

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER
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*Flex your power!
Be energy efficient!*

February 18, 2014

Facsimile: (925) 427-1216

Mike Fain, Operations Manager
Windsor Fuel Company
P.O. Box 1029
Pittsburg, CA 94565

06-0Q8404
06-Ker-43, 58, 223-Var
B.O. 01/07/2014

Dear Mr. Fain:

On behalf of the Department of Transportation (Caltrans) I have been asked to respond to your requests dated January 20, 2014 and January 31, 2014, for detailed clarification of the nonresponsive bid determination finding on Project 06-0Q8404, on January 16, 2014.

As you are aware, Caltrans' Office Engineers conducted a review of the Disadvantaged Business Enterprise (DBE) Commitment form submitted on January 10, 2014. In addition, after receiving the attached letter from WFC dated January 21, 2014, a second review of the DBE commitment form and initial bid documents was conducted. It remains the findings of Caltrans that the bid submitted by WFC is nonresponsive based on the following.

The subcontractor listing form did not list KRC Safety (KRC) as a subcontractor; however the DBE Commitment form submitted by WFC listed KRC for three items of work as follows:

- Item 2, Construction Area Signs - Includes furnish, install, and remove for \$7,550
- Item 3, Traffic Control Devices (partial) - Item is solely for 2 flaggers in the amount of \$13,950 (based on 10-8 hour shifts)
- Item 4, Portable Changeable Message signs - Sign rental that totals \$9600

WFC provided written confirmation (quote) from KRC that describes the bid items of work in greater detail. With regard to Bid Item 2, there is no question that this is subcontracted work. However, since this item falls below the required listing amount, this item in and of itself does not trigger the listing requirement. As to Bid Item 4, Caltrans acknowledges that this is equipment rental and is not required to be listed on the Subcontractor List. However, it is Caltrans' determination that Bid Item 3 fits within the definition of subcontracted work and, given that determination and the cost amount of Bid Item 3, KRC was required to be listed on the Subcontractor List Form.

According to the response provided by WFC on January 20, 2014, the flaggers (people) listed for Bid Item 3 are not under subcontract, but augment the WFC traffic control effort. Caltrans fails to see how this is possible. If the flaggers are not part of WFC's own work force, then they are subcontractors. It is clear that KRC is providing personnel to WFC and that WFC will be paying KRC for the personnel provided, thus they are subcontractors. The determination that the flaggers are subcontractors is further confirmed by the confirmation/quote provided by WFC as the quote solely lists flaggers (people) with a unit price per shift of \$1,395 per 8 hour

Mr. Fain
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shift and includes a handwritten computation as \$1395 at 10 days for \$13,950, which is included in the total amount claimed for KRC's DBE participation. If this is not subcontracted work then WFC would not be paying KRC for the personnel nor would WFC be able to claim this work as DBE participation. Therefore, Caltrans stands by its original determination that this work is subcontracted work that falls within the subcontractor listing requirement and should therefore have been listed on the Subcontractor List form. In his letter of January 31, 2014, counsel for WFC's makes further attempt to argue that Bid Item 3 is not subcontracted work and states that WFC was not required to list KRC as a subcontractor because KRC will supplement the traffic control operations by furnishing "Automated Flagger Assistance Devices (AFAD)", which are considered to be portable traffic signal equipment and thus do not fall within the subcontractor listing requirement, and not flagger personnel (people). There is no evidence that KRC will be supplying these devices as they are not listed on the quote from KRC but what is listed is a unit price per 8 hour shift for 10 days, as set forth above, indicating actual people flaggers and not automated devices. Therefore, Caltrans is not convinced that WFC was not required to list KRC as subcontractor.

A basic rule in competitive bidding is that bids must conform to the listing requirements and the Department's own bidding instructions and if it does not conform, it may not be accepted. Consequently, based on the above factors, the Department has concluded that the failure of WFC to list KRC is a material deviation from the bidding requirements and that the bid submitted by WFC is therefore nonresponsive.

If you have any questions, please contact Earl Seaberg, Chief Contract Awards, at (916) 227-6280.

Sincerely,



Plus
JOHN C. McMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services

**** Transmit Conf. Report ****

P.1
CALTRANS CONTR AWARDS Fax 916-227-6282

Feb 18 2014 04:25pm

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STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

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