



CONTRACT No: 01-0A4504

May 23, 2013

**VIA FACSIMILE (916) 227-6282 AND U.S. MAIL**

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Department of Transportation  
Division of Engineering Services  
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Contract Awards Branch Chief  
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Re: Response to letter of FDT non-eligibility for award for 01-0A4504 (Lack of DVBE Participation)

Dear Mr. McMillan and Ms. Thomas:

F.D. Thomas, Inc. (FDT) wholly disagrees with the letter that we received dated May, 22, 2013 which determines that FDT did not meet the DVBE participation goal for this project. The basis for the determination is that Rock N' Roll "(RNR) does not have the NAICS code required to perform traffic control. Therefore, the dollar amount claimed for credit will not be counted toward the DVBE goal pursuant to Military and Veterans Code 999(b)(5)(B)(I)(ac)".

Our issues with the determination made by John Meyers, Contract Evaluation Analyst (Cal Trans) are the following:

- RNR is a certified DVBE contractor that performs traffic control work, which is "normal for its business services and functions" per the Military and Veterans Code 999(b)(5)(B)(I)(ac) cited above by John Meyers in his determination.
- RNR lists as one of their many classifications on their DVBE certificate "highway and road construction services", we believe that traffic control falls into these types of services.
- RNR provided a quotation for traffic control elements specifically for this project as a subcontractor.
- RNR supplied an updated certificate with their quotation.
- RNR is a licensed contractor in California with multiple classifications.
- RNR supplied quotations and were listed by other contractors on this project for the same work.
- RNR has provided these same services for other Cal Trans contracts and have not been rejected.
- The paperwork that is supplied and to be filled out for the DVBE portion of the Bid Proposal paperwork in no way has a listing for the NAICS codes as an evaluation tool for whether a proposal is valid or not. How would we know if the subcontractor proposal is correct or not?
- FDT sees no reference to the NAICS codes as a necessary requirement for subcontractor listing.
- We believe that the assignment of the NAICS code is done by the DVBE contractor at the time of the application and is simply a classification that helps contractors search and the state to report for certain "types" of vendors.



- A DVBE contractor has the right and can change its classification by filling out and requesting a change to the classification on the form "CERTIFICATION OF INFORMATION CHANGE" (rev. 10/31/11).
- We believe that the NAICS code as it is used in this instance is insignificant to our determination to list the DVBE Certified contractor for this work, as it is not required in any of the submittal paperwork.

In summary, the process of bidding Cal Trans projects has never required the listing of NAICS codes in any of the paperwork supplied, nor is there any reference for the use of NAICS codes in the Cal Trans Standard Specifications. The DVBE bid paperwork requires a bid item number, description of the work, DVBE name, telephone and certification number, and the bid amount. Also the form asks that the items and work descriptions be consistent with the subcontractors list. FDT complied properly with these requirements and they were finalized in the required time frames. We find it completely insignificant that a specific code was not used by a contractor in its application for DVBE status which is covered by another code that encompasses this element of work, ie. "highway and road construction services". There are certain classifications that roll up into a primary status, and we believe this is the case as listed above. If a contractor was not to list some main "primary classifications", in lieu of many multiple specific items the contractor performs, the lists of codes for each contractor could become burdensome.

We ask that you disregard this finding by John Meyers and award FDT the project and in the process don't dismiss the DVBE contractor from valid and needed work. Please let us know your response to this letter as we would like to continue to pursue a solution that eventuates in an award for FDT.

Respectfully,

Grover Lee  
F.D. Thomas VP/Division Manager

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