

# GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

LOS ANGELES OFFICE  
1880 CENTURY PARK EAST  
12TH FLOOR  
LOS ANGELES, CA 90067-1621  
PHONE: (310) 552-3400  
FAX: (310) 552-0805  
WEBSITE: www.ggltsw.com

LAS VEGAS OFFICE  
7450 ARROYO CROSSING PARKWAY  
SUITE 270  
LAS VEGAS, NV 89113-4059  
PHONE: (702) 836-9800  
FAX: (702) 836-9802

REPLY TO LOS ANGELES OFFICE  
AUTHOR'S E-MAIL: SKORNBLATT@GGLTSW.COM  
FILE NO.: 1020.001

JOSEPH H. GIDEN  
WILLIAM D. LOCHER  
GLENN E. TURNER III  
GERALD A. GRIFFIN  
ANYA STANLEY  
THEODORE L. SENEY  
BARBARA A. GADBOIS  
RICHARD J. WITTBRODT  
RONALD S. SOFEN \*  
MICHAEL B. GEIBEL  
GARY E. SCALABRINI  
JOSE L. PADILLA, JR.  
STEVEN R. CUNEO, JR.  
MICHAEL F. WATNE  
MATTHEW L. GRODE \*  
MARION T. HACK  
CHRISTOPHER E. NG  
BRENDAN B. PENNEY  
RICHARD E. HASKIN \*  
PHILIP C. ZVONICEK

VICTOR F. LUKE  
JONATHAN B. WOLF  
JAMES I. MONTGOMERY, JR.  
NATHAN D. O'MALLEY  
ALEXIS M. MILLER  
LYNSEY M. EATON  
SETH W. EATON  
SARA H. KORNBLAYT  
JOHN H. CONRAO  
BRYAN M. GRAGG  
ERIC W. SPIESS  
LUKE N. EATON

OF COUNSEL  
ALFRED FADEL ▲

RETIRED PARTNER  
KENNETH C. GIBBS  
(Full-Time Neutral)

May 1, 2013

## VIA FACSIMILE, E-MAIL, AND U.S. MAIL

John C. McMillan, Deputy Division Chief  
Mulissa Smith, Contract Branch 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  
Fax: (916) 227-6282  
john.mcmillan@dot.ca.gov  
mulissa.smith@dot.ca.gov

Re: **Contract No. 03-4M5204**  
*Response of Truesdell Corp. to Bid Protest #2 of Western Structures*

Dear Mr. McMillan and Ms. Smith:

As you are aware, our office represents Truesdell Corporation of California, Inc. ("Truesdell"), the low bidder on California Department of Transportation ("Caltrans") Contract No. 03-4M5204 ("Contract"). On behalf of Truesdell, we submit this written response to the letters from Western Structures to Caltrans dated April 24, 2013, and April 26, 2013, in which Western Structures repeats its original protest of Truesdell's bid and presents a secondary meritless protest.

### A. Introduction

As noted in our first response letter, Truesdell has satisfied the DVBE requirement for this Contract. With respect to the second protest, Western Structures' *interpretation* is that Truesdell's description of the work to be performed by the DVBE does not sufficiently describe the part and location of the work the DVBE will perform. Not only is Truesdell's description adequate, but it also conforms to Caltrans-accepted industry practice. Moreover, even if the description is found to be slightly less illustrative than would be preferred, that is an immaterial deviation that can and should be waived by Caltrans. Both of Western Structures' protests must be denied and Caltrans should proceed with award of the Contract to Truesdell, the lowest responsive and responsive bidder.

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

May 1, 2013

Page 2

**B. Truesdell Has Satisfied the DVBE Participation Requirements**

Western Structures' April 24, 2013, letter does not present any new grounds or information regarding its original protest of Truesdell's bid. As stated in our original response, a copy of which is attached hereto as **Exhibit 1** for your reference, DVBE participation is established by a review of documentation of estimated and actual payments to DVBEs, not by the Bid Item List. Western Structures' continued protest on this basis lacks merit and should be rejected by Caltrans.

**C. The Description of Partial Bid Item Work by a DVBE is Sufficient and Consistent with Industry Practice and is a Waivable Immaterial Deviation**

Western Structures contends in its April 26, 2013, letter that Truesdell's bid should be deemed non-responsive because Truesdell's Certified DVBE Summary form does not indicate what part of Bid Item No. 4 (Traffic Control) will be performed by Titan DVBE. Western Structures complains that Truesdell's description does not describe the exact part or planned location of the work that Titan DVBE will perform, despite the facts that: (1) In the "Description of Work" column, Truesdell's form states that Titan DVBE will perform "Traffic Control System"; (2) Truesdell's Subcontractor List indicates that Titan DVBE will perform 11% of Bid Item No. 4; and (3) Caltrans-accepted industry practice is that no bidders identify the location of any DVBE-performed work (see Certified DVBE Summary forms from recently opened Caltrans bids, attached hereto as **Exhibit 2**). Truesdell's form therefore sufficiently indicates the description of work to be performed by Titan DVBE. Even if more detail would be preferred, such an insignificant variation is legally waivable by Caltrans.

Western Structures, however, is essentially arguing that this minor and inconsequential irregularity in the bid, which is routinely waived as a matter of course by Caltrans (see **Exhibit 2**), requires Caltrans to reject the bid as non-responsive. This is simply not the law in California. Given the complexity of construction projects and public bidding paperwork, there will inevitably be some variation between bids and bid documents. This raises questions of whether a variation is "material" or "immaterial" and whether variations may be waived by the awarding authority. California's courts have long held that "a public entity may waive inconsequential deviations from contract specifications in a public contract bid." *Ghilotti Constr. Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 900; see also, *MCM Constr., Inc. v. City & County of San Francisco* (1998) 66 Cal.App.4th 359.

