. As supported by the enclosed documentation, the inconsistencies in the following bid items prices versus DBE commitment values show that SNC inflated its DBE participation in the DBE Commitment Form.

Bid Item	Description	Bid Price	DBE Commitment	Variance (Amount Claimed Over the Bid Price)
#1	Lead Compliance Plan	\$ 500.00	\$ 1,900.00	\$ 1,400.00
#2	Construction Area Signs	\$ 3,300.00	\$ 3,400.00	\$ 100.00
#5	Portable Changeable Message Sign (LS)	\$ 3,000.00	\$ 9,600.00	\$ 6,600.00
Total Excess DBE Commitment				\$ 8,100.00

SNC claims more DBE commitment value than referenced in the respective bid item prices, overstating SNC's claimed DBE value by \$8,100. As a result, SNC failed to meet the DBE Goal of 8% for this Contract by 0.48%.

Due to the errors stated above, SNC's bid should be deemed non-responsive, and Granite should be declared the lowest responsive bidder and awarded the contract

**I. SNC Failed to Make Contract DBE Goal**

Since SNC's claimed DBE commitment should be reduced by the discrepancy between the commitment values and bid item prices, SNC failed to meet the Contract's DBE Goal by 0.48%. Granite submitted the lowest responsive bid on this project, meeting the DBE Goal.

Per the Contract's Specifications, bidders are required to "[t]ake necessary and reasonable steps to ensure that DBEs have the opportunity to participate in the contract." (See Standard Specification 2-1.12A). To this end, each bidder was required to meet the 8% Contract DBE goal or demonstrate that it made adequate good faith efforts to meet that goal.

## II. *Defects in SNC's Bid Are Material*

California Public Contract Code §10180 requires the Department to award its construction contracts to the lowest responsive bidder via competitive bidding. "A basic rule of competitive bidding is that bids must conform with specifications, and that if a bid does not so conform, it may not be accepted." *Konica Business Machines USA, Inc. v. Regents of University of California* (1988) 206 Cal. App. 3d 449, 454. "The purpose of requiring governmental entities to open the contracts process to public bidding is to eliminate favoritism, fraud and corruption; avoid misuse of public funds; and stimulate advantageous market place competition." (See legislative intent declared in the citations to Pub. Cont. Code, § 10300.)

A bid that does not strictly conform to the call for bids cannot be accepted if the variance could have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders. In other words, a public agency can only waive a deviation from bid specifications that is inconsequential and not material. A bid containing a material deviation must be rejected as non-responsive. See 47 Ops.Cal.Atty.Gen. 129, 130 (1966); *Konica*, supra, 206 Cal. App. 3d at 454; see also *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal. App. 4th 1432. Factors considered in determining whether a deviation is a minor irregularity or material departure include whether the deviation could be a vehicle for favoritism, affect the amount of the bid, influence potential bidders to refrain from bidding, or affect the awarding entity's ability to make bid comparisons. *Konica*, supra, 206 Cal. App. 3d at 455.

In this case, SNC's violations of the Department's Bid Specifications and governing DBE regulations created an advantage for SNC not available to other bidders. The defects in its bid enabled SNC to claim more DBE participation than that to which it was entitled. In sum, SNC failed to satisfy the mandates contained in specifications and significantly overstated its DBE participation. Such defects are material, give SNC a competitive advantage over other bidders, and render SNC's bid non-responsive. Because Granite submitted the lowest responsive and responsible bid, it should be awarded the Contract.

If you have any questions or require additional information please contact me at your convenience.

Sincerely,



Chris Burke  
Chief Estimator  
Granite Construction Company - Nevada Region  
Direct 775.352.1938 | Cell 775.813.0907 | Fax 775.358.0372

Enclosed: Supporting Documentation and Analysis from SNC's Bid Submittal (9 pgs.)

CONFLICT ITEM	DBE COMPANY	CLAIMED AMOUNT	BID AMOUNT	SUB QUOTE	VARIANCE BETWEEN CLAIMED AND BID AMOUNT	NOTE
Item #5 Furnish CMS	S.T. Rhoades Construction	\$ 9,600.00	\$ 3,000.00	\$1,200/MONTH	\$ 6,600.00	CONTRACT WORKING DAYS IS 30 DAYS. APPROX 1.5 MONTHS BASED ON 5 WORKING DAYS/WEEK.
Item #2 Construction Area Signs	Construction Area Signs	\$ 3,400.00	\$ 3,300.00	\$ 3,400.00	\$ 100.00	
Item #1 Lead Compliance Plan	Applan UDBE SWPPP	\$ 1,900.00	\$ 500.00	\$ 1,900.00	\$ 1,400.00	

