

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER

P.O. BOX 168041, MS-43

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6299

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TTY 711

www.dot.ca.gov



*Serious drought.  
Help save water!*

June 9, 2014

Facsimile: (805) 525-3000

Sam Bennett, President  
Summer Construction, Inc.  
Post Office Box 30  
Santa Paula, CA 93061

09-358304  
09-Mno-108, 182, 395-Var  
B.O. 05/14/2014

Dear Mr. Bennett:

The Department of Transportation (Caltrans) received the attached letter dated May 22, 2014, from Summer Construction, Inc., protesting William Kanayan Construction's (William Kanayan) bid. The protest alleges that William Kanayan's Subcontractors List Form did not list a Certified Biologist firm for Bid Item 11.

Caltrans has reviewed the Subcontractors List Form and determined that a Certified Biologist firm is not performing services defined by the Business and Professions Code for that of a contractor and these items of work are not considered items of work subject to the Public Contract Code 4100 (eq. seq). Therefore, William Kanayan's bid is considered to be responsive.

Based on the above, Caltrans finds that the protest letter submitted by Summer Construction does not have merit and will proceed to award the contract to the lowest responsible bidder, provided that all requirements have been met.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Manager, at (916) 227-6228.

Sincerely,

A handwritten signature in black ink, appearing to read "J. McMILLAN".

*1/2* JOHN C. McMILLAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

Attachment

**SUMMER CONSTRUCTION, INC.**  
**GENERAL ENGINEERING CONTRACTORS**

May 22, 2014

By Email and Facsimile and Certified Mail

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> Street  
Sacramento, CA 95816-8041

Re: **CONTRACT 09-358304**  
**Construction on State Highway in Mono County at various locations on Routes 108, 158, 182, 395**  
**Replace Culverts**  
**Letter of Protest**  
**Lowest Responsive Bidder: SUMMER CONSTRUCTION, INC.**  
**Non-Responsive Bidder: William Kanayan Construction**

Dear Mr. McMillan,

In accordance with the Caltrans contract bid protest procedure and specifically the California Public Contract Code (PCC), please accept this letter as Summer Construction, Inc.'s formal protest against the bid submitted by William Kanayan Construction for the above referenced project.

The bid from William Kanayan Construction must be rejected as non-responsive for the violation of the Subletting and Subcontracting Fair Practices Act (CA Public Contract Code Section 4100 et seq) (The "Act"). Summarily the detailing of the subcontractor listing for William Kanayan Construction did not consist of a certified biologist firm listed for bid item number 11. We received four (4) subcontractor bids from firms offering their services on the bid day with pricing ranging from \$23,000.00 to \$63,000.00. William Kanayan Construction's dollar amount for bid item number 11 (Item #11 Contractor Supplied Biologist) was \$35,000.00, somewhere in the middle of the range, so they could pick and choose a firm after award of the contract. This gave William Kanayan Construction an unfair advantage on bid day. Summer Construction, Inc. and the 3<sup>rd</sup> place bidder White Rock Construction, Inc. both have listed subcontractors specifically for this bid item.

Accordingly, Summer Construction, Inc. respectfully requests Caltrans award it with the project as the lowest responsive bidder.

The Subcontractor Listing Requirement

Section 4104 of the PCC specifically states:

"... any person making a bid or offer to perform work shall in his or her bid or offer, set forth:

- (a) (1) The name and location of the place of business of each subcontractor who will perform work or labor or render services to the prime contractor in or about the construction of the work, ... in an excess of one-half of 1 percent of the prime contractor's total bid.

And

- (b) ... "The portion of the work that will be done by each subcontractor under this act..."

# SUMMER CONSTRUCTION, INC.

GENERAL ENGINEERING CONTRACTORS

"...the Department cannot accept the revised Subcontract list, as it would violate the Subletting and Subcontracting Fair Practices Act of the Public Contract Code (PCC).

In conclusion, the purpose of the Act is to provide fair competitive bidding and to prevent bid shopping and bid peddling after the initial bid submission. Allowing such violations of the Act leave open the opportunity for a prime contractor to take advantage of a lack of enforcement and is the reason the Act should be strictly enforced.

