



www.kniferiver.com

Northern California Division - Chico  
1784 Skyway  
Chico, CA 95928-8333  
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March 23, 2015

VIA FACSIMILE (916) 227-6282

John C. McMillan, Deputy Division Chief  
Department of Transportation, Division of Engineering Services  
Office of the Engineer, MS 43  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816  
(916) 227-6280  
(916) 227-6282 fax

RE: Contract No. 03-0G2604 Hwy 162 in Butte County  
Bids Opened: March 17, 2015  
Bid Protest

Dear Mr. McMillan:

Please consider this letter to be a formal bid protest of the bid submitted by Pave-Tech Inc. (PTI) for the following reasons:

- 1.) On bid day, PTI requested Non Small Business Preference. On the Certified Small Business Listing for the Non-Small Business Preference form submitted by PTI, almost 19% of the 25.92% stated small business participation is through WEI Industries for the supply of Hot Mix Asphalt on this project. Knife River Construction contends that WEI Industries is an extra participant in this transaction and should be deemed as not performing a commercially useful function on this contract.

Section 1896 of the California Code of Regulations specifically states that "A contractor or subcontractor will not be considered as performing a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to achieve the appearance of small business participation."

Section 1896.6 of the California Code of Regulations goes further to state that "Non-small business bidders will be granted a five percent...preference... when the non-small business bidder.....Submits a list of small business(es) it commits to subcontract with for a commercially useful function in the performance of the contract."

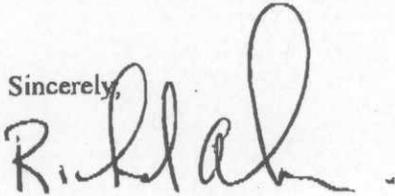
Wei Industries does not manufacture Hot Mix Asphalt, does not store Hot Mix Asphalt and does not own the trucks to deliver Hot Mix Asphalt and is merely an extra participant in the transaction. A check of WEI Industries own website indicates that the company sells products in the specialized Electrical High & Low Voltage industry.

- 2.) PTI did not list a subcontractor for Item 16- Prepaving Inertial Profiler and Item 17- Prepaving Grinding Day. Both these items require the use of a specialty contractor that should be listed as they are in excess of ½ of 1% of the bid. PTI used the exact quote from Western Grinding for these items but did not list a subcontractor for this specialty grinding work.

Knife River Construction hereby requests that Pave-Tech Inc., be denied their request for Non-Small Business Preference and that Pave-Tech, Inc., be deemed non responsive for not listing a subcontractor in excess of ½ of 1% of the bid as required by the Specifications.

If you have any questions, please do not hesitate to call Andy Lanier at (530) 891-6555.

Sincerely,



Knife River Construction  
Richard A. Lanier  
Estimating manager

15-17-15 P03:44 FCVD

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**CERTIFIED SMALL BUSINESS LISTING FOR THE NON-SMALL BUSINESS PREFERENCE**  
 DEB-OE-0102.8 (REV 2/2011)

BIDDER NAME Plyo Tech Inc.

CONTRACT NO. 03 - 032604

List the description of work, name, telephone number, certification number, and dollar amount of each certified small business who will be employed on this project. Failure to provide this information may be cause for denial of the non-small business subcontractor preference. Attach additional sheets if necessary.

Submit to:

MSC 43  
 OFFICE ENGINEER  
 DEPARTMENT OF TRANSPORTATION  
 1727 30TH STREET  
 SACRAMENTO, CA 95818-7005

Bid Item Number	Description of Work, Service, or Materials	Certified Small Business (Name, Telephone No., and Certification No.)	\$ Amount
3	Traffic Control	Sombrano Traffic Control Incorporated (916) 687-6472 1159740	\$74,125.00
29, 32, 35	Striping and Markers	Central Striping Service Inc (916) 635-5175 20572	\$64,833.00
19, 21	Testing	Trinity Engineering Laboratories, Inc (559) 260-6841 1269800	\$18,610.00
8	Milling (Rental)	Amtek Corporation (916) 383-5030 18781	\$3,000.00
9	Cold Plant (Rental)	Amtek Corporation (916) 383-5030 18781	\$6,000.00
2	Signs	Independent Structures Inc. (530) 223-5238 1464280	\$2,030.00
26	Delineator	Independent Structures Inc (530) 223-5238 1464280	\$1,470.00
27	Post Marker	Independent Structures Inc (530) 223-5238 1464280	\$750.00
19	Hot Mix Asphalt	WFI Industries (626) 531-7575 1458260	\$740,288.80 X .60 \$444,173.28

Rudy C. Zavala/President  
 Person In Contact (Please Type or Print)  
(760) 727-8700  
 (Area Code) Telephone Number

Total Claimed Participation

\$ 814,991.76

25.92 % of Contract

WEI was established in 1981 to promote and sell products in the specialized Electrical High & Low Voltage Industry. The company founder, Benjamin Walker, Sr. is a Technologist and Service Disabled Veteran. Mr. Walker has a BS, MBA and other diplomas and technical schools certificates. He has completed his North American Board of Certified Energy Practitioners (NABCEP) Certification and is a Solar Energy Expert. Previously, he worked for NASA (JPL) and the Union Oil Company as an Electrical Engineer before becoming a Small Business owner.