The *Ghilotti* court explained that "[t]o be considered inconsequential, a deviation must neither give the bidder an unfair competitive advantage nor otherwise defeat the goals of insuring economy and preventing corruption in the public contracting process." *Ghilotti, supra*, 45 Cal.App.4th at 900. Explained another way, an "immaterial variation" is the failure of a bidder to meet a bid requirement that does not affect the bidder's commitment if it is awarded the contract, either because (1) the requirement is merely procedural and, in the particular case, the meaning of the bid is clear; (2) the requirement is substantive but it is satisfactorily met, although

## GIBBS GIDEN LOCHER TURNER SENET &amp; WITTBRODT LLP

May 1, 2013

Page 3

not in the precise manner contemplated by the bidding documents; or (3) the requirement not met is one calling for information that relates not to the performance of the obligation but to independently verifiable facts regarding the bidder's status. In short, an "immaterial variation" will not change the bidder's performance obligations as described in the bid documents and does not provide the bidder an unfair advantage over other bidders. *See, Konica Bus. Machs. U.S.A., Inc., v. Regents of Univ. of Cal.*, (1988) 206 Cal.App.3d 449.

In the *Menefee* case, a disappointed bidder challenged award to the apparent low bidder, contending that the bid was nonresponsive because one of the pages of the bid proposal sheet had not been signed. The Court permitted the public agency to waive the defect of the unexecuted page and upheld award of the contract to the low bidder. In reaching its decision, a primary consideration of the Court was whether the low bidder obtained an unfair advantage over other bidders by failing to sign a page of its bid. If the absence of a signature would allow the bidder to avoid entering the contract, the Court reasoned, then it would have the unfair advantage of deciding whether it wanted the contract after bid opening. The Court found, however, that the bidder was bound by the terms of its bid and could not have refused to enter into the contract based on the defect in its bid. Therefore, the public agency was permitted to waive this "immaterial" defect.

Here, Truesdell's Subcontractor List indicates that Titan DVBE will perform 11% of Bid Item No. 4, and Truesdell's Certified DVBE Summary contains a description of the work that will be performed by Titan DVBE, in compliance with the instructions on the form. If Caltrans was to determine that a more detailed description of the work would be preferable, such an insignificant deviation will not entitle Truesdell to seek relief from its bid under Public Contract Code section 5103, as this "mistake" was not one that made the bid materially different than intended and was not due to an error in judgment. *See, Menefee v. County of Fresno*, (1985) 163 Cal.App.3d 1175. The description of Titan DVBE's work on the Certified DVBE Summary form does not change Truesdell's performance obligations, does not give Truesdell an unfair competitive advantage, and does not relieve Truesdell from being bound by the terms of its bid. Therefore, if Caltrans determines that Truesdell's form does not comply with the instructions (although Truesdell contends it is in compliance), Caltrans can and should waive this immaterial defect.

D. **There is No Evidence that Alleged Irregularities in Truesdell's Bid are Material or Provide any Competitive Advantage**

Moreover, Western Structures has not even alleged, much less presented evidence, that *either* of the alleged irregularities in Truesdell's bid affected the amount of Truesdell's bid, gave Truesdell an advantage over other bidders, constituted a vehicle for favoritism, influence potential bidders to refrain from bidding, or affected the ability of Caltrans to make bid comparisons. *See, Ghilotti, supra*, 45 Cal.App.4th 897. The burden of proving that any non-waivable deviations or irregularities (if any) exist in Truesdell's bid falls squarely on Western

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

May 1, 2013

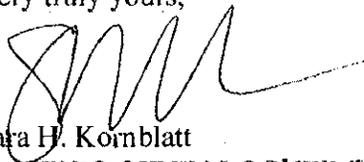
Page 4

Structures under applicable law. *Id.* at 907. Under California law, the analysis of whether or not to reject a bid must be based on actual, not hypothetical, considerations. *See, MCM Const., supra*, 66 Cal.App.4th 359. Furthermore, they must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder. *Ghilotti, supra*, 45 Cal.App.4th at 908. Accordingly, Western Structures has utterly failed to meet its burden of proof with respect to its protests of Truesdell's bid.

Western Structures' attempts to have Truesdell's bid rejected on extremely minor technicalities must be denied. It is "well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential." *Ghilotti, supra*, 45 Cal.App.4th at 904. The only thing that would be accomplished by rejecting Truesdell's bid would be to increase the cost of the Contract by more than \$128,500; such waste should not be tolerated.

For the reasons set forth herein, both of Western Structures' protests lack any merit and must be rejected by Caltrans. We therefore request that Caltrans proceed with award of the Contract to Truesdell, the lowest responsive and responsible bidder.

Very truly yours,



Sara H. Kornblatt  
for GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

Enclosures

cc: Wolfgang Delgado Sr., Western Structures (via fax only: (951) 352-4301)  
Kurt L. Clink, President, Truesdell Corporation of California, Inc. (via email only)

EXHIBIT 1

# GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

LOS ANGELES OFFICE  
1880 CENTURY PARK EAST  
12TH FLOOR  
LOS ANGELES, CA 90067-1621  
PHONE: (310) 552-3400  
FAX: (310) 552-0805  
WEBSITE: www.ggltsw.com

LAS VEGAS OFFICE  
7450 ARROYO CROSSING PARKWAY  
SUITE 270  
LAS VEGAS, NV 89113-4059  
PHONE: (702) 836-9800  
FAX: (702) 836-9802

REPLY TO LOS ANGELES OFFICE

AUTHOR'S E-MAIL: SKORNBLATT@GGLTSW.COM

FILE NO.: 1820.001

JOSEPH M. GIDEN  
WILLIAM D. LOCHER  
GLENN E. TURNER III  
GERALD A. GRIFFIN  
ANYA STANLEY  
THEODORE L. SENEI  
BARBARA K. GADBOIS  
RICHARD J. WITTBRODT  
RONALD S. SOLEN  
MICHAEL B. GEIDEL  
GARY C. SCALABRINI  
JOSE L. PADILLA, JR.  
STEVEN R. CUNEO, JR.  
MICHAEL I. WAYNE  
MATTHEW L. GRODE  
MARION T. HACK  
CHRISTOPHER E. NG  
BRENDAN S. PENNEY  
RICHARD E. HASKIN  
PHILIP C. ZYONICEK

VICTOR F. LUKC  
JONATHAN B. WOLF  
JAMES I. MONTGOMERY, JR.  
NATHAN D. O'MALLEY  
ALEXIS M. MILLER  
LYNSEY M. EATON  
SETH W. EATON  
SARA H. KORNBLETT  
JOHN H. CONRAD  
BRYAN M. CRAGG  
ERIC W. SPIESS  
LUKE N. EATON

OF COUNSEL  
ALFRED LADEL A.