PROJECT DBE REQUIREMENT	8.00%
SNC BID TOTAL DOLLAR AMOUNT	\$ 1,276,007.00
DBE DOLLAR AMOUNT REQUIREMENT	\$ 102,080.56
CLAIMED DBE DOLLAR AMOUNT	\$ 104,114.00
CLAIMED PERCENTAGE	8.16%
CONFLICT CORRECTION DOLLAR AMOUNT	\$ 8,100.00
CORRECTED DBE DOLLAR AMOUNT	\$ 96,014.00
CORRECTED DBE PERCENTAGE	7.52%

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
CALTRANS BIDDER - DBE - COMMITMENT  
DES-OE-090210C (NEW 08/2012)

# Low Bidder

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in section 2 of the specifications. Failure to submit the required DBE information will be grounds for finding the bid nonresponsive.

CONTRACT NO: 03-3F0304

BID AMOUNT: \$ 1,276,007.00

BID OPENING DATE: 2/27/13

BIDDER'S NAME: Sierra Nevada Construction, Inc.

DBE GOAL FROM CONTRACT, %:

DBE PRIME CONTRACTOR CERTIFICATION<sup>1</sup>:

BID ITEM NO	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED <sup>2</sup>	FOR CALTRANS USE ONLY	NAME OF DBEs (Must be certified on the date bids are opened - include Caltrans certification #, DBE address and phone number) (Indicate 2nd and lower tier subcontractors)	DOLLAR AMOUNT DBE <sup>3</sup>
<u>49</u>	<u>COLD MILL AC</u>		<u>ABSL CONSTRUCTION #5270 SACRAMENTO, CA 916-379-0442</u>	<u>4300.00</u>
<u>1</u>	<u>LEAD COMPLIANCE PLAN</u>		<u>ARLAN DBE SWAPP #38334 EL SOBRAnte CA 510-375-1127</u>	<u>1900.00</u>
<u>24+25</u>	<u>SUPPLY LIQUID ASPHALT</u>		<u>BLACK DIAMOND ASPHALT #2299 VACAVILLE, CA 707-448-9402</u>	<u>84,914.00</u>
<u>2</u>	<u>CONSTRUCTION AREA SIGNS</u>		<u>CONSTRUCTION AREA SIGNS #500 NEWCASTLE, CA 916-063-9097</u>	<u>3400.00</u>
<u>5</u>	<u>FURNISH CMS</u>		<u>S.T. RHOADES CONSTRUCTION #37693 REDDING, CA 530-223-9322</u>	<u>9600.00</u>

**IMPORTANT:** Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective tier(s) of work listed above must be consistent, where applicable, with the names and items of work in the "Subcontractor List" submitted with your bid. Copies of the DBE quotes are required.

- DBE prime contractors must enter their certification number and indicate all work to be performed by DBEs including work performed by its own forces.
- If 100% of item is not to be performed or finished by DBE, describe exact portion of item to be performed or finished.
- See section 2-1.12 of the specifications to determine the credit allowed for DBE firms.

Submit to

MSC 43  
OFFICE ENGINEER  
DEPARTMENT OF TRANSPORTATION  
1737 30TH STREET  
SACRAMENTO, CA 95818-7005

Total Claimed Participation \$ 104,114.00

8.2 %

[Signature]  
Signature of Bidder

2/26/13 715-355-0420  
Date (Area Code) Tel. No

Tim Morgan  
Person to Contact (Please Type or Print)

**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 664-6410 or TDD (916) 664-3890 or write Records and Plans Management, 1120 N Street, NE-23, Sacramento, CA 95814.