WEI's corporate office is located in Pasadena, California (Los Angeles Area), with offices in Hayward, CA, Dallas/Forth Worth, TX, and Washington, DC.

WEI's principal customers are:

- Federal, State, and Local governments
- Large Commercial, Industrial, and Aerospace companies
- Utilities, Educational, and Municipal organizations.

Presently, WEI has a highly qualified, and educated staff of professionals with over one hundred years of experience in the Power & Green Power Technology Industries, collectively.



- **Distributor**

- High and Low Voltage Electrical/Electronic Material & Equipment
- Wire and Cable
- Pipes and Mechanical Valves
- Solar Panels & Related Components
- Pre-Fab Steel Buildings

### California Certification Report

#### 1458260 - WEI INDUSTRIES - MB | DVBE

<b>Legal Business Name</b>	WEI INDUSTRIES		
<b>Doing Business As</b>	WEI INDUSTRIES		
<b>Address</b>	2320 Central Avenue Unit 4	<b>Phone</b>	(826) 531-7575
	DUARTE, CA 91010	<b>FAX</b>	(826) 258-3200

<b>Email</b>	benwalkersr@weiindustries.com
<b>Web Page</b>	http://www.weiindustries.com
<b>Active Certifications</b>	SB (micro) Feb 11, 2013 - Feb 28, 2017 DVBE Feb 11, 2013 - Feb 28, 2017
<b>Business Types</b>	Service; Non-Manufacturer;
<b>Classifications</b>	[201220] Fixturing and test equipment [201225] Coiled tubing equipment [221010] Building construction machinery and accessories [232421] Metal cutting machine attachments [251720] Exterior vehicle lighting [251730] Electrical components [261115] Kinetic power transmission [261116] Power generators [261215] Electrical wire [261216] Electrical cable and accessories [261315] Power plants [261317] Power generation monitoring or detecting equipment [261318] Power generation control equipment [271127] Power tools [301016] Bar [301036] Structural products [301115] Concrete and mortars [301216] Asphalts [301417] Insulation sealing layers [302416] Portable Structure Consolidating Components [311517] Mechanical cable [311616] Bolts [311625] Brackets and braces [312311] Machined bar stock [312515] Actuators [312615] Housings and cabinets [313311] Bonded structural assemblies [313312] Bolted structural assemblies [313317] Riveted structural assemblies [321015] Circuit assemblies and radio frequency RF components [321115] Diodes [321116] Transistors [321216] Resistors [321310] Electronic component parts and raw materials and accessories [321517] Programmable Logic Controllers

[391019] Lamp Ballasts and Lamp Transformers  
 [391115] Interior lighting fixtures and accessories  
 [391116] Exterior lighting fixtures and accessories  
 [391117] Emergency lighting and accessories  
 [391118] Lighting accessories  
 [391119] Special environment fixtures and accessories  
 [391120] Portable and Temporary Lighting and accessories  
 [391121] Optical lighting  
 [391210] Power conditioning equipment  
 [391211] Distribution and control centers and accessories  
 [391213] Electrical boxes and enclosures and fittings and accessories  
 [391214] Electrical lugs plugs and connectors  
 [391215] Electrical controls and accessories  
 [391216] Circuit protection devices and accessories  
 [391217] Electrical hardware and supplies  
 [391219] Electrical safety devices and accessories  
 [391220] Electrical Variable Speed Drives  
 [391221] Electrical transmission and distribution equipment  
 [391317] Wire Raceways Conduit and Busways  
 [401416] Valves  
 [411119] Indicating and recording instruments  
 [411138] Electrical measuring and testing equipment and accessories  
 [411153] Light and wave generating and measuring equipment  
 [432015] System boards processors interfaces or modules  
 [432022] Sub assemblies for electronic devices  
 [432228] Network service equipment  
 [432231] Digital mobile network infrastructure equipment and components  
 [432326] Industry specific software  
 [492415] Playground equipment  
 [711230] Integrated services  
 [811415] Quality control  
 [811416] Supply chain management  
 [811418] Facilities management  
 [831018] Electric utilities  
 [831125] Backbone capacities  
 [951216] Utility buildings and structures

**Keywords**

Electrical High Low Voltage materials equipment Green Energy Solar Products Pre-Fab Steel Buildings  
 Installation Facilities Management transformers generators emergency back up UPS crane backhoe heavy duty  
 truck equipment rental asphalt concrete gravel

## Small Business Regulations

The current California Code of Regulations can be found on the [California Code of Regulations website](#).

