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February 18, 2014

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

ATTN: Mr. John C. McMillan  
Deputy Division Chief

Subj: 10-0Y2604 STANISLAUS COUNTY IN AND NEAR PATTERSON FROM WARO AVENUE TO ROGERS  
ROAD ON ROUTE 33

Re: FORMAL PROTEST OF BIO SUBMITTED BY KNIFE RIVER CONSTRUCTION AND SIERRA NEVAOA  
CONSTRUCTION

Dear Mr. McMillan,

Please consider this letter to be a formal protest of the bids submitted by Knife River Construction (KRC), and Sierra Nevada Construction (SNC) in connection with Contract No. 10-0Y2604. Chester Gross Construction is presently the third lowest bidder on the subject project. The bids turned in by KRC and SNC are nonresponsive and therefore must be rejected based on the Department's bidding requirements and strictly-enforced policies.

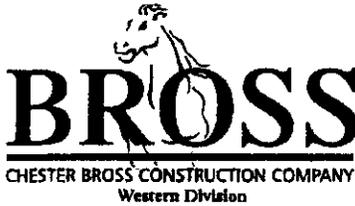
The bid submitted by KRC on bid day of 1/29/14 included a completed Non-small business participation submittal, (attachment A), demonstrating a requested and submitted non-small business participation as final in the amount of \$98,790.00 dollars. This equated to 6.9% of the KRC bid price. The minimum percentage required by Caltrans upon submittal to qualify for non-small business participation is 25.0%. KRC did not meet the necessary 25.0% minimum. As evident, KRC recognized the fact after bid close of 2:00pm January 29, 2014, and after completing and submitting the non-small



business participation much lower than necessary to qualify for non-small business credit. As such, KRC has made a futile attempt to locate a certified small business to somehow make up the large shortfall of 18.1% in an effort to achieve the 25% even though KRC had already submitted the final Total Claimed Participation of 6.9% on bid day. The attempt to modify the original non-small business participation claim is attached hereto as attachment B.

Caltrans is very strict with regards to contractors modifying, changing or otherwise altering any bid documents after the bid close deadline when submitted initially with the bid. Caltrans has set precedence on numerous occasions and continues to enforce extremely strict policies to ensure that changes exactly like or similar to this are not allowed. This fact is evident and a matter of record in and with Caltrans' numerous previous rulings of non-allowance as applicable to scenarios of this very nature in which the contractor attempting to intentionally, or inadvertently modify percentages, dollar amounts, named or listed participants, sub-contractors, suppliers etc., has been effectively disqualified or deemed non-responsive. As a Segue to this fact, KRC must be deemed non-responsive, and the bid awarded to the next responsive and responsible bidder.

Notwithstanding the fact that KRC has attempted to make a change to a completed bid document submitted as final, KRC, in its haste to try and qualify after the fact, has utilized a materials supplier that is clearly an extra participant in the transaction of purchasing asphalt, in by utilizing Janet Simas Paving, Inc. DBA Spirit Road Oils (SRO). Though at a glance, it may have the appearance that KRC has met the necessary 25% minimum in so utilizing SRO, upon closer review, it is clear that KRC has in fact only attempted to utilize SRO to meet the 25% minimum. The bid day quote sent out by SRO to Chester Bross and the other bidding contractors, to include the known materials suppliers, (attachment C), this is typical of the quote for supply services received by SRO by bidding Prime contractors, SRO has not, in speaking with the other materials suppliers specific to this project, previously quoted the sale or supply of hot liquid asphalts although certified to do so. It should also be noted that on the SRO quote provided by KRC (attachment D), that there are numerous points of concern with specific regards to the KRC attempt to gain credit for non-small business participation. The first and most obvious point being that the PG 64-10 hot liquid asphalt product is quoted F.O.B. Stockton, California. There is no freight involved, this fact alone substantiates the fact that SRO is indeed a pass through participant utilized by KRC as a desperate attempt to mitigate an initial error or non-small business participation goal shortfall. As such, SRO as it pertains to this particular project, will clearly not be performing a commercially useful function. The KRC hot plant facility is located just East of Interstate 5 in the Vernalis California area. The liquid asphalt according to the quote provided by KRC is priced FOB Stockton California. The only liquid asphalt supplier based or located in Stockton is Pacific Northwest Oil. Pacific Northwest Oil is a wholly



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owned subsidiary of KRC. Please see the map and entity location diagram printed off of the KRC website, (attachment E). Numerous assumptions could be made in this regard though it would be deemed speculation, as such, no additional connection will be discussed.

The facts are clear, KRC has utilized SRO in a late attempt to change a bid day submittal, even if such changes were allowed and accepted by Caltrans, SRO is facilitating the sale of asphalt liquid as an extra participant in the transaction of purchasing asphalt liquid and is not performing a commercially useful function. As such, and again, if Caltrans were to allow a change after bid day submittal, KRC cannot utilize the SRO dollars allocated towards the 25% non-small business participation goal as SRO is clearly not performing a commercially useful function and is indeed acting as a pass through or extra participant.