REFUSED PARTNER  
KENNETH C. G. 885  
(Full-Time Neutral)

April 26, 2013

## VIA FACSIMILE, E-MAIL, AND U.S. MAIL

John C. McMillan, Deputy Division Chief  
Mulissa Smith, Contract Branch 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  
Fax: (916) 227-6282  
john.mcmillan@dot.ca.gov  
mulissa.smith@dot.ca.gov

Re: **Contract No. 03-4M5204**  
*Response of Truesdell Corp. to Bid Protest of Western Structures*

Dear Mr. McMillan and Ms. Smith:

Our office represents Truesdell Corporation of California, Inc. ("Truesdell"), the low bidder on California Department of Transportation ("Caltrans") Contract No. 03-4M5204 ("Contract"). On behalf of Truesdell, we submit this written response to your letter dated April 24, 2013, and the letter from Western Structures to Caltrans dated April 12, 2013, in which Western Structures erroneously protests Truesdell's bid. Truesdell has satisfied the DVBE requirement for this Contract; as such, Western Structures' protest must be denied and Caltrans should proceed with award of the Contract to Truesdell, the lowest responsive and responsive bidder.

Western Structures appears to argue that because Truesdell's Bid Item List set forth an Item Total for Bid Item No. 10 (Public Safety Plan) of \$5,000, then Truesdell cannot get \$16,175 credit for the full amount of the expected costs related to that same Bid Item with respect to reaching the Contract's 3% DVBE participation goal. Western Structures is simply mistaken.

DVBE participation is measured as the percentage of the total contract amount for which the prime contractor subcontracts with DVBEs. The DVBE goal is therefore attained when the bidder commits to use DVBEs for not less than 3% of the contract dollar amount. To that end,

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

April 26, 2013  
Page 2

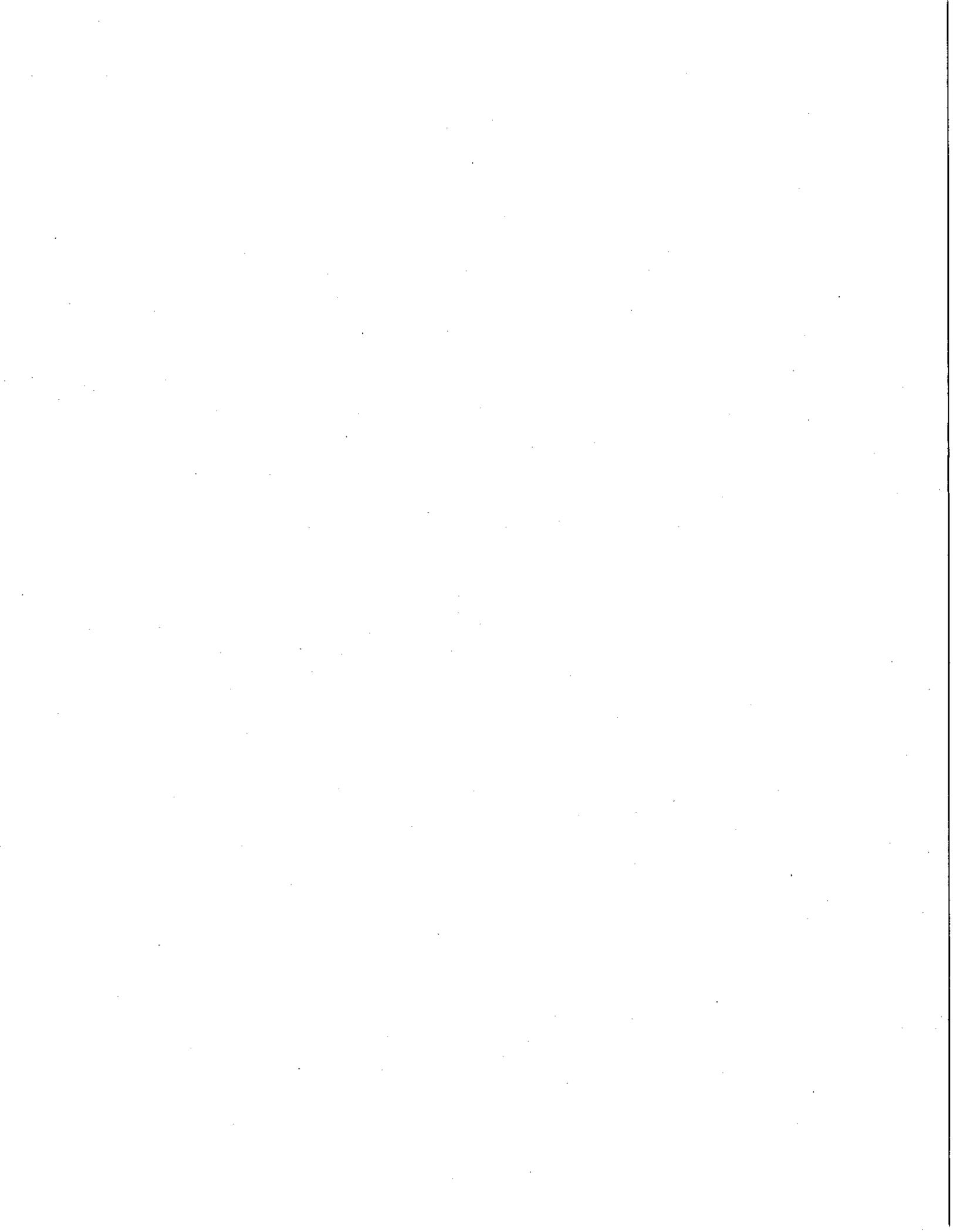
DVBE utilization is calculated and tracked by looking at payments to the DVBE by the prime contractor, not Bid Item List amounts. Caltrans form CEM-2402S "Final Report - Utilization of Disabled Veteran Enterprises (DVBE) State Funded Projects Only" requires the prime contractor to identify the amounts paid to each DVBE on a particular Caltrans contract.

Notwithstanding the fact that Truesdell bid \$5,000 for Bid Item No. 10, Truesdell has committed to and will in fact subcontract with and pay Global Environmental Network, Inc. ("GENI") \$16,175 for performance of that Bid Item. Attached hereto as **Exhibit A** is a copy of GENI's bid to Truesdell, which shows a total bid price of \$16,175 for Bid Item No. 10. To only give \$5,000 credit to Truesdell would not only be in contravention of the procedures used to measure DVBE participation, but it would also do a complete disservice to the DVBE program because it would result in an inaccurately low report to the State of California regarding the true amount of DVBE participation. By subcontracting with and paying GENI \$16,175, Truesdell's total DVBE participation is \$65,273, or 3.02%; Truesdell has therefore met the Contract goal of 3% DVBE participation and its bid is in fact responsive.