03-34-15A11:13 RCLVD

**BID ITEM LIST**  
**03-3F0304**

Item No.	Item Code	Item Description	Unit of Measure	Estimated Quantity	Unit Price	Item Total
1	070030	LEAD COMPLIANCE PLAN	LS	LUMP SUM	LUMP SUM	500.00
2	120090	CONSTRUCTION AREA SIGNS	LS	LUMP SUM	LUMP SUM	3,360.00
3	120100	TRAFFIC CONTROL SYSTEM	LS	LUMP SUM	LUMP SUM	127,834.20 84,908.11 B
4	120165	CHANNELIZER (SURFACE MOUNTED)	EA	10	50.00	500.00
5	128652	PORTABLE CHANGEABLE MESSAGE SIGN (LS)	LS	LUMP SUM	LUMP SUM	3,000.00
6	129000	TEMPORARY RAILING (TYPE K)	LF	560	50.00	28,000.00
7	025167	TEMPORARY CRASH CUSHION (ABSORB 350)	EA	2	10,000.00	20,000.00
8	130100	JOB SITE MANAGEMENT	LS	LUMP SUM	LUMP SUM	500.00
9	130300	PREPARE STORM WATER POLLUTION PREVENTION PLAN	LS	LUMP SUM	LUMP SUM	500.00
10	130310	RAIN EVENT ACTION PLAN	EA	4	500.00	2,000.00
11	130320	STORM WATER SAMPLING AND ANALYSIS DAY	EA	4	1.00	4.00
12	130330	STORM WATER ANNUAL REPORT	EA	1	2,000.00	2,000.00
13	130820	TEMPORARY DRAINAGE INLET PROTECTION	EA	7	150.00	1,050.00
14	130730	STREET SWEEPING	LS	LUMP SUM	LUMP SUM	500.00
15	130900	TEMPORARY CONCRETE WASHOUT	LS	LUMP SUM	LUMP SUM	1,000.00
16	150203	ABANDON CULVERT (EA)	EA	1	2,000.00	2,000.00
17	150820	REMOVE INLET	EA	2	1,000.00	2,000.00
18	153221	REMOVE CONCRETE BARRIER	LF	150	60.00 60.00	9,000.00
19	155232	SAND BACKFILL	CY	7	200.00	1,400.00
20	156585	REMOVE CRASH CUSHION	EA	2	285.00	570.00

3

REVISED PER ADDENDUM NO. 2 DATED FEBRUARY 8, 2013

Received

Mar 19 2013 07:21am

Received  
Feb. 28. 2013 10:04AM

Feb 28 2013 10:01am

No. 9689 P. 2

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
SUBCONTRACTOR LIST  
DES-08-0102.2 (REV 3/2011)

Bidder Name: Sierra Nevada Construction, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub. Cont. Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-8282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Contracted Work
ABSL Sacramento, CA	49	36	Coldmill
Construction Area Signs, Inc Newcastle, CA	2	100	Construction Area Signs
Gerco Contractors, Inc Auburn, CA	28	100	Concrete Pile
	30	100	Furnish Sign Structure
	31	100	Install Sign Structure
	32	100	Furnish Panel Sign
Midstate Barrier, Inc Stockton, CA	36	100	Metal Beam Guard Rail (MBGR)
	38	100	EAA-SFT
	39	100	Crash Cushion
	40	100	Concrete Barrier
	41	100	Concrete Barrier
	46	100	Concrete Barrier
PAR Electrical Contractors, Inc. Reno, NV	43	100	Maintain Existing TMS
	44	100	Sign Illumination
Penhall Company Reno, NV	18	100	Remove Concrete Barrier
	21	3	Sawcut AC
Wells Sweeping Sacramento, CA	14	100	Sweeping
	21	6	Sweeping
	24	1	Sweeping

## ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 854-4118 or TDD (916) 854-2838 or write Records and Forms Management, 1120 N Street, MS-68, Sacramento, CA 95814

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**SUBCONTRACTOR LIST**  
 DES-0E-0102.2 (REV 3/2011)

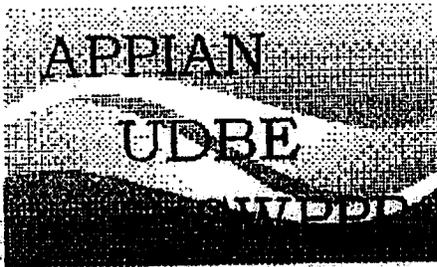
Bidder Name: Serra Nevada Construction, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). 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 opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Gerris Contractors Auburn CA			concrete pile, furnish and install sign structure, furnish panel sign
Par Electrical Cont. Inc. Reno NV			Maintain Existing TMS Sign Luminaires
Midstate Barrier Inc. Stockton CA			MBGR, SFT Crash Cushion Concrete Barrier, Extension
ABSL Construction Sacramento CA			Colo Mill
Construction Area Signs Inc. Newcastle CA			CONSTRUCTION AREA SIGNS
Penhall Co. Reno NV			Saw Cut AC Remove Concrete Barrier

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2/25/2013 09:59



**APPIAN UDBE SWPPP**

Storm Water Pollution Prevention Plans  
Water Pollution Control Programs  
Lead Compliance Plans

**Certified DBE (UDBE, WBE & MBE):**  
BART - No. 38334 - exp: 04-20-2015

**Business License Number 024765**

5780 Olinda Road  
El Sobrante, CA 94803

Phone: (510) 375-1927  
Fax: (510) 227-6004

**Friday, February 22, 2013**

**ATTN: Estimator**

**RE: Contract : Caltrans - 03-3F0304**

***Pave Median; Install Concrete Median Barrier & Sign Truss Structure.***

**Bid Date: February 27, 2013**

Please find below the APPIAN SWPPP quote for the referenced project.

