



CALPORTLAND
CONSTRUCTION

1625 E. Donovan Road, Santa Maria, CA 93454
P. O. Box 1280, Santa Maria, CA 93456
Phone: (805) 345-3581 Fax: (805) 345-3538
Contractor's License #523019

February 3, 2012

California Department of Transportation
Division of Engineering Services
Office Engineer
1727 30th Street
P.O. Box 168041
Sacramento, CA 95816-8041

Attention: Loren C. Newell

Re: Contract Number 05-0T0204.
Bids Opened: January 25th, 2012
Bid Protest of Windsor Fuel Company

Dear Ms. Newell,

CalPortland Construction hereby protests the award of the above mentioned project to Windsor Fuel Company, due to Windsor Fuel Company not meeting the UDBE goal, providing false information, and an insufficient "Good Faith Effort" submittal.

OVERVIEW

The apparent low bidder (ASAP General Engineering) has since filed a "Relief of Bid Request", if accepted; the contract is to be awarded to the next low bidder, Windsor Fuel Company (Windsor). CalPortland Construction (CalPortland) is protesting Windsor's bid based on the following observations. After reviewing Windsor's UDBE Submittal, it is clear that their submittal has major errors. Windsor has not met the UDBE goal of 6% for the project. Windsor wrongly listed a subcontractor (Austin Enterprise) to perform work that the said subcontractor does not perform. In addition, it appears that Windsor has failed to achieve a sufficient "Good Faith Effort" submittal.

UDBE Goal & Providing False Information

- i. Upon further investigation of Windsor's UDBE Submittal, it became apparent that they listed a subcontractor (Austin Enterprise) to perform work on the project that the subcontractor does not perform. CalPortland has done several hundred miles of Ground in Rumble Strips, utilizing Austin Enterprise as the subcontractor. Not once has Austin Enterprise offered to do sweeping or vacuuming on the project, which is shown on the attached (Exhibit A) as an exclusion to their Bid Proposal. In order to clarify Windsor Fuel's utilization of Austin Enterprise to perform sweeping on the project; I contacted Austin Enterprise on February 2nd, 2012 and spoke with Tye Conner. Mr. Conner informed me that Austin only has a Bobcat with a broom attachment, and that their rumble strip grinder does not include a vacuum attachment, which is required in the Specifications (p. 54, 10-1.16 "Centerline Rumble Strip," "Construction," pp. 6) (Exhibit B). The

reason why Austin Enterprise's proposal excludes sweeping is because they do not in fact own the equipment required by the Specifications.

If you deduct the amount \$2,160.00 for Sweeping from Austin Enterprise's Proposal, and recalculate the total, you come up with 5.8%, which does not meet the required UDBE goal of 6% (Exhibit C p. 2).

- ii. In Exhibit A, you can see that a representative from Windsor wrote in by hand, "Add for Sweep \$2,160.00," under the "Conditions for above items:" Item four (4) clearly states that sweeping is excluded from the proposal. During my conversation with Mr. Conner of Austin Enterprise, he reiterated the fact that Austin does not have a vacuum sweeper, and that he did not provide Windsor Fuel Company a quote for \$2,160.00 to perform this work. Mr. Conner also stressed that no one from Windsor had ever contacted them to see if they could do the sweeping. This is evidence that Windsor is providing false and misleading information to try and meet the 6% UDBE goal.

Inaufficient "Good Faith Effort" Submittal

CalPortland Construction hereby renders Windsor Fuel Company's "Good Faith Effort" insufficient, due to lacking the required information and supporting documentation as required by the Specifications. Please see Exhibit D, Specification Section 2-1.02, "Good Faith Efforts Submittal". The following will address in-part, items one (1) through eight (8), which CalPortland finds to be insufficient. The numbers below correspond with the numbers in the above mentioned Specification section. Please see Windsor's UDBE Submittal for clarification.

