



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 # 984141

February 25, 2014

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

Mr. Earl Seaberg, Deputy Division Chief  
MSC 43  
Office Engineer Contracts Award Branch Chief  
California Department of Transportation  
1727 30<sup>th</sup> Street  
Sacramento, California 95816-7005

Re: Construction on State Highway in Napa County Near Napa From Knoxville Road to Solano  
County Line  
Caltrans Contract No. 04-3E4004, 04-Nap-128-19.1/34.3  
Protest of Bid Submitted by Martin Brothers Construction

Dear Mr. Seaberg:

Please consider this letter to be a formal protest of the bid submitted by Martin Brothers Construction ("MBC") in connection with Caltrans Contract No. 04-Nap-128-19.1/34.3. For clarity, we are submitting a separate letter that protests the bid submitted by Chester Bross Construction Company.

For the reasons stated below, MBC's bid is nonresponsive.

1. **A Company's Participation May Be Counted Toward DBE Goals Only For Those Work Categories For Which The Company Has been Certified**

Section 2-1.12B of the Standard Specifications provides that a contractor submitting a bid must "meet the goal shown on the *Notice to Bidders* or demonstrate that you made adequate good faith efforts. You are responsible to verify that at the bid opening date the UDBE firm is certified as a DBE by the CA Unified Certification Program. Under 49 Section 26.55(f), "if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in § 26.87(i)."

In accordance with 49 C.F.R. Section 26.71(n)(1), Caltrans only certifies DBE companies for particular NAICS work code categories. A company is not a certified DBE for categories outside of those



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for which it was certified. Thus, as the Fact Sheet for Evaluating DBE Participation on Federally Funded Projects (May 2013) notes, Caltrans must “Review the CALTRANS Bidder-DBE Commitment form from the prime contractor to ... ensure that the DBEs possess the correct work category code for the type of work they are listed to perform [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm) ***(If the DBE does not possess the correct work category code, their participation will not be counted.)***”

**2. MBC Failed To Meet The DBE Goal For The Project Because Apadana Was Not Certified For the Categories Of Work For Which MBC Listed It**

MBC listed “Apadana Engineering” for \$324,856.80 for the following items:

Bid Item 22                    Asphaltic Emulsion Membrane  
Bid Item 23(p)                Rubberized Hot Mix Asphalt

The work codes for these items are the following:

- “424710 – Petroleum, Oil, Lubricants Supplier”
- “423320 – Asphalt Supplier”
- “484220 – Specialized Freight Trucking”

At the time of bid, Apadana Engineering was certified only for NAICS Code 237310 and 531210, and work codes “C8773 - Construction Management (Professional Services)” and “H65330 – Real Estate Agents and Managers (Professional Services).” The following is a printout from the Caltrans DBE search tool:

<a href="#">Table Of Contents</a> <a href="#">Unified Certification Program</a>	
File Edit View Favorites Tools Help X Find: dbe      Previous Next <input checked="" type="checkbox"/> Options -	
<a href="#">Back To Query Form</a>	
<b>Search Returned 1 Records</b>	
<b>Query Criteria</b> Firm/DBA Name: apadana Firm Type: DBE	
Firm ID Firm/DBA Name Address Line1 Address Line2 City State Zip Code1 Zip Code2 Mailing Address Line1 Mailing Address Line2 Mailing City Mailing State Mailing Zip Code1 Mailing Zip Code2 Certification Type Email Contact Name Area Code	37713 APADANA ENGINEERING, INC. 150 EXECUTIVE PARK BLVD SUITE NO. 4000  SAN FRANCISCO CA 94134  DBE MEMBER 1 (DBE) - Project Bid #00, supplier@caltrans.net SOWDA S12427 (415)



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Thus, under 49 CFR Part 26 and the bidding requirements for this contract, Apadana Engineering was not certified for the work categories for which MBC listed it. No credit toward the DBE goal should be provided in connection with the items to be purchased from or subcontracted to Apadana Engineering.

Reducing MBC's DBE commitment amount by the \$324,856.80 that MBC improperly claimed for Apadana Engineering yields a DBE commitment of \$226,692, or only 7.6%, far short of the 12% goal.

3. **MBC Failed To Meet The DBE Goal For The Project Because Apadana Engineering Is Not Performing A Commercially Useful Function**

Apadana Engineering is a shell company with an address at an office complex at 150 Executive Park Blvd, Suite 4700, San Francisco, California. There is no evidence that Apadana has any kind of yard or other facility from which it operates as a construction material supplier or trucking company.

Accordingly, even if Apadana Engineering were certified in the categories required for the materials and services it allegedly will be furnishing, Apadana Engineering is not performing a commercially useful function and the amounts paid to it should not be counted toward the DBE goal for the contract. 49 C.F.R. § 26.55.

**Conclusion**

MBC failed to meet the DBE goal for the project. Apadana Engineering is not certified in the categories for which MBC listed it.

We therefore respectfully request that the Department uphold Windsor Fuel Company's protest and award the contract to our company, which submitted the lowest responsive bid for Contract No. 04-Nap-128-19.1/34.3. Thank you for your careful attention to this protest, and please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marc Armstrong', is written over a large, stylized flourish that extends to the right and loops back under the signature.

Marc Armstrong  
Estimator / Project Manager

CC: Mike Fain, Karl Meyers

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**Search Returned 1 Records**

Tue Feb 25 16:02:34 PST 2014

**Query Criteria**

Firm/DBA Name: Apadana

Firm Type: DBE

Firm ID	37715
Firm/DBA Name	APADANA ENGINEERING, INC.
Address Line1	150 EXECUTIVE PARK BLVD SUITE NO. 4700
Address Line2	
City	SAN FRANCISCO
State	CA
Zip Code1	94134
Zip Code2	
Mailing Address Line1	
Mailing Address Line2	
Mailing City	
Mailing State	
Mailing Zip Code1	
Mailing Zip Code2	
Certification Type	DBE
E-Mail	apadana1@sbcglobal.net; sopida@sbcglobal.net
Contact Name	SOPIA SIADAT
Area Code	( 415 )
Phone Number	859-5915
Fax Area Code	( 415 )
Fax Phone Number	859-5935
Agency Name	SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
Counties	01; 07; 21; 28; 38; 41; 43;
Districts	04;
DBE NAICS	237310; 531210;
ACDBE NAICS	
Work Codes	C8773 Construction Management - Highway, Street and Bridge Construction; H6530 REAL ESTATE AGENTS & MANAGERS;
Licenses	A General Engineering Contractor;
Trucks	
Gender	F
Ethnicity	OTHER
Firm Type	DBE

237310; 531210;

C8773 Construction Management - Highway, Street and Bridge Construction; H6530 REAL ESTATE AGENTS & MANAGERS; A General Engineering Contractor;

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Contractor's License #984141-A

**Windsor Fuel Company**

# WFC

**To:** Caltrans

**From:** Marc Armstrong

**Attention:** Office Engineer

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**Fax:** 916-227-6282

**Pages:** 5

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**Phone:** 916-324-6985

**Date:** 2/25/2014

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**Re:** Contract No. 04-3E4004 Martin

Brothers Protest

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**Urgent**

**For Review**

**Please Comment**

**Please Reply**

**Please Recycle**

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• **Comments:**

Please see attached our Formal Protest to Contract No. 04-3E4004, 04-Nap-128-19.1/34.3 as required. Please let me know if you need any further information. Please confirm receipt. Hard copy will be sent via Certified mail.

Thanks,

Marc

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