Item #	Item Code	<u>Items bid individually</u>	Bid Price
1	070030	Prepare Lead Compliance Plan (LCP)	\$1,900.00

Good luck,

A handwritten signature in black ink that reads "Thomas Koprek".

Thomas Koprek  
Estimator  
(510) 375-1927



FEB/27/2013/WED 02:07 PM SIERRA SAFETY

FAX No. 1-916-663-1858

P. 001/002



Caltrans Project  
Contract no. 03-3F0304  
Location: 03-Nev-80-R12.3/13.3  
Bid Date: February 27, 2013

Item no. 02	Construction Area Signs—Stationary Mounted As shown on Sheet CS-1		
	Furnish, Install, & Remove	Lump Sum	\$3,400.00

Excludes: Portable Changeable Message Sign, Impact Attenuator Vehicle, and Traffic Control other than Typical Shoulder Closure.

**\*Please note:**

For Item no. 05 Portable Changeable Message Sign, please see attached quote from Sierra Safety Company.

Please contact Mike Smith for additional information at the number noted below.

215 Taylor Road, Newcastle, CA 95658 \* (916)663-9097 \* FAX (916) 663-1858

# 500 Qualified DBE/WBE \* Contractor #442645

5302239222

ST RHOADES CONST

PAGE 01

**RHOADES CONSTRUCTION INC.**  
 1000 COMMERCIAL WAY, REDDING CA 96002  
 P.O. BOX 194520, REDDING, CA, 96049  
 530-223-9322, Fax 530-223-9222, License # 930684  
 MBE/SBE- 1247344, 37693, UNIONS-OPERATORS, LABORERS



**PROPOSAL FAXED**

To : Bidding Contractors  
 Phone:  
 Fax:

DATE 2/27/18

CONTRACT NO.03-3F0304  
 PROJECT: NAVADA COUNTY NEAR TRUCKEE  
 DESCRIPTION:

ITEM NO.	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	ITEM TOTAL
2	CONSTRUCTION AREA SIGNS	LS	1	\$5,500.00	\$5,500.00
8	TRAFFIC CONTROL SYSTEM	LS	1	See Attached	
5	PORTABLE CHANGEABLE MESSAGE SIGN (LB)	LS	1	See Attached	
9	PREPARE STORM WATER POLLUTION PREVENTION PLAN	LB	1	\$ 4,000.00	\$4,000.00
10	RAIN EVENT ACTION PLAN	EA	4	\$ 800.00	\$2,400.00
11	STORM WATER SAMPLING AND ANALYSIS DAY	EA	4	\$ 450.00	\$1,800.00
12	STORM WATER ANNUAL REPORT	EA	1	\$ 1,200.00	\$1,200.00
13	TEMPORARY DRAINAGE INLET PROTECTION	EA	7	\$ 280.00	\$1,960.00
14	STREET SWEEPING	HR	1	\$ 140.00	\$140.00
15	TEMPORARY CONCRETE WASHOUT	EA	1	\$ 300.00	\$300.00
18	ABANDON CULVERT (EA)	EA	2	\$ 2,000.00	\$4,000.00
17	REMOVE INLET	EA	2	\$ 3,600.00	\$7,200.00
19	SAND BACKFILL	CY	12	\$ 350.00	\$4,200.00
22	CONCRETE BACKFILL	CY	1.8	\$ 380.00	\$680.00
29	MINOR CONCRETE (MINOR STRUCTURE)	CY	8.3	\$ 3,800.00	\$11,550.00
33	10" PLASTIC PIPE	LF	8	\$ 1,000.00	\$8,000.00
34	MINOR CONCRETE (MISC CONSTRUCTION)	CY	0.7	\$ 1,000.00	\$700.00
35	MISCELLANEOUS IRON AND STEEL	LB	717	\$ 3.00	\$2,151.00
				<b>Total</b>	<b>\$58,255.00</b>

Advertise-1,2,3 Acknowledged

Unions Operators  
 Laborers  
 Cement Masons

note: Item 15 Furnish only  
 Item 14 Street Sweeping is by the hr. plus mob & \$100 a day per diem

INCLUDE Furnishing & installation unless otherwise noted  
 1 move in additional mobs at \$4500 ea.