Bidders complete their Bid Item Lists in an effort to be the low bidder and not lose money on the project. If DVBE participation was calculated by examining the Bid Item List instead of actual payments to the DVBE, any bidder could inflate the Bid Item amounts for Items being performed by DVBEs in order to reach the goal, even though the bidder would actually subcontract with and pay the DVBE less than the amount on the Bid Item List. **For this reason, the State has insisted on documentation of the estimated and actual payments made to DVBE vendors, and the State uses said documentation to determine DVBE participation, not the Bid Item List amount.** Conversely, using the Bid Item List amount would render the DVBE Final Report meaningless and there would be no manner in which to determine actual DVBE participation, which is the intent of the program. This succinctly demonstrates why Western Structures' argument is illogical. What actually matters here is the amount that will be paid to the DVBE, not the Bid Item List amount.

Moreover, a determination that Truesdell's bid is non-responsive could result in the award of the Contract to Western Structures at a price more than \$128,500 greater than Truesdell's bid. California's competitive bidding laws exist to protect against the waste of public funds and to obtain the best economic result for the public. See, *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631. As one California Court has stated:

It would certainly be a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, and cancel the low bid on a minor technicality, with the hope of securing acceptance of its higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.



## GIBBS GIDEN LOCHER TURNER SENET &amp; WITTBRODT LLP

April 26, 2013  
Page 3

*MCM Construction v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 370. This is exactly what Western Structures is, improperly, trying to accomplish. Clearly Western Structures hopes that by raising the specter of alleged defects in Truesdell's bid, Caltrans will award Western Structures the Contract at a price more than \$128,500.00 higher than Truesdell's bid. The waste of this, or any, amount of taxpayer funds should not be allowed, particularly in this situation, where the low bidder is in fact responsive, responsible, and ready to perform.

For the reasons set forth herein, Western Structures' protest lacks any merit and must be rejected by Caltrans. We therefore request that Caltrans proceed with award of the Contract to Truesdell.

Very truly yours,



Sara H. Kornblatt  
for GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

Enclosure

cc: Wolfgang Delgado Sr., Western Structures (via fax only: (951) 352-4301)  
Kurt L. Clink, President, Truesdell Corporation of California, Inc. (via email only)

EXHIBIT A

?xml xmlns:v="urn:schemas-microsoft-com:vml" xmlns:o="urn:schemas-microsoft-com:office:office" xmlns:w="urn:schemas-microsoft-com:office:word" xmlns:m="http://schemas.microsoft.com/office/2004/12/omml" xmlns="http://www.w3.org/TR/REC-html40">

**FAXTRANSMISSION**



Global Environmental Network, Inc.  
Santa Ana / Oakland / South Pacific (Guam)  
Tel: 900-230-8944 Fax: 714-479-1189

To: (Tempe)  
From: Global Environmental Network, Inc.  
Subject: 03-SAC-80, 99, 160-VAR; REHABILITATE 13 BRIDGE DECKS

Message: CA DVBE / SBE No. 24765 DVBE / Est. \$2.35M  
GENI Ref. No. 03-4M5204 Bid Date: 4/3/2013  
March 26, 2013 Duration: 230 Working Days  
SUBJECT: CA DVBE / SBE QUOTATION - CALTRANS # 03-4M5204  
03-SAC-80, 99, 160-VAR; REHABILITATE 13 BRIDGE DECKS

**ATTEND OUR TRAINING COURSES AND PAY FOR THEM WITH YOUR DVBE CREDIT**

**Asbestos - Lead - HAZWOPER - Confined Space - Scaffolding - Trench**  
**Oakland and Anaheim**

**NEED A WPC MANAGER FOR YOUR PROJECT? SEE OUR OFFER IN THIS BID!**

**SWPPP Courses - Learn how to fill out your forms**

**CESSWI Review Course and Exam**

***Sign-up Now for the CESSWI Revi***  
***Anaheim / Oakland CA - Priced to fill up quickly***

CESSWI Review \$250 / CESSWI Exam \$75  
CESSWI Review and Exam together is a \$10 discount so t

Contact the Training Department at 714-479-1119

**Online Registration > <http://www>**

Item # 1  
1 LS = 785.00  
Item # 7  
1 LS = 825.00  
Item # 10  
1 LS = 4175.00  
8 x 975 = 7800.00  
9 x 525 = 4200.00  

---

Total 17,785.00



# GLOBAL ENVIRONMENTAL NETWORK, INC.

## ENVIRONMENTAL, SAFETY & CONSTRUCTION ENGINEERING SERVICES

Main Office: Box 8068, Fountain Valley, CA 92728-8068

Additional Locations: Oakland / Fresno / Santa Cruz / Santa Maria / Santa Ana / Bakersfield

www.My-DVBE.com

License No. 878478 - A / Haz

Phone: 800-230-6944

email: GENI@SafetyGeni.com

Fax: 714-479-0809

CA DVBE / SBE No. 24765

DVBE / Est. \$2.35M

GENI Ref. No. 03-4M5204

Bid Date: 4/3/2013

March 26, 2013

Duration: 230 Working Days

**SUBJECT: CA DVBE / SBE QUOTATION - CALTRANS # 03-4M5204**

**03-SAC-80, 99, 160-VAR; REHABILITATE 13 BRIDGE DECKS**

**\*\*\* Acceptance of This Bid is good for 30 Days from Bid Date. \*\*\***

**Item 1 > Lead Compliance Plan (LCP) for Residue Containing Lead from Paints & Thermoplastics (RCLPT) and Traffic Stripe Removal / Pavement Markings (TSR/PM)<sup>1,3,5,7</sup>**

Options:

- |  |            |
|--|------------|
| 1) Lead Plan only (Certified by CIH); or                       | \$785.00   |
| 2) Lead Plan (Certified by CIH) and Awareness Training; or     | \$1,435.00 |
| 3) Lump Sum (plan, training, air monitoring, analysis, report) | \$2,785.00 |

