



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 UDDBE 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:

Query Criteria	
Firm DBA Name:	apadana
Firm Type:	DBE
Firm ID	2779
Firm/DBA Name	APADANA ENGINEERING, INC.
Address Line1	130 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
Email	apadana@apadana.com
Contact Name	SOPHIA STADAT
Area Code	(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.

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

<b>Firm ID</b>	37715
<b>Firm/DBA Name</b>	APADANA ENGINEERING, INC.
<b>Address Line1</b>	150 EXECUTIVE PARK BLVD SUITE NO. 4700
<b>Address Line2</b>	
<b>City</b>	SAN FRANCISCO
<b>State</b>	CA
<b>Zip Code1</b>	84134
<b>Zip Code2</b>	
<b>Mailing Address Line1</b>	
<b>Mailing Address Line2</b>	
<b>Mailing City</b>	
<b>Mailing State</b>	
<b>Mailing Zip Code1</b>	
<b>Mailing Zip Code2</b>	
<b>Certification Type</b>	DBE
<b>E-Mail</b>	apadana1@sbcglobal.net; sopida@sbcglobal.net
<b>Contact Name</b>	SOPIA SIADAT
<b>Area Code</b>	(415)
<b>Phone Number</b>	859-5915
<b>Fax Area Code</b>	(415)
<b>Fax Phone Number</b>	859-5935
<b>Agency Name</b>	SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
<b>Counties</b>	01; 07; 21; 28; 38; 41; 43;
<b>Districts</b>	04;
<b>DBE NAICS</b>	237310; 531210;
<b>ACDBE NAICS</b>	
<b>Work Codes</b>	C8773 Construction Management - Highway, Street and Bridge Construction; H8530 REAL ESTATE AGENTS & MANAGERS;
<b>Licenses</b>	A General Engineering Contractor;
<b>Trucks</b>	
<b>Gender</b>	F
<b>Ethnicity</b>	OTHER
<b>Firm Type</b>	DBE

237310; 531210;

C8773 Construction Management - Highway, Street and Bridge Construction; H8530 REAL ESTATE AGENTS & MANAGERS; A General Engineering Contractor;

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descriptions, and the accompanying license and NAICS Code cross references, to assign codes that describe a firm's primary business activity. These codes distinguish DBE firms involved in the physically act of construction from those that provide support services and supplies to the construction industry. The tabulated spreadsheets have these various categories separated into specific workgroups. Please note that the issue of whether a firm performs Commercially Useful Function (CUF) is not reviewed at the time of certification (refer 49 CFR 26.73(a)(1));

#### Authority to Assign NAICS and Work Codes

- DBE certifying agencies get their authority from 49 CFR 26.71(n) to assign NAICS Codes and Work Codes
- Certifying agencies can, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity
- The use of Work Codes is a descriptor that supplements the NAICS Codes in order describe work items on contract bid summaries or scope of work
- Certifying agencies must certify firms as DBEs only with respect to specific types of work in which the certifying agency determines that the socially and disadvantaged owners have proven ability to control operations of the firm
- There is no such thing as a "generic" certification, that is, DBE firms are not certified in general terms, in ways that make them eligible to perform any sort of work. Put another way, DBE firms cannot base list their business activity as something they intend to do in future after certification.
- At the time of application a DBE firm must provide the primary business or professional activities the firm is engaged in to enable correct code assignment (primary business is what brings in the most revenue for the business)
- An applicant firm has the sole responsibility of providing detailed company information to a certifying agency to help make an appropriate NAICS and Work Code designations (Work Code designation is not based on the request of a prime contractor to facilitate DBE participation).
- Where a DBE firm intends to be certified in "additional work" after initial certification, the firm needs to demonstrate that its socially and economically disadvantaged owner(s), not employees or acquaintances, are able to control the firm regarding the additional type of work.
- DBE firms must be certified with appropriate NAICS and Work Codes prior to bid opening to qualify as a responsible/responsive bid. As indicated above, CUF is not reviewed during the certification process. Prime contractors must conduct their own due diligence to verify if a firm listed on the DBE database performs a CUF before they commit to use the firm. This prevents DBE firms from being disallowed post-bid commitment.
- NAICS Codes and Work Codes are assigned based on documentary evidence and site visit interview that support an applicant's ability to control technical and operational aspects of their firm, including the disadvantaged owner having all the license necessary to demonstrate control.
- In many instances, the ability to control operations may require specific qualification or license from accredited institution or state agency. Failure to provide proof of such qualification or license may prevent an applicant from obtaining NAICS and Work Codes

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
SUBCONTRACTOR LIST  
DES-CE-01022 (REV 2/2014)

Martin Brothers  
Construction

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 No.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
- Austin Enterprise PO Box 81926 Bakersfield CA 93380	18	100%	Crack Treatment
- Spirit Road Oils 16490 Vineyard Blvd Morgan Hill CA 95037	28	100%	Tack Coat
- Apadana Engineering 150 Executive Park Blvd Ste 4700 San Francisco CA 94114	22	↓ 100%	Asphaltic Emulsion membrane
	23	↓ 11%	Rubberized Hot mix Asphalt (partial)

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1170 N Street, MS-83, Sacramento, CA 95814.