Summer Construction, Inc. respectfully asserts that Caltrans should find William Kanayah Construction's bid to be non-responsive and disqualify its bid, and award the subject contract to Summer Construction, Inc.

If you have any questions please feel free to contact Sam Bennett at 805-933-9364 or [summer.construction@hotmail.com](mailto:summer.construction@hotmail.com).

Thank you,



Sam Bennett  
President  
Summer Construction, Inc.

# SUMMER CONSTRUCTION, INC.

## GENERAL ENGINEERING CONTRACTORS

And

Section 4106 of the PCC specifically states:

If a prime contractor fails to specify a subcontractor for a portion of work to be performed under the contract in excess of one-half of one percent of the prime contractor's total bid, the prime contractor agrees that he or she is qualified to perform that portion of the work himself or herself, and that the prime contractor shall perform that portion himself or herself.

Furthermore, Section 4109 of the PCC states that:

Subcontracting any portion of the work in excess of one-half of one percent of the prime contractor's total bid to which no subcontractor was designated in the original bid shall not be permitted in cases of public emergency or necessity, and then only after having received written consent as a public record of the awarding authority setting forth the facts constituting the emergency or necessity.

### William Kanayan Construction's Inconsistent Subcontractor Lists

William Kanayan Construction submitted its subcontractor list with its bid, listing the name, location and description of the work to be performed by its subcontractors ("Original Bid"). Following the submission of the "Original Bid", within the deadline established by Caltrans, William Kanayan Construction submitted a completed Subcontractor List, including Bid Item Nos. and Percentages of Bid Item Subcontracted ("Post Bid Submission"). The Post Bid Submission is intended to complete the information regarding the subcontractors listed in the "Original Bid", it is not an opportunity to make changes and such changes constitute as a violation of the PCC "The Act".

William Kanayan Construction's subcontractor listing violates "the Act" and renders William Kanayan Construction's bid non-responsive for the following reason(s):

- Failure to list a subcontractor who will render services for a portion of work to be performed on contract in excess of one-half of one percent of the prime contractor's total bid.

In the Original Bid, William Kanayan Construction did not list a subcontractor for Bid Item #11 Contractor Supplied Biologist. Section 4106 of the PCC states that in NO subcontractor is listed, the prime contractor agrees that he or she is qualified to perform that portion of the work himself or herself and will then perform said portion of work himself or herself.

If William Kanayan Construction is qualified to perform that portion of the work, we respectfully request copies of William Kanayan Construction's certifications.

- Caltrans Special Provisions Section 14 Environmental Stewardship states:

14-6.05A (3) (a) Qualifications: A biologist must meet PLAC Requirements (Permits, Licenses, Agreements, Certifications).

- Section 14-6.05A (3) (a) also states: Biologist who will be performing specialized activities must have a California Department of Fish and Wildlife MOU (Memorandum of Understanding) for conducting Willow Flycatcher Surveys.

If William Kanayan Construction asserts that this is a "clerical error", it should have given notice to Caltrans within 2 working days after the time of bid opening, per Section 4107.5 of the PCC. Summer Construction, Inc. is not aware that such a notice was given to Caltrans.

On previous projects, Caltrans has disqualified bidders as non-responsive due to Subcontractor list revisions. In these disqualifications, Caltrans has stated the following regard to revisions of a Subcontractor List:

Summer Construction, Inc.

P.O. Box 30  
Santa Paula, CA. 93061  
(805) 933-9364  
FAX (805) 525-3000

FAX TRANSMISSION COVER SHEET

DATE: May 22, 2014

TO: Caltrans FAX NO. (916) 227-6214  
Deputy Division Chief  
ATTN: John McMullan PROJECT: 09-358304

FROM: Sam Bennett

TOTAL OF PAGES (INCLUDING THIS PAGE) 4

RE: Letter of Protest for Contract 09-358304.

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

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

Jun 9 2014 03:15pm

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STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

**DEPARTMENT OF TRANSPORTATION**

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*1/2* JOHN C. McMILLAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

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