**Item 4 > Traffic Control System (partial)**

> Arrow Boards<sup>1,2,3,4</sup>

4 Weeks Rate (each unit) \$575.00\*

7 Days Rate (each unit) \$245.00\*

Purchase: Used Arrow boards starting at \$3,000K (max of 2 at this rate)

**Item 5 > Portable Changeable Message Signs (partial)<sup>1,2,3,4</sup>**

4 Weeks Rate (each unit) \$1,275.00\*

7 Days Rate (each unit) \$575.00\*

\* Equipment delivery or pick-up rates

Purchase of Used PCMS boards starting at \$6,775 - \$8,200 (3 at these rates)

Pick up or drop off by customer at GENI's Facility:

**Item 6 > Job Site Management (partial - Training Services)<sup>1,3,6,7</sup>**

Lump Sum \$185.00

JSM Package - Option 1

This Job Site Management package includes a project specific JSM binder that an experienced Water Pollution Control Manager can use to assist them in meeting the project's **Job Site BMP training / Management** requirements.

OR

Lump Sum \$1,935.00

JSM Package - Option 2

**Instructor led, On-Site BMP Awareness training course**, a "Train the Trainer" course and a "Training CD" for your future training requirements. The JSM package includes a project specific JSM binder with a full colored Employee Training section. Five student manuals are also included in this package for the required training

**SAFETY COURSES OFFERED BY SafetyGENI™**

Crane Training  
CCO Written Exams  
CCO Practical Exams

Traffic Control Coning & Flagging Awareness

Safety Orientation for Construction

Scaffold Safety Awareness

Fall Protection Awareness

Trench Safety Competent Person Awareness

Trench Rescue

Confined Space

Confined Space Rescue

Urban Search & Rescue

Respirator Training & Fit Testing

CPR & First Aid

Crane Operator Awareness

Forklift Training Awareness

Aerial Lift Awareness

Hearing Conservation Training

DOT HM 126P/181 Awareness

Emergency Response Awareness / Refresher  
Operational Technician Specialist

HAZWOPER Awareness / Refresher  
Supervisor Waste Site Worker

Household Hazardous Waste

Asbestos Training

Lead Training

24 Hr SWPPP Training

GENI - PROPOSAL  
PROJECT #: 03-4M5204  
PAGE 2 OF 5

**Item 7 > Prepare Water Pollution Control Program (WPCP)** <sup>1,3,6,7</sup>

Lump Sum (Est 10 Engineering Drawings)	
Option 1 A - <i>Plan Written by a QSP</i>	\$525.00
Pricing is when GENI is hired as the WPCM conducting inspections See Additional WPCM services below:	
Option 1 B - <i>Plan Written by a QSP</i> and GENI is not the WPCM	\$825.00

Additional WPCP Services: as low as \$180.00/wk. see below

> **Water Pollution Control Manager (WPCM):**

GENI can be your WPCM for this project - Option 1 A plus Set up fee \$275 plus: QSP field work. For bidding purposes only estimate at bi-weekly rate of \$360.00. Rate of \$360.00 will be invoiced at the onset, end and bi-weekly (*every other week*) during the project. Pricing includes up to two hours of inspection training. Pricing also includes weather forecast log with Pre/During/Post to be invoiced an additional cost of \$295.00/day if the contractor is unable or to perform this required function.

**NOTE:** For assistance with WPCM requirements; contact Marshall at 1-800-230-6944

**Item 10 > Public Safety Plan (PSP) / Airborne Emissions Monitoring Plan (AEMP) for Polyester Concrete (PCC) & High Molecular Weight Methacrylate (HMWM) (Partial)** <sup>1,3,5,7</sup>

Airborne Emissions Monitoring Plan	\$875.00
Lump Sum (package)	\$4,175.00 <sup>#</sup>
This estimate includes mobilization, 1 bridge needing one direction air monitoring for PCC and HMWM treatment and 0 weekends (non-consecutive days) an Airborne Emissions Monitoring Plan, pumps, test media, lab analysis and final report.	

See notes below to develop your own estimates

Additional work:

Airborne Emissions Monitoring Plan	\$875.00
Each additional evening (8 hours or less)	\$975.00
Each additional test for HMWM (includes pumps & 5 samples)	\$525.00
Each additional test for Polyester Concrete (includes pumps & 5 samples)	\$525.00
Each additional mobilization	\$1,675.00 <sup>#</sup>
Note: Estimates are for bidding purposes only. The actual pricing may change upon requirements of RE or contractor	
Each additional lab report	\$775.00
(May be required if time between mobilization require a separate report)	

<sup>#</sup> Pricing is with 1 wks written notice confirming date and time of required field work. Less than 1 week notice may increase the price of mobilization to increase by up to \$350.00 per mobilization / false starts.

GENI - PROPOSAL  
PROJECT #: 03-4MS204  
PAGE 3 OF 5



## GLOBAL ENVIRONMENTAL NETWORK, INC.

---

### YOUR ENVIRONMENTAL ENGINEERING PARTNER

Professional Engineers, Civil Engineers, Certified Industrial Hygienists (CIH)  
Certified Professional Geologists (PG), Certified Asbestos Consultants (CAC)  
CPESCs QSDs QSPs and More

---

#### ◆ AIR MONITORING & SOIL SAMPLING

Our CIHs & Field Technicians are experienced with CalTrans & Federal Heavy Construction, Road Excavation, Bridge Demolition & Refurbishment. With a Strong Team of Industrial Hygienists state-wide, Call us for your current and future projects!

---

#### ◆ CERTIFIED ASBESTOS CONSULTANTS

With over 25 years as a Benchmark Leader in Accredited Asbestos Training & Asbestos CAC Consulting, GENI's large team of expert CACs are here to serve your project needs statewide.

