



May 2, 2013

Mr. John McMillan  
Deputy Division Chief  
State of California  
Department of Transportation  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> St.  
Sacramento Ca 95816

REGARDING: Caltrans Contract 06-0N1604

SUBJECT: BID PROTEST

Dear Mr. McMillan,

Hal Hays Construction Inc. hereby protests the bid submitted by Griffith Company for the above referenced project because it submitted a misleading bid that does not comply with the DBE requirements. Griffith submitted EM Oil Transport as its DBE qualifier. EM Oil is a transportation company, not a material supplier. Notably, Griffith has included both the value of transportation and material (oil) within the dollar amounts claimed.

As set out in the OBEO Commercially Useful Function Guide (July 21, 2011):

Contractors and program participants should always keep in mind that participation by a certified business only counts for credit toward a contract goal when: (1) the business has been properly certified by the appropriate authority for the work category for which it is listed on a particular contract; and (2) the certified business is performing a CUF on the contract for which it has been listed.

A DBE/UDBE does *not* perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE/UDBE participation. Also, an DBE/UDBE does not perform a CUF if it does not exercise responsibility for at least 30 percent of the total cost of the contract with its own work force, or if the DBE/UDBE subcontracts out a greater portion of the work of a contract than would be expected (on the basis of normal industry practice for the work involved) or if it merely orders material or supplies from a third party for delivery by a third party.

which funds are passed in order to obtain the appearance of DBE participation. A DBE does not perform a CUF if it does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.”

While EM Oil is apparently a certified DBE, it does not perform a commercially useful function when acting as a pass through provider of oil. Caltrans has considered such circumstances on numerous previous occasions (including within the DVBE qualification process) and concluded that a company that transports materials as its normal business practice but purports to become a material supplier that also transports material on a specific project for the obvious purpose of creating the appearance of compliance with the DBE percentages is not a legitimate material supplier. Griffith knows full well the requirement that a DBE perform a CUF.

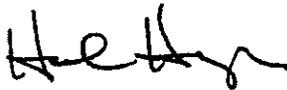
Granite Construction's bid on Contract Number 09-347804 just last year was deemed non-responsive for trying the same thing regarding DVBE goals with an identical ploy - in that bid Granite named Dependable Petroleum Products, Inc. (a transportation company) to “provide” similar material. The attempt was rejected by Caltrans. Although regular bidders to Caltrans are competitors, word of rejected bids and the basis for rejection gets around the industry. The tactic of inflating DBE dollars by inserting material costs into transportation providers is well known as a failed practice. As with Granite's attempt, Griffith's bid must be rejected as non-responsive.

As a result of these findings, Griffith Company's bid should be deemed non-responsive.

We would ask that this protest be considered prior to awarding this contract.

Sincerely

**HAL HAYS CONSTRUCTION INC.**



Hal Hays  
President/CEO

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## Fax Transmittal

DATE: 5-2-13

NO. OF PAGES: 3  
(Including Cover Sheet)

ATTENTION: Office Engineer Dept of Transportation

COMPANY: Caltrans

FAX NUMBER: 916-227-6282

PHONE NUMBER:

FROM: Denia Lanza - [dlanza@halhays.com](mailto:dlanza@halhays.com)

SUBJECT: LETTER OF PROTEST - Contract No 06-0N1604

MESSAGE:

Please see attached Letter of Protest for Contract No. 06-0N1604

  
Denia Lanza  
951-788-0703  
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