In summation with regards to the bid submitted by KRC, the bid is non-responsive based on the fact that KRC changed and or modified a bid day final submittal. Notwithstanding this attempted change, KRC has utilized SRO as a futile attempt at reaching the required minimum of 25% bid total to receive the bid ranking adjustment. SRO is an extra participant in the transaction of purchasing asphalt and is not performing a commercially useful function. As such, KRC did not meet the 25% non-small business participation goal and cannot receive the respective bid ranking credit.

With regards to Sierra Nevada Construction (SNC), SNC did not meet the required DVBE goal, as such, SNC is non-responsive and cannot be considered for the award of this project. Additionally, SNC did not request non-small business participation, as such, and if SNC were still responsive, SNC cannot receive the bid ranking adjustment as it did not request non-small business participation nor did it meet the necessary 25% minimum small business participation. As such, SNC cannot be considered for the award of this project and not further substantiation should be necessary at this time.

Caltrans has consistently found bidders to be nonresponsive for revisions, incompleteness, and errors similar or exactly like those made by SNC in its bid submitted for this project. More specifically, Knife River Construction on Caltrans project 03-1F6204, by reference to a letter from John C. McMillan was notified that it was no longer eligible for award of that contract as in a mirror situation, KRC utilized yet another supplier to simply meet a goal very similar to this situation with SRO. As a matter of public record, numerous examples of similar determinations supporting Chester Bross contentions are available upon request, with several additional contracts presently being reviewed by the department for errors of the same fundamental nature. The Department owes a duty to enforce its bid



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requirements in a fair and uniform manner consistent with set precedence, and in keeping with the governing Subletting and Subcontracting Fair Practices Act of the Public Contract Code.

Based in no small part on the facts presented herein, it is respectfully and formally requested that the Department uphold and validate Chester Bross Construction's bid protest, and award the contract to our company, which submitted the lowest responsive and responsible bid for Contract No. 10-0Y2604.

Thank you for your attention to this matter and please feel free to contact me if you have any questions.

Very truly yours,

Shawn N. Simmons  
Western Division Manager

Via FedEx to the address above  
Via Facsimile to (916) 227-6282

From:chester gross construction

209 263 0123

02/18/2014 15:56

#086 P.005/011

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
BID BOOK

Contract No.: 10-0Y2604

Project ID: 1013000125

Bidder: VC0000018748 - Knife River Construction

**CERTIFIED SMALL BUSINESS LISTING FOR THE NON-SMALL BUSINESS PREFERENCE**

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. May submit additional sheets if necessary.

Submit to:

MSC43  
Office Engineer  
Department of Transportation  
1727 30th Street  
Sacramento, CA 95816-7005

Person to contact: Steve McPeak  
Telephone number: 2099480302

**Total Claimed Participation:**

\$98,790.00  
6.9 % of Contract

Bid Item No.(s) : Example: 100, 200  
3 (Part.), 4

Description of Work, Service, or Materials:

Traffic Control (Flagging Part.), PCMS

Firm Name:

Sambrano Traffic Control Inc.

Telephone: 9166876472

SB Certification No.: 1159740

\$Amount : 36,030.00 Example: 999,999

Bid Item No.(s) : Example: 100, 200  
7 (Part.), 9 (Part.)

Description of Work, Service, or Materials:

Street Sweeping (Both Items Part.)

Firm Name:

Wells Sweeping

Telephone: 9165680104

SB Certification No.: 0000333

\$Amount : 13,970.00 Example: 999,999

Bid Item No.(s) : Example: 100, 200  
14 (Part.)

Description of Work, Service, or Materials:

HMA Testing (Part.)

Firm Name:

Neil O. Anderson and Associates

Telephone: 2093673701

SB Certification No.: 0023954

\$Amount : 46,240.00 Example: 999,999

ATTACHMENT A  
PG 1 of 2

From:chester gross construction

209 263 0123

02/18/2014 15:56

#086 P.006/011

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
BID BOOK

Contract No.: 10-0Y2604

Project ID: 1013000125

Bidder: VC0000018748 - Knife River Construction

CERTIFIED SMALL BUSINESS LISTING FOR THE NON-SMALL BUSINESS PREFERENCE (cont'd)

Bid Item No.(s) : Example: 100, 200

6  
Description of Work, Service, or Materials:  
Prepare WPC

Firm Name: Tully Consulting Group  
Telephone: :7076931926  
SB Certification :0060919  
\$Amount :650.00 Example: 999,999

Bid Item No.(s) : Example: 100, 200

2  
Description of Work, Service, or Materials:  
Construction Area Signs

Firm Name: Farwest Safety, Inc.  
Telephone :2093398085  
SB Certification :0006544  
\$Amount :1,900.00 Example: 999,999