---

#### ◆ PLAN DEVELOPMENT

GENI's experts excel in developing a large variety of plans and procedures. Plans range from Lead, Arsenic, PCB and Asbestos Plans to Excavation and Transportation plans, NOA, and Dust plans as well as more comprehensive plans such as air quality Nox, noise monitoring, hazardous waste disposal, and more. *Call on the Experts!*

[www.SafetyGENI.com](http://www.SafetyGENI.com)

| Phone: 800-230-6944

| Fax: 714-479-0809

GENI - PROPOSAL  
PROJECT #: 03-4MS204  
PAGE 4 OF 5

**SUPERSCRIPT NOTES**

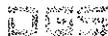
1. GENI carries the following insurance: \$2,000,000 General Liability / Pollution, \$1,000,000 Auto / Workman's Compensation insurance and an umbrella of \$2 Million over GL/Auto/WC.
  - A one time fifty dollar (\$50.00) processing fee will be added to all contracts requiring insurance endorsements for General Liability, Workman's Comp and / or Auto Insurance.
  - Insurance endorsements requiring CG2010#### or similar insurance and Primary wording will be charged an additional Two Hundred Seventy Five Dollar (\$275.00) processing fee.
2. Lease / Rentals: All items property of GENI and its Subcontractors; Sign installation excludes any cutting or coring of asphalt; Prices based on quantities noted. Customer is responsible for all vandalized, damaged or loss of equipment and completion of our indemnification agreement form. GENI shall be named as an additional insured and loss payee under the end users insurance policy. All construction area sign bids include installation and removal of signs only when noted on our bid line item.
3. Caltrans allocation of DVBE Credit 100%. Credit for participation of a DVBE subcontractor, supplier, or broker will be 100 percent provided such DVBE is performing a commercially useful function.
5. **Option 1:** Lead Compliance Plan certified by a CIH. **Option 2:** Includes option 1 and 2 hr. lead training for up to 10 personnel. **Option 3:** includes options 1 & 2 and air monitoring on same day as training, laboratory testing for up to eight 8 hour TWA samples (48 hr turn-around if required); Report Preparation by the CIH.  
**Additional Work:** Air Monitoring for heavy metals (CI Technician @ \$75.00/Hr, CIH @ \$145.00/Hr both requiring 8 consecutive hrs min), Laboratory Analysis (at cost plus 20%); Price includes one move-in and rental of equipment. Additional move-in will be charged at \$720.00 plus hourly personnel and equipment rates. Call for published rate sheet.
6. Price includes submittal of Three (3) copies of the Final WPCP delivered via FedEx ground. **NOTE:** GENI does not provide draft copies of its WPCP. Occasionally corrections and or additions will be necessary due to a multitude of reasons, upon the contractor becoming aware of any potential or required correction they are to provide a written request to GENI for our review and plan update if necessary. Corrections / additions to the plan due to errors or omissions on behalf of the contractor or the Agency may be billed to the contractor as time and material as noted below as T&M. Engineernd designs required by a registered Civil Engineer are not part of this contract. This bid does not include any associated filing fees or the design / layout of dewatering, recycling or batch plant BMP systems / drawings.  
 Maintenance of SWPPP billing rates will be billed as Time & Material (T&M). T&M will be billed at a standard rate of \$92.50/hour for non-Civil Engineering services and \$145.00 / hour for Registered Civil Engineering services with all services being billed in 1/2 hour increments. Additional manuals billed at \$65.00 for the initial manual and \$50.00 for each consecutively assembled manual. Material / additional expenditures will be billed at cost plus \$50.00 or cost plus 20 percent which ever is greater.
7. Unless specifically stated in this bid proposal the customer will pay for all additional shipping charges at cost plus a 15% handling fee.
8. (3) week minimum, GENI does not hold a C-31 License and cannot place equipment on site. Delivery / pick-up are not included in base price. When contracted to deliver or pick up equipment it is to be delivered / picked up at contractor's facility or project yard. Rental is time out, not time used. Delivery times cannot be guaranteed. ALL LEASES ARE SUBJECT TO AVAILABILITY. Prices are for this project only. Regular pricing will be \$1,375.00 (CMS) and \$585.00 (Arrow board) per month for each piece of rental equipment if the minimum weeks are not met or exceeded.
9. Unless otherwise noted price does not include Sales Tax or F.O.B. costs if applicable.
10. Please contact GENI to set up an account with our firm to lease or purchase items off our web site or listed within this bid. Accounts are due and payable within 30 days of purchase. Interest charged at the rate of 1.65% per month.

Should you have any questions about the quotation please contact the undersigned,

**Christopher Hann**  
Christopher Hann  
Apprentice Estimator

GENI - PROPOSAL  
PROJECT #: 03-4M5204  
PAGE 5 OF 5

### GENI – PROPOSAL PROJECT NUMBER 03-4M5204



Feb 1, 2013

SB / DVBE APP

Supplier #24765  
GLOBAL ENVIRONMENTAL NETWORK INC  
P O BOX 8068  
FOUNTAIN VALLEY CA 92728-8068

Dear Business Person:

Congratulations on your Small Business / Disabled Veteran Business Enterprise (DVBE) certification with the State of California. Your business is now entitled to compete in the State's goal to spend three percent of its annual contracting dollars with SB / DVBE businesses. For more information or to verify certification status, visit [www.e-procure.dgs.ca.gov](http://www.e-procure.dgs.ca.gov)

**Certification Period**

From Jan 28, 2013 to Feb 28, 2014

**Business Types**

- Construction
- Service
- Non-Manufacturer

**Classifications**

- |   |  |
|---|--|
| 321518 - Safety control devices                             | 771017 - Environmental advisory services                         |
| 411126 - Hygiene monitoring and testing equipment           | 771018 - Environmental auditing                                  |
| 422715 - Respiratory monitoring products                    | 771115 - Environmental safety services                           |
| 423015 - Aids for medical training                          | 771215 - Air pollution   |
| 432325 - Educational or reference software                  | 771216 - Soil pollution  |
| 461615 - Traffic control                                    | 771217 - Water pollution   |
| 461616 - Water safety                                       | 771315 - Oil pollution   |
| 461815 - Safety apparel                                     | 771316 - Noise pollution   |
| 461816 - Safety footwear                                    | 771317 - Toxic substances pollution                              |
| 461817 - Face and head protection                           | 801015 - Business and corporate management consultation services |
| 461823 - Fall protection and rescue equipment               | 801115 - Human resource development                              |
| 461824 - Decontamination aids and safety cleaning equipment | 801116 - Temporary personnel services                            |
| 551217 - Signage  | 811015 - Civil engineering                                       |
| 721517 - Safety and security system installation services   | 811022 - Transportation engineering                              |
| 771025 - Environmental impact assessment                    | 861018 - In service training and manpower development            |
| 771016 - Environmental planning                             |  |

**Proof of Certification Status**

To verify your firm's small business certification status go to <http://www.e-procure.dgs.ca.gov/default.htm> and select "SB/DVBE Search."

