

**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..."

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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 on 1 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:

"Subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after finding reduced to writing 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 1 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 if **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 this 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:

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"...the Department cannot accept the revised "Subcontractor 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 Kanayan 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.