1. Windsor did not complete p. 9 of the Good Faith Effort Documentation.
2. It appears that Windsor has shown negligence in providing supporting documentation for contacting potential certified UDBEs. Windsor representatives did not provide the time of contact or the person contacted in their Call Log. In addition, 30.5% ($11/36=0.305$) of the firms supposedly contacted were contacted the day of the bid (January 25, 2012). This does not provide sufficient time to allow UDBEs to respond.
3. No errors here.
4. Windsor's UDBE Submittal does not show evidence of advertising in any publications. No copies of supporting documents.
5. No errors here.
6. It does not appear that Windsor made the effort to provide interested UDBEs adequate information about the plans, specifications, or requirements of the contract to assist them in responding to the solicitation. No copies of supporting documents.
7. It does not appear that Windsor made efforts to assist interested UDBEs in obtaining bonding, lines of credit, insurance, equipment, supplies, or materials. No copies of supporting documents.
8. N/A

Conclusion

Windsor Fuel Company clearly did not meet the UDBE goal of 6% for the project, they provided false information to make it look like they met the UDBE goal, and provided an insufficient "Good Faith

Effort" submittal. Any one of the three missteps by Windsor should be more than enough to declare them non-responsive for the above mentioned contract.

CalPortland Construction requests that Caltrans adhere to the strict guidelines that are put forth for fair and competitive bidding purposes, and would like to conclude that Windsor Fuel Company's bid is non-responsive and not eligible for award.

Sincerely,
CalPortland Construction



Mark Kalouner
Senior Estimator

EXHIBIT A

01/23/2012 12:45 6615899904

AUSTIN ENTERPRISE

PAGE 02

AUSTIN ENTERPRISE

License #764893

P O B ox 81926

Bakersfield, CA, 93380

661-589-1001 FAX 589-9509

Certified DBE/MBE/WBE CT-13602

Certified UDBE CT_13602

12

BID PROPOSAL

Contract # CDOT 05-0T0204
Rt 166 near New Cuyama

Bid Date: January 25, 2012

BID ITEM # 13 / Centerline Rumble Strip (HMA, Grinded in):

300 sta Grind rumble only.....\$15.32 / sta.....\$4,525.00

OPTION

300 sta Spray Fog Seal Material.....\$9.20 / sta.....\$2,760.00

7287⁰⁰

Conditions for above items:

1. Excludes traffic control. 2 shifts required
2. Contractor to provide layout and clear access to work area.
3. One move in included, additional moves at \$300.00 each
4. Excludes fog seal, sweeping and disposal of debris.

ADD FOR SWEEP \$2160

Note*Union signatory
Insurance: \$5,000,000.00 Liability
No Bonding

7287⁰⁰
2160⁰⁰
9387⁰⁰

[EXHIBIT B]

The asphaltic emulsion (fog seal coat) shall be applied at a rate of 0.03-gallon to 0.06-gallon per square yard. The exact rate of application will be determined by the Engineer.

Attention is directed to Section 7-1.11, "Preservation Of Property," of the Standard Specifications and "Existing Highway Facilities" of these special provisions regarding protecting the highway facilities from the fog seal coat.

During flush coat operations, the surface upon which the flush coat is being applied shall be closed to public traffic. Care shall be taken to avoid tracking fog seal coat material onto existing pavement surfaces beyond the limits of construction.

Sand Cover

Sand cover shall be applied immediately following application of the fog seal coat.

Sand for the sand cover shall conform to the provisions for fine aggregate grading in Section 90-3.03, "Fine Aggregate Grading," of the Standard Specifications and these special provisions. Sand shall not contain clay and shall not contain organic material.

Sand shall be spread by means of a self-propelled chip spreader equipped with a mechanical device that will spread the sand at a uniform rate over the full width of a traffic lane in a single application. Sand shall be spread at a rate of 2 pounds to 4 pounds per square yard. The exact spread rate will be determined by the Engineer.

MEASUREMENT AND PAYMENT

Full compensation for sampling and testing polymer modified asphaltic emulsion shall be considered as included in the contract price paid per ton for asphaltic emulsion (polymer modified) and no additional compensation will be allowed therefor.

Sand cover will be measured and paid for in the same manner specified for screenings in Section 37-1.08, "Measurement," and Section 37-1.09, "Payment," of the Standard Specifications.

No adjustment in compensation will be made for any increase or decrease in the quantities of asphaltic emulsion (fog seal coat) and sand cover required, regardless of the reason for the increase or decrease. The provisions in Section 4-1.03B, "Increased or Decreased Quantities," of the Standard Specifications shall not apply to the items of asphaltic emulsion (fog seal coat) and sand cover.

10-1.16 CENTERLINE RUMBLE STRIP**GENERAL****Summary**

This work includes constructing centerline rumble strips in the top layer of hot mix asphalt surfacing by ground-in method.

