

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER, MS 43

1727 30<sup>th</sup> STREET

P. O. BOX 168041

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6280

FAX (916) 227-6282

TTY 711

*Flex your power!  
Be energy efficient!*

August 20, 2013

Facsimile: (714) 538-5157

Kristi Stelle  
Highland Construction Inc.  
133 N Pixley Street  
Orange, CA 92868

12-0L7504  
12-Ora-91-R0.3/R0.3  
B.O. 6/20/13

Dear Ms. Stelle:

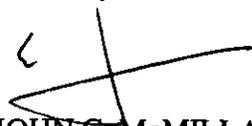
The Department of Transportation (Caltrans) received a letter dated August 9, 2013, from Highland Construction, Inc. (Highland) protesting the award of contract number 12-0L7504, to Peterson-Chase General Engineering Construction, Inc. (Peterson-Chase). The protest alleges that Peterson-Chase's Disadvantaged Business Enterprise (DBE) submittal listed E-Nor Innovations (E-Nor) to provide traffic control equipment rental and construction area signs rental, but E-Nor does not possess the required work codes for these items. Highland requests that Caltrans find the bid submitted by Peterson-Chase nonresponsive and award the contract to Highland.

The Caltrans Office of Business and Economic Opportunity's, Contract Evaluation Unit (CEU) has reviewed the bid documents, as well as the protest submitted by Highland and upholds its original finding that Peterson-Chase met the stated goal for this contract. Furthermore, E-Nor Innovations does have the necessary work codes to be a participant on this contract.

This contract was awarded to Peterson Chase on August 8, 2013.

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

Sincerely,

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

FACSIMILE TRANSMITTAL SHEET

TO John McMillan	FROM Kristi Stelle
COMPANY: Department of Transportation	DATE: 8/9/2013
FAX NUMBER: 916-227-6282	TOTAL NO. OF PAGES INCLUDING COVER:
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
REF: 12-0L7504 ~BID PROTEST RESPONSE	YOUR REFERENCE NUMBER:

- URGENT   
 FOR REVIEW   
 PLEASE COMMENT   
 PLEASE REPLY   
 PLEASE RECYCLE

NOTES/COMMENTS:

Please see attached

Originals to follow via Golden State Overnight.

If you did not receive any of the pages indicated, please call (714) 538-5156. Thank you.



Lic. #743775

August 8, 2013

John McMillan  
Department of Transportation  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816-8041

Re: Contract Number 12-0L7504  
Bid Opening Date: June 20, 2013  
Bid Protest – Peterson Chase (Apparent 1<sup>st</sup> Low Bidder)

Dear Mr. McMillan:

We are in receipt of Caltrans' response dated August 8, 2013 regarding our original protest of award of the above-mentioned contract to Peterson Chase (PC).

Please be advised that we disagree with Caltrans' decision and hereby, reassert our protest of the award of this contract for the following reasons:

Peterson Chase, in their response, to Caltrans has now claimed that E-nor Innovations' (ENOR) DBE participation is based on traffic control equipment rental and renting construction area signs. However, ENOR's DBE certification does not provide the required work codes for renting traffic control equipment and/or construction area signs. The work codes necessary for equipment rental to qualify for participation are C9907 Construction Equipment Rental or 17350.

The following are ENOR's relevant work codes and their definitions:

Construction Area Signs C1200: *Places the construction zone signs on side of the road.*  
Traffic Control System C1201: *The person putting the orange cones or large barrels out at a construction site. Places the big orange construction zone signs on side of the road.*

Neither of these two work codes indicates the rental of construction area signs or the rental of traffic control devices. While we respect Peterson Chase (PC) as a friendly competitor and acknowledge their expertise in this industry, the explanation provided to Caltrans is not supported by the facts of ENOR's bid proposal.

John McMillan  
August 8, 2013  
Bid Protest - Contract #12-DL7504  
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If Caltrans' Evaluation Unit took a detailed review of ENOR's proposal, they would find the very description of the scope of work, for which ENOR is proposing is "Traffic Control Systems." The proposal indicates the labor and equipment that ENOR is proposing to furnish, to the contractor, for the project's required lane closures. The quote further provides the manpower and equipment costs for each traffic lane that will need to be closed during active construction.

