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April 2, 2015

State Contractor's License No. 211337-A



California Department of Transportation
 Division of Engineering Services
 Office Engineer, MS-43
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 Sacramento, CA 95816-8041
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Attention: John McMillan, Deputy Division Chief

RE: Contract 10-1C9304
 Bid Opened March 12, 2015
 Bid Protest of Pave-Tech Response

Dear Mr. McMillan:

George Reed, Inc. (GRI) is hereby following up to the Bid Protest Response provided by Pave-Tech (PT) on March 26th, 2015. GRI contends that WEI Industries (WEI) is an extra participant in PT's transactions and should be deemed as not performing a commercially useful function on this contract.

Per PT's response including WEI's quote, it is clear that WEI is "limited to that of an extra participant" in both the purchase and delivery transactions for the Hot Mix Asphalt. WEI will not provide a commercially useful function as WEI is not a manufacturer of the Hot Mix Asphalt material nor does WEI own or lease trucks that can haul the HMA material. As stated in its quote, WEI is subcontracting the delivery service to USA Trucking. Beyond 'scheduling' of the material order and truck deliveries which is based on a schedule generated by the Prime as stated in PT's response letter, WEI is not supervising or managing the transportation element. WEI's quote is merely a pass-through service in an attempt to "achieve the appearance of small business participation". (See C.C. Meyers, Inc v. Department of Transportation).

Furthermore, the classification codes cited by PT, first of all the codes are not SIC codes but rather UNSPSC codes (United Nations Standard Products and Services Code). When each code that PT claims applies to WEI's quote is further researched, code 301036-Structural Components it is discovered that this actually has nothing to do with HMA or Aggregate products. Please see following:

- ☐ **[301036] - Structural products**
 - [30103601] - Wood beams
 - [30103602] - Wood composite beams
 - [30103603] - Framing lumber
 - [30103604] - Wood sheathing or sheets
 - [30103605] - Wood planks
 - [30103606] - Wood trusses
 - [30103607] - Wood joists
 - [30103608] - Wooden poles or telephone poles
 - [30103609] - Brattice board
 - [30103610] - Crib block
 - [30103611] - Shovel mat
 - [30103612] - Railway tie
 - [30103613] - Precast haydite element
 - [30103614] - Steel plate joist
 - [30103615] - Plate girder
 - [30103616] - Composite framework
 - [30103617] - Wooden framework
 - [30103618] - Steel framework
 - [30103619] - Precast concrete element
 - [30103620] - Crib block treated
 - [30103621] - Railway tie untreated
 - [30103622] - Square timber
 - [30103623] - Reinforcing bar or rebar or mesh

In researching code 301216 – Asphalt it shows that the asphalt refers to a component (asphalt oil) of the HMA and not the actual HMA. Asphalt (Asphalt Oil) would not be the material used for paving the road but rather just a piece of it. The proper code would be 301217-Road and railroad construction materials. See the following that shows the component pieces versus the proper classification:

- ☐ [301200] - Roads and landscape
 - ⊕ [301215] - Bituminous derivatives
 - ☐ [301216] - Asphalts
 - ☞ [30121601] - Asphalt
 - [30121602] - Pitch
 - [30121603] - Gilsonite
 - [30121604] - Cutback products
 - [30121605] - Manhole frames with covers
 - ⊕ [301217] - Road and railroad construction materials
 - ⊕ [301218] - Landscape architecture materials
 - ⊕ [301219] - Soil stabilizers and reinforcing materials

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 - ⊕ [301215] - Bituminous derivatives
 - ⊕ [301216] - Asphalts
 - ☐ [301217] - Road and railroad construction materials
 - [30121701] - Geomesh
 - [30121702] - Geotextile
 - [30121703] - Bridge rail
 - [30121704] - Concrete slab
 - [30121705] - Paving slab
 - [30121706] - Concrete curb
 - [30121707] - Noise protection board
 - [30121708] - Brick tile
 - [30121709] - Ungraded crushed rock
 - [30121710] - Paving stone
 - [30121711] - Natural curbstone
 - [30121712] - Post cover
 - [30121713] - Manhole cover
 - [30121714] - Manhole box
 - [30121715] - Bridge expansion joint
 - [30121716] - Bridge seat mounding
 - [30121717] - Guardrail
 - [30121718] - Safety fence and net for rock drop
 - [30121719] - Safety separator for road
 - ⊕ [301218] - Landscape architecture materials
 - ⊕ [301219] - Soil stabilizers and reinforcing materials

PT is applying their own incorrect interpretation of the classifications for their own benefit. No evidence can be found that shows that the claimed participation by WEI is part of WEI's usual business. To be able to buy material from another supplier, add mark up and pass that on to the prime contractor and say that they are performing a commercially useful function is the true meaning of "extra participant" and cannot be allowed by California Military and Veterans Code, Section 999(b)(5) which states that the contractor, subcontractor, or supplier:

- Is responsible for the execution of a distinct element of work of the contract
- Carries out the obligation by actually performing, managing, or supervising the work involved
- **Performs work that is normal for its business services and function**
- Is not further subcontracting a portion of the work that is greater than that expected to subcontracted by normal practices

In PT's letter they state that under WEI responsibilities that they will assure that the product derives from an accredited plant as well as schedule proper trucking, capabilities to assure proper and timely delivery of product. This is work that PT would normally perform. WEI provides no further service than to act as an extra participant.

One more item is the fact that Gold and Sons Trucking is also listed trucking in Item 22-HMA (Type A) but it would appear that WEI's quote was to include all of the trucking.

Additionally a contractor, subcontractor, or supplier will not be considered to perform a "commercially useful function" if the contractor's, subcontractor's, or supplier's 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 participation.

Because of these reasons, GRI hereby requests that Pave-Tech Inc. be denied their request for Non-Small Business Preference and the project be awarded to George Reed, Inc. as the low responsive, responsible bidder.

Please call with any questions,

Respectfully,



Stacy Case
Chief Estimator
George Reed Inc.

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FAX TRANSMITTAL

Date: April 2, 2015

To: John McMillan, Deputy Chief
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From: Stacy Case
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Pages Faxed: 5

Project Name: 10-1C9304

Comments: George Reed, Inc. response to Pave-Tech Inc.

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Thanks, Stacy Case.