APADAWA HAS THIS WORK CODE

Work Code	Category	Description	License Requirement	NAICS Code(s)
0100	MANUFACTURING	Manufacturing of all other nonmetallic mineral products	Requires a license/permit	2720



Feb 26 2014 07:55am

Received

ARADAKUA HAS THIS WORK CODE

Work Code	Category	Description	License Requirement	NAICS Code(s)
[Obscured]	[Obscured]	[Obscured]	[Obscured]	[Obscured]



Feb 26 2014 07:55am

Received

THIS WORK CODE IS REQUIRED

Work Code	Category	Description	License Requirement	NAICS Code(s)
C9608	ASPHALT OIL TANKERS	A trucking business that specializes in bulk hauling of hot asphalt oil.	NO LICENSE REQUIRED	484220 - Specialized Freight Trucking, Local 484230 - Specialized Freight Trucking, Long Distance

Feb 26 2014 07:55am

Received

THIS WORK CODE IS REQUIRED

Work Code	Category	Description	License Requirement	NAICS Code(s)
CO624	PETROLEUM, OIL, LUBRICANTS SUPPLIER (BULK ITEM)	This industry comprises establishments with bulk liquid storage facilities primarily engaged in the merchant wholesale distribution of crude petroleum and petroleum products, including liquefied petroleum gas.	NO LICENSE REQUIRED - Must own and operate distribution equipment to supply bulk materials. supplementing of own equipment to be on long term lease, not ad hoc.	424710 -Petroleum Bulk Stations and Terminals

Feb 26 2014 07:55am

Received

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**CALTRANS BIDDER - DBE - COMMITMENT**  
 DES-05-0102.10C (NEW 06/2012)

Pg. 5 of 6

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: **04-3E4004**

BID AMOUNT: \$ **2,967,250-**

BID OPENING DATE: **February 11, 2014**

BIDDER'S NAME: **Martin Brothers Construction**

DBE GOAL FROM CONTRACT, %: **12%**

DBE PRIME CONTRACTOR CERTIFICATION:

BID ITEM NO	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED	FOR CALTRANS USE ONLY	NAME OF DBE (Must be certified on the date bids are opened - include Caltrans certification #, DBE address and phone number) (Indicate 2nd and 3rd tier for subcontractors)	DOLLAR AMOUNT DBE
→ 22	Asphaltic Emulsion Membrane		Apadana Eng.	5324,856 <sup>80</sup>
23(p)	Pubberized Hot mix Asphalt		150 Executive Park Blvd ste 4700 San Francisco CA 94134 (415) 859-5915 Cert # 37715	

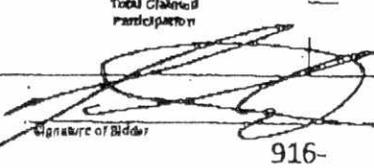
**IMPORTANT:** Identify all DBE firms being utilized for each, regardless of tier. Names of the First Tier DBE subcontractors and their respective item(s) of work listed above must be consistent, where applicable, with the names and items of work in the "Subcontractors" List submitted with your bid. 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 firms.
- If 100% of item is not to be performed or limited by DBE, describe what portion of item is to be performed or furnished.
- 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  
 1727 30TH STREET  
 SACRAMENTO, CA 95816-7005

Total Certified Participation: \$ \_\_\_\_\_

  
 Signature of Bidder

916-  
 February 11, 2014 381-0911  
 Date (Area Code) Tel. No.

Felipe Martin, President  
 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) 884-8410 or TDD (916) 884-8880 at the Records and Forms Management, 1120 N. Street, MS-89, Sacramento, CA 95814.