SCHEDULE: 14 days notice required to schedule  
 Proposal Valid 10 days

EXCLUDE Weekend and Holiday shifts  
 Testing, Staking, Bonds, Fee's, K-Rail, CIES,  
 Permanent or Temp. pavement markings,  
 Submittals, Referencing & Protection of existing  
 Facilities, Preparation or Compliance w/water pollution control plan  
 Traffic control, subgrade or basegrade  
 Fixing Damage done by others

Respectfully submitted

Jacob Hale

\_\_\_\_\_  
 Companies Name  
 Acceptance: \_\_\_\_\_  
 Signature Date  
 Print name Title  
 Phone: \_\_\_\_\_

3/26/2013 11:10 5302239222

ST RHOADES CONST

PAGE 02

**S.T.RHOADES CONSTRUCTION INC.**

8585 COMMERCIAL WAY REDDING, CA 96002

P.O. BOX 494520, REDDING, CA, 96049

530-223-9322, FAX 530-223-9222, License # 930684

MBE/SBE- 1247344, U/DBE-37693, UNIONS-OPERATORS, LABORERS

**TRAFFIC CONTROL PROPOSAL**

To: Bidding Contractors

Date: 2/27/13

Attn: ESTIMATORS

Project: 03-3E0304

Item	Description	Quantity	UM	Price
A	1 Man 1 Lane 1 Mile day or night	1	shift	\$ 895.00
B	Additional lane same direction	1	ea	\$ 135.00
C	Additional lane opposite direction	1	ea	\$ 175.00
D	Additional mileage	1	ea	\$ 85.00
E	Ramp closure with lane closure minor detour	1	ea	\$ 75.00
F	Ramp closure w.o lane closure minor detour	1	ea	\$ 925.00
G	1 man lane closure overtime rate	1	hr	\$ 80.00
H	Additional man	1	shift	\$ 575.00
I	Pilot car	1	shift	\$ 625.00
J	2 flaggers 8 hr shift signs, cones	1	shift	\$ 1,150.00
K	2 flaggers overtime rate	1	hr	\$ 170.00
L	2 flaggers 8 hr night/special shift	1	shift	\$ 1,425.00
M	2 flaggers overtime night/special shift	1	hr	\$ 180.00
N*	Attenuator truck	1	shift	\$ 350.00
	Attenuator truck	1	wk	\$ 1,000.00
	Attenuator truck	1	month	\$ 3,000.00
	optional driver	1	shift	\$ 525.00
O*	Portable changeable message sign	1	day	\$ 250.00
		1	week	\$ 550.00
		1	month	\$ 1,200.00
P*	Portable radar trailer	1	day	\$ 175.00
		1	week	\$ 375.00
		1	month	\$ 750.00
Q	Shoulder closure	1	shift	\$ 825.00
R*	High dump sweeper unoperated	1	day	\$ 400.00
*	High dump sweeper operated	1	hr	\$ 125.00
*	Based on availability at time of project start			
S	Pilot car	1	hr	\$ 80.00
	Delivery not included, call for rates			

**Notes:**

- Proposal valid for 30 days, Allow 10 days for scheduling
- 1 shift - up to and minimum of 8hrs, up to 1 mile
- Subsistence to be added as needed per union rates
- Sunday rates available upon request
- We also provide erosion, water pollution programs, storm water plans, and BMP placement.
- Multiple move ins and outs may require additional charges

**Includes:**

- Price includes furnishing and installation unless otherwise noted.

**Excludes**

- Bonds
- Permits
- Mobilization, call for rates

Respectively Submitted,  
**Jacob Hale**  
 Estimator



**FAX TRANSMITTAL SHEET**

❖ ATTENTION: MR. JOHN M. MILLAN

❖ COMPANY: CALTRANS

❖ FAX: (916) 227-6292

❖ DATE: 03.19.2013

NUMBER OF PAGES: 12  
(INCLUDING TRANSMITTAL)

❖ FROM: CHRIS BURKE  
GRANITE CONSTRUCTION COMPANY  
1900 GLENDALE AVE/P.O. BOX 2087  
SPARKS, NV 89432  
PHONE (775)358-8792  
FAX (775)358-0372

RE: CALTRANS CONTRACT # 03-3F0304 - BID PROTEST

MESSAGE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_