CONSTRUCTION

Select the method and equipment for constructing ground-in indentations.

Do not construct rumble strips on structures or approach slabs.

Construct rumble strips within 2 inches of the specified alignment. The grinding equipment must be equipped with a sighting device enabling the operator to maintain the rumble strip alignment.

Indentations must comply with the specified dimensions within 0.06 inch in depth and 10 percent in length and width.

The Engineer orders grinding or removal and replacement of noncompliant rumble strips to bring them within specified tolerances. Ground surface areas must be neat and uniform in appearance.

The grinding equipment must be equipped with a vacuum attachment to remove residue from the roadbed.

Dispose of removed material under Section 7-1.13, "Disposal of Material Outside the Highway Right of Way," of the Standard Specifications.

On ground areas, apply fog seal coat under Section 37-1, "Seal Coats," of the Standard Specifications.

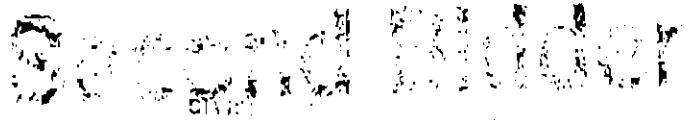
MEASUREMENT AND PAYMENT

The contract item for centerline rumble strip is measured by the station along the length of the rumble strips without deductions for gaps between indentations.

The contract price paid per station for centerline rumble strip includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in constructing rumble strip complete in place including furnishing and applying fog seal coat to the actual ground areas, as shown on the plans, as specified in the Standard Specifications and these special provisions, and as directed by the Engineer.

[EXHIBIT "C" p. 1]

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
CALTRANS BIDDER - UDBE - COMMITMENT
DES-OE-0102.10 (REV 07/2008)



This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the lowest or third low bidder, it must be submitted and remain on file as specified in Section 2 of the Special Provisions. Failure to submit the required UDBE information will be grounds for finding the proposal non-responsive.

CONTRACT NO: **05-0T0204**

BID AMOUNT: \$ **299,991.50**

BID OPENING DATE: **1/05/2012**

BIDDER'S NAME: **Windsor Fuel Company**

UDBE GOAL FROM CONTRACT, %: **6%**

UDBE PRIME CONTRACTOR CERTIFICATION:

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED ¹	FOR CALTRANS USE ONLY	NAME OF UDBEs (Must be certified on the date/bids are opened. Include California certification A, UDBE address and phone number) (Indicate 2nd and lower tier subcontractors).	DOLLAR AMOUNT UDBE ²
13	Rumble Strips w/ Pave Seal - Sweep		AUSTIN BILT. ROAD SUPPLY SACRAMENTO, CA 916-328-1201 CP# 015602	\$ 9,387 ⁰⁰
4-5	DCMS ROADS TRAFFIC CONTROL (P&T)		WEST SAFETY WEST & MOBILITY VICTORIA, CA 531-712-0000 CP# 000017	\$ 4,858 ⁰⁰
2	WATER Pollution Control equipment (P&T)		SIERRA SUPPLY SIERRA, CA 530-325-1027 CP# 38854	\$ 750 ⁰⁰
12	WATER TRAIL & OFFROAD EXPOS		SUNSHINE TRAIL SUPPLY PALLMADER, CA 760-335-5500 CP# 67723	\$ 4,706 ⁰⁰

IMPORTANT: Identify all UDBEs from being claimed for credit, regard less of tier. Names of the First Tier UDBE subcontractors and their respective item(s) of work listed above must be consistent, where applicable, with the names and items of work in the "List of subcontractors" submitted with your bid. Copies of the UDBE quotes are required.

- UDBE prime contractors must enter their certification number and indicate all work to be performed by UDBEs including work performed by its own forces.
- If 100% of item is not to be performed or furnished by UDBE, describe exact portion of item to be performed or furnished.
- See Section titled "Disadvantaged Business Enterprises" under Section 2 "Bidding" of the special provisions to determine the credit allowed for UDBE firms.

Submit to:
MRC 43
OFFICE ENGINEER
DEPARTMENT OF TRANSPORTATION
1727 30TH STREET
SACRAMENTO, CA 95816-7005

Total Certified Participation **\$19,697**

6.5%

Mark A. ...
Signature of Bidder

1/07/2012 **925-427-5266**
Date (Area Code) Tel. No.