# Apadana Engineering, Inc.

WBE/OBE: 37715	88E: 1014677	CSLB License: 528048	LBE: 77218	SF Vendor: 77218
<b>Apadana is a Woman Owned Business</b>				

## Daily Quote for HMA Paver & Paving Crew (Operated)

Project:	Caltrans #04-3E004	TO:	Martin Brothers Con
Location:	Hwy 128 Lakebarryessa		Alex Emerson
Contract Number:	04-3E004		
Bid Date:	2-11-14		

Bid Item #	Description	Qty	Unit	Unit Price	Total
	Mobilization / Demobilize	1.00	LS	10,500.00	10,500.00
	Bonded Wearing Course Spray Paver (Roadtec SP 200) and Shuttle Buggy (Roadtec SB 2500a )	1.00	Day	11,500.00	11,500.00
	Emulsion *If prime contractor want Apadana to place oil	240	Ton	596.00	143,040.00
	Emulsion Transport, Trailer Rental, Pump charge, Restock fee	9	12 Days	4,000.00	-48,000.00

**Notes:**  
 Prime contractor to fuel the paver and shuttle buggy on daily basis.  
 Prime contractor is responsible for all mobilizations and demobilizations within the project limits.  
 Price is based on 8 hour shifts. Overtime to be billed at \$2,000.00 per hour.  
 Additional mobilization to be billed at \$12,000.00 each.  
 Standby will be at \$8,000.00 per day,  
 No bond is included. If bonding is required please call our office.  
 Quotation is based on mutually agreed schedule.  
 Quotation is valid for 30 days.  
 Payments are due within 30 days.  
 No back up paver/buggy is quoted. (Price available upon request)  
 No Retention  
 Signitary to Operating Engineers and Labor Union  
 Emulsion Transport price, pump, based on 12 days

**MBC Calculations:**  
**BI #22 Asphaltic Emulsion Membrane**  
 260 Tons x \$596/Ton +8% Tax = \$167,356.80  
 (9) Days @ \$4000/Day = 36,000.00  
**Total BI #22 \$203,356.80**

**BI #23 Rubberized Hot Mix Asphalt**  
 (9) Days @ \$11,500 + \$2000 O.T. / Day  
**Total BI #23 \$121,500.00**

**Inclusions:**  
 Pavement rental: Integrated spray paver with shuttle buggy  
 2 Operators  
 2 Screedmen  
 1 Mechanic with mechanic truck

**Exclusions:**

Permits	Trucking	Work behind Scream	Sweeping
Traffic control	Emulsion	Mechanical Breakdown	Testing
Surface prep.	A/C Mix	Oil	Striping

**STEVE BLESS 520-858-5520**

Back To Query Form**Search Returned 1 Records**

Tue Feb 11 16:38:15 PST 2014

**Query Criteria**

Firm ID: 37715

Firm Type: DBE

<b>Firm ID</b>	37715
<b>Firm/DBA Name</b>	APADANA ENGINEERING, INC.
<b>Address Line1</b>	150 EXECUTIVE PARK BLVD SUITE NO. 4700
<b>Address Line2</b>	
<b>City</b>	SAN FRANCISCO
<b>State</b>	CA
<b>Zip Code1</b>	94134
<b>Zip Code2</b>	
<b>Mailing Address Line1</b>	
<b>Mailing Address Line2</b>	
<b>Mailing City</b>	
<b>Mailing State</b>	
<b>Mailing Zip Code1</b>	
<b>Mailing Zip Code2</b>	
<b>Certification Type</b>	DBE
<b>E-Mail</b>	apadana1@abcglobal.net; sopida@abcglobal.net
<b>Contact Name</b>	SOPIDA SIADAT
<b>Area Code</b>	( 415 )
<b>Phone Number</b>	859-5815
<b>Fax Area Code</b>	( 415 )
<b>Fax Phone Number</b>	859-5835
<b>Agency Name</b>	SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
<b>Counties</b>	01; 07; 21; 28; 38; 41; 43;
<b>Districts</b>	04;
<b>DBE NAICS</b>	237310; 531210;

**ACDBE NAICS**

<b>Work Codes</b>	C8773 Construction Management - Highway, Street and Bridge Construction; H8530 REAL ESTATE AGENTS & MANAGERS;
<b>Licenses</b>	A General Engineering Contractor;
<b>Trucks</b>	
<b>Gender</b>	F
<b>Ethnicity</b>	OTHER
<b>Firm Type</b>	DBE

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1150 Willow Pass Road  
Pittsburg, CA 94565  
Phone: (925) 427-5266 Fax: (925) 427-1216  
Contractor's License #984141-A

**Windsor Fuel Company**

**WFC**

" REVISED "

**To:** Caltrans

**From:** Marc Armstrong

**Attention:** Office Engineer

**Fax:** 916-227-6282

**Pages:** 8 14

**Phone:** 916-324-6985

**Date:** 2/25/2014

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

REVISED TO INCLUDE Supporting Back-up

**Urgent**

**For Review**

**Please Comment**

**Please Reply**

**Please Recycle**

• **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