The Small Business Regulations are under:

- TITLE 2. Administration
- Division 2. Financial Operations
- Chapter 3. Department of General Services
- Subchapter 6. Office of Small Business Procurement and Contracts

### Article 1. General Provisions

#### Section 1896. Purpose of Subchapter

The purpose of this subchapter is to set forth the rules for applying the small business and the non-small business sub-contractor preferences; and the rules, roles, responsibilities and rights of businesses and the state as they pertain to small business certification.

#### Note:

Authority cited: Section 14837 and 14843, Government Code.  
Reference: Section 14835, 14837, 14838 and 14839.1, Government Code.

#### Section 1896.2. Authority

The Department shall have the sole responsibility for determining the eligibility of and certifying small businesses pursuant to the provisions of the Small Business Procurement and Contract Act, Article 1 of Chapter 8.5, Part 6.6 of Division 3, Title 2, Government Code, commencing with Section 14835.

When authorized by the applicant, the Department may share certification data and information with other state, federal, or local agencies for purposes of enabling the applicant to become certified as a small business with these other public agencies.

#### Note:

Authority cited: Section 14837 and 14843, Government Code.  
Reference: Section 14835, 14837 and 14839.1, Government Code.

#### Section 1896.4. Definitions

The terms defined in this article shall have the following meanings whenever they appear in this subchapter:

- a. **Affiliate or affiliation** refers to a relationship of direct or indirect control or shared interests, as determined in Section 1898.12, between the applicant or a small business and another business.
- b. **ALJ** means Administrative Law Judge, as defined in Government Code Section 11502, assigned by the Office of Administrative Hearings to consider and rule on appeals of certification denial, decertification, and sanctions.
- c. **Applicant** means a business that has filed an application for certification as a small business with the Department on the Small Business Certification Application, STD. 613, REV. 1/2002, which is incorporated by reference.
- d. **Assignment** means a transfer of rights, responsibility, or property.
- e. **Awarding department** means any agency, department, office, board, commission, institution, hospital, the California State universities and colleges, and any other entity empowered by law to enter into contracts on behalf of the State of California.
- f. **Bid** means an offer made in response to a solicitation.
- g. **Business** means an entity organized for profit including, but not limited to, an individual, sole proprietorship, partnership, limited liability partnership, corporation, limited liability company, joint venture, association or cooperative; or solely for purposes of the Prompt Payment Act (Government Code 927 et seq.), a duly authorized nonprofit corporation.
- h. **Commercially useful function** means:
  1. The contractor or subcontractor is responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing or supervising the work involved; and performing work that is normal for its business services and functions; and
  2. The contractor or subcontractor is not further subcontracting a greater portion of the work than would be expected by normal industry practices.
  3. The contractor or subcontractor is responsible, with respect to materials and supplies provided on the subcontract, for negotiating price, determining quality and quantity, ordering the material, installing (when applicable), and paying for the material itself.
  4. A contractor or subcontractor will not be considered as performing a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to achieve the appearance of small business participation.
- i. **Department** means the Department of General Services.
- j. **Disabled veteran-owned small business** means a business defined pursuant to Government Code Section 14836(f).
- k. **Employee** means an individual employed by a business that is either:
  1. Reported as an employee to the State of California, Employment Development Department (EDD) on the business's Quarterly Wage and Withholding Report or other format accepted by EDD; or
  2. Reported as an employee by the business on another state's report equivalent to the EDD's Quarterly Wage and Withholding Report.

- l. **Gross annual receipts** means "Total Gross Receipts or Sales", less "Returns and Allowances," as reported on the business' income tax returns, as filed with the federal Internal Revenue Service.
- m. **Independently owned and operated** means a business concern that independently manages and controls the day-to-day operations of its own business through its ownership and management, without undue influence by an outside entity or person that may have an ownership and/or financial interest in the management responsibilities of the applicant business or small business.
- n. **Joint Venture** means an association of businesses established by written agreement to engage in and carry out a single business venture for joint profit, for which purpose they combine their efforts, property, money, skills and/or knowledge.
- o. **Local agency** means any county, city, city and county, district, public authority, public agency, school district, and any other political subdivision or public corporation in the State, but does not include the State.
- p. **Manufacturer** means a business as defined in Government Code Section 14837(c), pursuant to the determination criteria set forth in Section 1896.12.
- q. **Microbusiness** means a small business that, together with affiliates, has average annual gross receipts of three million, five hundred thousand dollars (\$3,500,000) or less over the previous three years, as adjusted by the Department pursuant to Government Code Section 14837(d)(2), or is an manufacturer, as defined in Government Code Section 14837, with 25 or fewer employees.
- r. **Net bid price** means the verified price of a bid, after all adjustments described in the solicitation have been made.
- s. **Non-Profit Corporation** means, for purposes of the Prompt Payment Act, California Government Code Section 927 et seq, a duly authorized non-profit corporation.
- t. **Non-small business** means a responsible bidder that is not certified as a small business.
- u. **Principal office** means where the business is headquartered and conducts the management and operations of the business.
- v. **Responsive bid** means a bid that clearly substantiates compliance without material deviation with all specifications, requirements, and the terms and conditions of the solicitation.
- w. **Small business** means a business that meets the eligibility requirements contained herein, that has been certified by the Department as a small business. For the purposes of these regulations, whenever the term small business is used, it means certified small business and includes microbusinesses.
- x. **Solicitation** means the notification to prospective bidders that an awarding department wishes to receive bids for furnishing goods, services, information technology, or construction.