Sincerely,

Office of Small Business and DVBE Services

PROCUREMENT DIVISION - Small Business & DVBE Services | State of California | State Consumer Services Agency  
707 3rd Street, 1st Floor, Room 400 | West Sacramento, CA 95605 | t 916.375.4940 f 916.375.4950

EXHIBIT 2

2nd low bidder

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**CERTIFIED DVBE SUMMARY**  
 DES-OE-0102.5 (REV 3/2008)

# Low Bidder

DISTRICT-COUNTY-ROUTE: 01 - Humboldt 211  
 CONTRACT NO.: 01-OB8604  
 TOTAL BID: \$211,988-  
 BID OPENING DATE: 4/17/13  
 BIDDER'S NAME: V & C Construction, Inc.  
 DVBE PRIME CONTRACTOR CERTIFICATION <sup>1</sup> \_\_\_\_\_

0-17-1000101 2008

Bid Item Number	Description of Work to Be Subcontracted to DVBE or Materials to Be Supplied by DVBE <sup>2</sup>	For Caltrans Only	DVBE (Name, Telephone No., and Certification No.)	\$ Amount
#1, #6, #7	Lead Compliance Plan Site Management Plan Water Pollution Control Plan		ESWPP Consultants (925) 451-1337 #35275	\$1939-
Names of first tier DVBE subcontractors and their items of work listed must be consistent with the names and items of work in the Subcontractor List (Pub Cont Code § 4100 et seq.) submitted with the bid. Identify second and lower tier subcontractors on this form.				Total Claimed Participation \$ <u>1,939-</u> <u>.91</u> %

1. DVBE prime contractors must enter their DVBE reference number or their DBA name as listed with Department of General Services (DVBE prime contractors are credited with 100 percent DVBE participation and need not complete the above table).  
 2. If 100% of an item is not performed or supplied by the DVBEs, describe the exact part, including the planned location of work to be performed, of item to be performed or supplied by DVBE.

Submit to:

MSC 43  
 OFFICE ENGINEER  
 DEPARTMENT OF TRANSPORTATION  
 1727 30TH STREET  
 SACRAMENTO, CA 95816-7005

Ray VanWinkle 4/15/13  
 Signature of Bidder Date

775-267-1967  
 (Area Code) Telephone Number

Ray VanWinkle  
 Contact Person (Type or Print)

**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3680 or write Records and Forms Management, 1120 N Street, MS-69, Sacramento, CA 95814.

# Low Bidder

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**CERTIFIED DVBE SUMMARY**  
 DES-0E-0102.5 (REV 3/2008)

DISTRICT-COUNTY-ROUTE: 03 Yol, Sut. 45, 80, 113  
 CONTRACT NO.: 03-4M4904  
 TOTAL BID: \$1,472,540.04  
 BID OPENING DATE: Apr. 17, 2013  
 BIDDER'S NAME: J. McLoughlin Engineering Co., Inc.  
 DVBE PRIME CONTRACTOR CERTIFICATION: NA

04-19-13A11:55 RCVD

Bid Item Number	Description of Work to Be Subcontracted to DVBE or Materials to Be Supplied by DVBE <sup>1</sup>	For Caltrans Only	DVBE (Name, Telephone No., and Certification No.)	\$ Amount
4	Traffic Control		Caroline Traffic Control, Inc. (619)434-9200 #1259580	\$ 40,250.00
7, 10	WPCP and Public Safety Plan		Global Environmental Network, Inc. (714)479-1199 #24765	\$ 6,195.00
Names of first tier DVBE subcontractors and their items of work listed must be consistent with the names and items of work in the Subcontractor List (Pub Cont Code § 4100 et seq.) submitted with the bid. Identify second and lower tier subcontractors on this form.				Total Claimed Participation \$ <u>46,445.00</u> <u>3.15</u> %

1. DVBE prime contractors must enter their DVBE reference number or their DSA name as listed with Department of General Services (DVBE prime contractors are credited with 100 percent DVBE participation and need not complete this above table).

2. If 100% of an item is not performed or supplied by the DVBEs, describe the exact part, including the planned location of work to be performed, of item to be performed or supplied by DVBE.

Submit to:

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

*Chibeze Emuh* 4-18-13  
 Signature of Bidder Date

(909) 944-1037

(Area Code) Telephone Number

Chibeze Emuh

Contact Person (Type or Print)

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-99, Sacramento, CA 95814.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**CERTIFIED DVBE SUMMARY**  
 DES-OE-0102.5 (REV 3/2008)

# Low Bidder

DISTRICT-COUNTY-ROUTE: 06 . Ker, Kin 5, 14, 58, 202, 204  
 CONTRACT NO.: 06-0M6204  
 TOTAL BID: \$1,943,320.70  
 BID OPENING DATE: Apr. 17, 2013  
 BIDDER'S NAME: J. McLoughlin Engineering Co., Inc.  
 DVBE PRIME CONTRACTOR CERTIFICATION: NA

04-19-13A11:56 RCVD

Bid Item Number	Description of Work to Be Subcontracted to DVBE or Materials to Be Supplied by DVBE <sup>1</sup>	For Caltrans Only	DVBE (Name, Telephone No., and Certification No.)	\$ Amount
1, 3, 9, 11 36-40	Stripe		Safety Striping Service, Inc. (559) 651-1022 #14354	\$ 67,514.00
Names of first tier DVBE subcontractors and their items of work listed must be consistent with the names and items of work in the Subcontractor List (Pub Cont Code § 4100 et seq.) submitted with the bid. Identify second and lower tier subcontractors on this form.				Total Claimed Participation \$ <u>67,514.00</u> _____ 3.5 %

1. DVBE prime contractors must enter their DVBE reference number or their DSA name as listed with Department of General Services (DVBE prime contractors are credited with 100 percent DVBE participation and need not complete the above table).  
 2. If 100% of an item is not performed or supplied by the DVBEs, describe the exact part, including the planned location of work to be performed, of item to be performed or supplied by DVBE.