These proposal provides the rental costs that will be passed on to the contractor should the contractor elect to use such equipment to be provided by ENOR during the lane closures. The proposal does not include any statement that the equipment may be used as a bare rental. Also, ENOR's proposal also does not include any proposed costs for rental of construction area signs, which are shown on sheet 17 of the contract plans, and clearly differ from temporary traffic detour signs needed for lane closures.

Further, a review of the provisions in ENOR's proposal, undoubtedly, shows the intent to "subcontract" to the prime contractor. For example:

- *"All provisions will be added as part of contract before proceeding. No contract will be signed unless all provisions are included."* This phrase alone proves the intent to subcontract and not provide rental equipment.
- *"Overtime will be billed at \$108 each man per hour after 8 hrs shift."* No overtime are charged for any equipment rental!
- *"Multiply rates by 1.5 for Saturdays and 2 for Sundays and Holidays."* There are no premium rates for equipment rental.
- *"ENOR is a Union Contractor."* Rental companies are not union contractors.
- *"Prime Contractor is responsible for highway patrol unit."* This would not be included if ENOR is merely providing rented equipment.
- *"Equipment is rented for "set-up" only, contractor is responsible for closure until ENOR picks up closure."* Meaning labor is required for set up and being provided with equipment for traffic control and the prime must maintain the lane closure during active construction.
- *"All signs marks ... to be done by others and completed prior to ENOR starting work ..."* Meaning ENOR intent on installing signs not "renting" the signs.

John McMillan  
August 8, 2013  
Bid Protest ~ Contract #12-OL7504  
Page 3 of 4

All of the above statements clearly show that ENOR intended to subcontract to the prime contractor for the lane closure systems. The quote is not and was not proposed for equipment rental. It seems that PC came up with the "equipment rental" only after HCI protested the award. This is evident by reviewing the post bid files, in which no calculations were provided to Caltrans at bid time for the alleged rental of equipment.

Lastly, as you may recall, on January 22, 2013, the Contract Evaluation Unit (CEU) made a preliminary determination to disallow DBE participation, from ENOR, in the amount of \$17,992.80 towards HCI's DBE goal for Contract 07-2X9604. The preliminary determination threatened the award of the said contract. The CEU's analysis stated that ENOR was not "certified to rent equipment" and thereby disallowed the participation towards HCI's DBE goal. HCI challenged the CEU's determination and requested a reconsideration hearing, which was granted. Ultimately the project was awarded to HCI based on our Good Faith Effort. However, the Reconsideration Committee (COMMITTEE) upheld the CEU's disallowment of ENOR's DBE participation, for equipment rental, towards the contract's goal, despite our very compelling arguments at the said hearing.

The COMMITTEE vehemently stated that ENOR is "not certified to rent equipment." While we acknowledge that ENOR has updated their DBE certification to include the work codes C1200 and C1201, the newly updated codes still do not include equipment rental, which has precluded HCI from listing ENOR for any type of DBE rental participation. At the said hearing, which the president of ENOR was present, we were directed, by the COMMITTEE, that in order for HCI to claim future DBE participation by ENOR, for traffic control device rentals, ENOR must possess the work codes of 17350 or C9907.

As such, Caltrans must maintain the same determination consistencies in the award process to avoid favoritism and/or impropriety. This same standard applies to the evaluations unit and in the award of the contracts. A failure to maintain this consistency would not only violate Caltrans' own policy, but also those policies set for the by Public Contract Code and Federal Law. It would also subject Caltrans to an enormous amount of litigation to defend the inconsistent determinations.

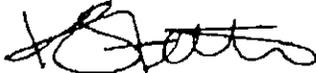
As stated previously, we hereby protest the award of this contract to Peterson Chase for the Failure to List ENOR as a subcontractor, failure to meet the DBE goal and the failure to make a Good Faith Effort

As such, we hereby request award of Contract #12-OL7504 as the lowest most responsive and responsible bidder.

John McMillen  
August 8, 2013  
Bid Protest ~ Contract #12-0L7S04  
Page 4 of 4

If you have any further questions, please do not hesitate to contact our office. Thank you.

Respectfully,



Kristi Stelle  
VP of Operations

KS:er  
C: Mahoney & Soll, LLP  
VIA: FAX & GSO

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

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

Aug 20 2013 01:07pm

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STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

**DEPARTMENT OF TRANSPORTATION**  
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