



# Landscape & Construction, Inc.

726 ALFRED NOBEL DR. HERCULES, CA 94547 LIC. 962263 A, B, & C27  
(510) 741-9226 FAX (510) 724-2391 bids@wabo.com

November 15, 2013

John McMillan  
Deputy Division Chief  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816  
Phone: (916) 227-6280  
Fax: (916) 227-6282

Re: Contract 06-0Q5504; Bid Opening Date: 10/15/2013

Dear Mr. McMillan:

WABO Landscape & Construction, Inc. (WABO) has read the letter from Mr. McInerney, Jr. of McInerney & Dillon, P.C. (the response) speaking for Taber Construction, Inc. (Taber). Mr. McInerney Jr. states that Taber engaged in pre-bid negotiations with A-C Electric, Inc. (ACE) and arranged for ACE to purchase \$382,000 of electrical equipment from Catco Services (Catco) for ACE's performance of the work. If this statement is true, and if the materials purchased from Catco represent 100% of the electrical equipment for bid items 35 and 36 (and 12)(which it must, since Taber does not "describe [an] exact portion of [the] item[s] to be performed or furnished" on the DBE Commitment form), we are willing to accept that no material inconsistency exists between Taber's DBE commitment form and their Subcontractor List information.

The response further asserts that Catco's work codes, D3690 and F5060 are "clearly appropriate for the materials identified for this project." On this point, WABO vehemently disagrees. The correct work code would be C0686, which, unlike Catco's work codes is a code for a "Construction Supplier." Catco's work codes are not construction supplier codes and therefore their participation in this contract should not count towards Taber's DBE goal.

Here we cite CalTrans' Work Code Template, which can be obtained by following the Work Code Template link on the following CalTrans web page:

[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm),

The Work Code Template is an Excel workbook with tabs for the various categories of work codes. Again, Catco's work codes are not Construction Supplier codes (these are under the "Construction Supplier" tab). Catco's work codes only found under the tab for "All Industries." Catco's first work code, D3690 is found under the "All Industries" tab and then in the "D" category which is for "Manufacturing." D3690 MISC ELECTRICAL EQUIPMENT is described as:

*establishments primarily engaged in manufacturing electrical machinery, equipment, and supplies, **not elsewhere classified**, [emphasis added] including high energy particle*



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*acceleration systems and equipment, electronic simulators, appliance and extension cords, bells and chimes, and insect traps.*

We could establish that D3690 is not the correct work code for manufacturing the electrical equipment required by this contract. However, no one has suggested that Catco is manufacturing the equipment. Therefore, we see no reason to take up that discussion here. It should suffice to say that D3690, as a manufacturing work code, is not applicable to Catco's stated role in this contract. If, in response to this letter, the argument is put forth that Catco is manufacturing the materials, we will be happy to provide a detailed response.

Catco's other work code, F5060, is only located under the "All Industries" tab. Further, as an "F" work code, it is categorized as:

**SUPPLIERS (ALL OTHER EXCL. HIGHWAY CONSTRUCTION)**

This category clearly does not apply to suppliers of materials for highway construction projects.

The correct work code for a supplier of electrical materials for a highway construction project is C0686 Electrical & Signals Supplier. Locating C0686 under the "All Industries" tab, work code C0686 is categorized as:

**HIGHWAY & BUILDING CONSTRUCTION SUPPLIER  
(49 CFR 26.55 (e)(2)(i)(ii) (A) (B))**

This second reference, "49 CFR 26.55 (e)(2)(i)(ii) (A) (B)" is to the specific sections of the Federal Regulations describing the application of DBE credit to material suppliers. We do not see how it could be any clearer that this category *does* apply to suppliers of materials for highway construction projects. Code C0686 is described as:

*establishments primarily engaged in the merchant wholesale distribution of electrical construction materials; wiring supplies; electric light fixtures; light bulbs; and/or electrical power equipment for the generation, transmission, distribution, or control of electric energy.*

WABO believes that the validity of our arguments can be readily ascertained. CalTrans' policy has been to only apply DBE credit if the DBE has the correct work code for their role in the contract. In fact, this policy is required by §26.71(n)(1). To allow Taber DBE credit for Catco's role in this contract is inconsistent with CalTrans' policy and with federal regulations. If CalTrans is to follow policy, Catco's participation should not be allowed to count towards Taber's DBE goal. Since Taber did not submit Good Faith Effort documentation, their bid should therefore be found nonresponsive.

Thank you for taking the time to consider this matter.

Steve Gladden  
President

**WABO****Landscape & Construction, Inc.**

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Attention: John McMillan

Two pages to follow.

To: CalTrans

Phone: (916) 227-6280

Fax: (916) 227-6282

From: WABO Landscape &amp; Construction, Inc.

Re: Bid Protest 2 for Contract No. 06-0Q5504

Thank you.

Mark Gomes

WABO Landscape &amp; Construction, Inc.

Ph. (510) 741-9226 ext. 100

admin@wabo.com