*Chibeze Emuh* 4-18-13  
 Signature of Bidder Date

(909) 944-1037  
 (Area Code) Telephone Number

Submit to:  
 MSC 43  
 OFFICE ENGINEER  
 DEPARTMENT OF TRANSPORTATION  
 1727 30TH STREET  
 SACRAMENTO, CA 95816-7005

Chibeze Emuh  
 Contact Person (Type or Print)

**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-0418 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

LOW BIDDER

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**CERTIFIED DVBE SUMMARY**  
 DES-OE-0102.5 (REV 3/2008)

# Low Bidder

DISTRICT-COUNTY-ROUTE: 03 - Gle - 162-67 2/76.3, 71.3/84.6  
 CONTRACT NO.: 03-4M5504  
 TOTAL BID: 1,524,932.50  
 BID OPENING DATE: 4/16/13  
 BIDDER'S NAME: Kaife River Construction  
 DVBE PRIME CONTRACTOR CERTIFICATION: N/A

Bid Item Number	Description of Work to Be Subcontracted to DVBE or Materials to Be Supplied by DVBE <sup>2</sup>	For Caltrans Only	DVBE (Name, Telephone No., and Certification No.)	\$ Amount
3 Partial 4	Traffic Control Message Boards		Titan DVBE 530-246-7836 # 1249460	\$ 60,775.00
1, 6	Lead Plan & WPCP		Global Environmental 1-800-230-6144 # 24756	\$ 1,470.00

Names of first tier DVBE subcontractors and their items of work listed must be consistent with the names and items of work in the Subcontractor List (Pub Cont Code § 4100 et seq.) submitted with the bid. Identify second and lower tier subcontractors on this form.

Total Claimed Participation 62,245.00  
~~\$ 60,775.00~~  
4.08 %

- DVBE prime contractors must enter their DVBE reference number or their DBA name as listed with Department of General Services (DVBE prime contractors are credited with 100 percent DVBE participation and need not complete the above table).
- If 100% of an item is not performed or supplied by the DVBEs, describe the exact part, including the planned location of work to be performed, or item to be performed or supplied by DVBE.

  
 Signature of Bidder 4/17/13  
 Date

Submit to:

MSC 43  
 OFFICE ENGINEER  
 DEPARTMENT OF TRANSPORTATION  
 1727 30TH STREET  
 SACRAMENTO, CA 95816-7005

530-891-6555  
 (Area Code) Telephone Number

Jared Springer  
 Contact Person (Type or Print)

**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 854-8410 or TDD (916) 854-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

LOW BIDDER

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**CERTIFIED DVBE SUMMARY**  
 DES-OE-0102.5 (REV 3/2008)

# Low Bidder

DISTRICT-COUNTY-ROUTE: 11 SD 9,52,94,125,805  
 CONTRACT NO.: 11-2M5204  
 TOTAL BID: 454,240.35  
 BID OPENING DATE: 4/11/13  
 BIDDER'S NAME: Peterson-Chase General Engineering Construction, Inc.  
 DVBE PRIME CONTRACTOR CERTIFICATION: \_\_\_\_\_

Bid Item Number	Description of Work to Be Subcontracted to DVBE or Materials to Be Supplied by DVBE <sup>2</sup>	For Caltrans Only	DVBE (Name, Telephone No., and Certification No.)	\$ Amount
1,2,3,4, CS	FURNISH PSP, WPCP, LCP, CONST SIGNS, ARROW BOARDS, C.M.S		GLOBAL ENVIRONMENTAL NETWORK 800-230-6944 # 24765	\$ 24,690
Names of first tier DVBE subcontractors and their items of work listed must be consistent with the names and items of work in the Subcontractor List (Pub Cont Code § 4100 et seq.) submitted with the bid. Identify second and lower tier subcontractors on this form.				Total Claimed Participation \$ 24,690 5.4 %

- DVBE prime contractors must enter their DVBE reference number or their OBA name as listed with Department of General Services (DVBE prime contractors are credited with 100 percent DVBE participation and need not complete the above table).
- If 100% of an item is not performed or supplied by the DVBEs, describe the exact part, including the planned location of work to be performed, of item to be performed or supplied by DVBE.

Submit to:

MSC 43  
 OFFICE ENGINEER  
 DEPARTMENT OF TRANSPORTATION  
 1727 30TH STREET  
 SACRAMENTO, CA 95816-7005

[Signature] 4/11/13  
 Signature of Bidder Date  
(916) 252-0441  
 (Area Code) Telephone Number  
Dick W. Vogels  
 Contact Person (Type or Print)

**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-69, Sacramento, CA 95814.

# GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

LOS ANGELES OFFICE  
1880 CENTURY PARK EAST  
12TH FLOOR  
LOS ANGELES, CA 90067-1621  
PHONE: (310) 552-3400  
FAX: (310) 552-0805  
WEBSITE: www.ggltsw.com

LAS VEGAS OFFICE  
7450 ARROYO CROSSING PARKWAY  
SUITE 270  
LAS VEGAS, NV 89113-4059  
PHONE: (702) 836-9800  
FAX: (702) 836-9802

REPLY TO LOS ANGELES OFFICE

## FACSIMILE TRANSMISSION

FROM: Sara H. Kornblatt, Esq.

DATE: May 1, 2013

PAGES (incl. cover sheet): 22

RECIPIENT	COMPANY	FAX NUMBER	TELEPHONE
John C. McMillan Mulissa Smith	State of California, Dept. of Transportation, Div. of Engineering Services	(916) 227-6282	(916) 227-6280
Wolfgang Delgado Sr. (via fax only)	Western Structures	(951) 352-4301	(951) 352-4300
<b>CLIENT/MATTER:</b>	Name: Truesdell/General		
	No.: 1020.001		
<b>ATTACHED PLEASE FIND:</b>	<i>Response of Truesdell Corp. to Bid Protest #2 of Western Structures</i>		

- FOR YOUR FILES
- FOR YOUR REVIEW
- FOR YOUR INFORMATION
- IN ACCORDANCE WITH YOUR REQUEST
- PLEASE COMMENT
- PLEASE TELEPHONE ME
- ALSO SENT VIA U.S. MAIL & E-MAIL
- PLEASE HANDLE

**CONFIDENTIALITY NOTICE:** This message and the documents accompanying this facsimile are legally privileged, confidential, and exempt from disclosure under applicable law. The information is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, please be advised that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If this communication has been received in error, please notify us by telephone immediately to arrange for the return of the original documents to us. Thank you.