Mark A. ...
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) 654-6610 or TDD (916) 654-6603 or write Records and Form Management, 1120 N Street, MS-8R, Sacramento, CA 95814.

EXHIBIT C P. 2

CALPORTLAND CONSTRUCTION

P.O. Box 1280
SANTA MARIA, CA 93456
LICENSE #523019
(805) 345-3581 FAX (805) 345-3538

JOB 05-0T0204

SHEET NO. _____ OF _____

CALCULATED BY _____ DATE _____

CHECKED BY _____ DATE _____

SCALE _____

WINDSOR'S - LDBE - COMMITMENT

CONTRACT ITEM No.	ITEM OF WORK AND DESCRIPTION	NAME OF LDBE	DOLLAR AMOUNT
13	RUMBLE STRIPS 1/2 FOG SEAL - SWEEP	AUSTIN ENTERPRISE	\$ 9,387.00
4-5	CMS BOARDS TRAFFIC CONTROL (PART)	KRC SAFETY	\$ 4,855.00
2	WATER POLLUTION CONTROL	APPIAN	\$ 750.00
12	SCREENINGS (PART) WATER TRUCK + OFFHAUL EXCESS	SUDDEN SAMS	\$ 4,705.00
TOTAL CLAIMED PARTICIPATION			\$ 19,697.00

6.5%

$$\frac{\$ 19,697}{\$ 299,991.50} = 6.56\%$$

CALPORTLAND - RECALCULATION

* ITEM 13 - RUMBLE STRIPS = \$ 9,387.00 - \$ 2,160 (SWEEPING) = \$ 7,227

4-5 - CMS BOARDS = 4,855.00

2 WATER POLLUTION = 750.00

12 SCREENINGS = 4,705.00

NEW TOTAL = \$ 17,537.00 → $\frac{\$ 17,537.00}{\$ 299,991.50} = 5.85\%$

∴ 5.85% ≠ 6.0%

[EXHIBIT D]

Other bidders do not need to submit the UDBE Commitment form unless the Department requests it. If the Department requests you to submit a UDBE Commitment form, submit the completed form within 4 business days of the request.

Submit written confirmation from each UDBE stating that it is participating in the contract. Include confirmation with the UDBE Commitment form. A copy of a UDBE's quote will serve as written confirmation that the UDBE is participating in the contract.

If you do not submit the UDBE Commitment form within the specified time, the Department finds your bid nonresponsive.

Good Faith Efforts Submittal

If you have not met the UDBE goal, complete and submit the Good Faith Efforts Documentation form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by UDBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Department no later than 4:00 p.m. on the 4th business day after bid opening.

If your UDBE Commitment form shows that you have met the UDBE goal or if you are required to submit the UDBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Department finds that the UDBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to UDBE firms. Identify those items of work you might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate UDBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to UDBE firms.
2. Names of certified UDBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the UDBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified UDBEs through all reasonable and available means and provide sufficient time to allow UDBEs to respond.
3. Name of selected firm and its status as a UDBE for each item of work made available. Include name, address, and telephone number of each UDBE that provided a quote and their price quote. If the firm selected for the item is not a UDBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested UDBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using UDBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested UDBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the UDBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested UDBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the UDBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the UDBE assisted, nature of the assistance offered, and date. Provide copies of supporting documents, as appropriate.
8. Any additional data to support demonstration of good faith efforts.

The Department may consider UDBE commitments of the 2nd and 3rd bidders when determining whether the low bidder made good faith efforts to meet the UDBE goal.

2-1.03 OPT OUT OF PAYMENT ADJUSTMENTS FOR PRICE INDEX FLUCTUATIONS

You may opt out of the payment adjustments for price index fluctuations as specified in "Payment Adjustments for Price Index Fluctuations" of these special provisions. If you elect to opt out of the provisions of this specification, you must complete the "Opt Out of Payment Adjustments for Price Index Fluctuations" form. The completed form must be submitted with your bid.

SECTION 3 CONTRACT AWARD AND EXECUTION

3-1.01 SMALL BUSINESS PARTICIPATION REPORT

The Department has established an overall 25 percent small business participation goal. To determine if the goal is achieved, the Department is tracking small business participation on all contracts.