**Note:**

Authority cited: Section 14837 and 14843, Government Code.

Reference: Section 927, 927.2, 11370.2, 11602 and 14837, Government Code; Section 999, Military and Veterans Code.

Top of Page**Article 2. Small Business Preference****Section 1896.6. Application of the Small Business and Non-Small Business Subcontractor Preferences**

- a. Small businesses will be granted the five percent (5%) small business preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced, responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in Section 1896.8, and when the small business:
  1. Has included in its bid a notification to the awarding department that it is a small business or that it has submitted to the Department a complete application pursuant to Section 1896.14 no later than 5:00 p.m. on the bid due date, and is subsequently certified by the Department as a small business; and
  2. Has submitted a timely, responsive bid; and
  3. Is determined to be a responsible bidder.
- b. Non-small business bidders will be granted a five percent (5%) non-small business subcontractor preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in Section 1896.8, and when the non-small business bidder:
  1. Has included in its bid a notification to the awarding department that it commits to subcontract at least twenty-five percent (25%) of its net bid price with one or more small business(es); and
  2. Has submitted a timely, responsive bid; and
  3. Is determined to be a responsible bidder; and
  4. Submits a list of the small business(es) it commits to subcontract with for a commercially useful function in the performance of the contract. The list of subcontractors shall include their name, address, phone number, a description of the work to be performed, and the dollar amount or percentage (as specified in the solicitation) per subcontractor.

**Note:**

Authority cited: Section 14837 and 14843, Government Code.

Reference: Section 14837 and 14838, Government Code.

**Section 1896.8. Computing the Small Business and the Non-Small Business Subcontractor Preferences**



Grinding - Corrective Grinding - Grooving - Profilograph

# Proposal

3-17-2015

TO: Knife River  
RE: Cal Trans Contract Number: 03-OG2604

*Handwritten marks: two asterisks*

<del>◆</del>	<del>Bid Item 8</del>	<del>Remove Asphalt Concrete Dike</del>	<del>2,040 LF</del>	<del>\$3.25 LF</del>	<del>\$ 6,630.00</del>
◆	Bid Item 16	Prepaving Inertial Profiler	1 LS	\$4,000.00 LS	\$ 4,000.00
◆	Bid Item 17	Prepaving Grinding Day	7 EA	\$6,000.00 Per Day	\$ 42,000.00

*Grinder Tanker Profile*

Bid Item 16: This bid item is for two measurements of the work area. Pre grind and post grind. All testing is done with a Cal Trans Certified High Speed Inertial Profiler.

Bid Item 17: This bid item is based on a Diamond Grinder and Tanker *Profile every day After Grinding.*

Post Pava Pricing

◆	Inertial Profiler	1 Day	\$1,500.00 Per Day	\$ <del>2,000.00</del> - 1,500
◆	Smoothness Grinder	1 Day	\$6,800.00 Per Day	\$ 6,800.00
◆	Grinding Mobilization	1 Each	\$1,500.00	\$ 1,500.00

Special Conditions:

1. Western Grinding will only provide Inertial Profiling if Western Grinding is used for Pre Pave Grinding Day. Western Grinding will perform Pre Pave Grinding Day should contractor utilize other Inertial Profiler.
2. This proposal is based upon using a diamond grinding operation. Dump site is the responsibility of the contractor. Price is based on a dump site within 25 miles of work area. Beyond 25 miles will be charged at \$125.00 per hour.
3. Bid Item 8 is for the removal pickup and disposal of dike. Dump site is to be provided by the contractor. Material will be the consistency of normal grindings.
4. Water source is to be provided by contractor.
5. This proposals based on two mobilizations for Bid Item 16, one mobilization for Bid Item 17 and one mobilization for bid Item 8.
6. This proposal excludes traffic control.
7. Bonding of this project is available at an extra cost.

Thank you for the opportunity to quote corrective grinding/grooving to your company. Should you have any questions, please feel free to call me at 775-857-7075.

Sincerely,

**Eric Petersen**

Eric Petersen, President