Bid Item No.(s) : Example: 100, 200

Description of Work, Service, or Materials:

Firm Name:  
Telephone :  
SB Certification :  
\$Amount : Example: 999,999

Bid Item No.(s) : Example: 100, 200

Description of Work, Service, or Materials:

Firm Name:  
Telephone :  
SB Certification :  
\$Amount : Example: 999,999

Bid Item No.(s) : Example: 100, 200

Description of Work, Service, or Materials:

Firm Name:  
Telephone :  
SB Certification :  
\$Amount : Example: 999,999

Bid Item No.(s) : Example: 100, 200

Description of Work, Service, or Materials:

Firm Name:  
Telephone :

ATTACHMENT A  
PG 2 of 2

From:chester gross construction

209 263 0123

02/18/2014 15:57

#086 P.007/011

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

## BID BOOK

Contract No.: 10-0Y2604

Project ID: 1013000125

Bidder: VC0000018748 - Knife River Construction

## CERTIFIED SMALL BUSINESS LISTING FOR THE NON-SMALL BUSINESS PREFERENCE

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. May submit additional sheets if necessary.

## Submit to:

MSC43  
Office Engineer  
Department of Transportation  
1727 30th Street  
Sacramento, CA 95816-7005

Person to contact: Steve McPeak

Telephone number: 2099480302

## Total Claimed Participation:

\$356,722.69

25.11 % of Contract

Bid Item No.(s) : Example: 100, 200

3 (Part.), 4

Description of Work, Service, or Materials:

Traffic Control (Flagging Part.), PCMS

Firm Name:

Sambrano Traffic Control Inc.

Telephone: 9166876472

SB Certification No.: 1159740

\$Amount : 36,030.00 Example: 999,999

Bid Item No.(s) : Example: 100, 200

7 (Part.), 9 (Part.)

Description of Work, Service, or Materials:

Street Sweeping (Both Items Part.)

Firm Name:

Wells Sweeping

Telephone: 9165680104

SB Certification No.: 0000333

\$Amount : 13,970.00 Example: 999,999

Bid Item No.(s) : Example: 100, 200

14 (Part.)

Description of Work, Service, or Materials:

HMA Testing (Part.)

Firm Name:

Neil O. Anderson and Associates

Telephone: 2093673701

SB Certification No.: 0023954

\$Amount : 46,240.00 Example: 999,999

ATTACHMENT B

PG 1 of 2

From: chester gross construction

209 263 0123

02/18/2014 15:57

#086 P.008/011

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
BID BOOK

Contract No.: 10-0Y2604

Project ID: 1013000125

Bidder: VC0000018748 - Knife River Construction

CERTIFIED SMALL BUSINESS LISTING FOR THE NON-SMALL BUSINESS PREFERENCE (cont'd)

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Bid Item No.(s) : Example: 100, 200

6

Description of Work, Service, or Materials:

Prepare WPC

Firm Name: Tully Consulting Group

Telephone: :7076931926

SB Certification :0060919

\$Amount :650.00 Example: 999,999

Bid Item No.(s) : Example: 100, 200

2

Description of Work, Service, or Materials:

Construction Area Signs

Firm Name: Farwest Safety, Inc.

Telephone :2093398085

SB Certification :0006544

\$Amount :1,900.00 Example: 999,999

Bid Item No.(s) : Example: 100, 200

14 (Part.)

Description of Work, Service, or Materials:

Asphalt Oil

Firm Name: Janet Simas Paving, Inc. DBA SPIRIT ROAD OILS

Telephone :4084652270

SB Certification :7795

\$Amount :257,932.69 Example: 999,999

Bid Item No.(s) : Example: 100, 200

Description of Work, Service, or Materials:

Firm Name:

Telephone :

SB Certification :

\$Amount : Example: 999,999

Bid Item No.(s) : Example: 100, 200

Description of Work, Service, or Materials:

Firm Name:

Telephone :

SB Certification :

\$Amount : Example: 999,999

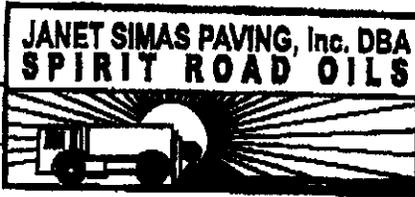
Bid Item No.(s) : Example: 100, 200

Description of Work, Service, or Materials:

Firm Name:

Telephone :

ATTACHMENT B  
PG 2 of 2



State Contractors License  
No. 472897

16490 Vineyard Boulevard, Morgan Hill, CA 95037  
Office (408) 485-2270 Call (800) 837-2040 Fax (408) 485-2270

American Indian owned and operated  
Member of Chukchansi Tribe of CA

We are CALTRANS Certified  
UDBE, SBE, MBE & WBE  
Material Supplier Only

00914

Bld/Fax# \_\_\_\_\_

Submitted to: Chester Gross Attn: Shawn Simmons

Bid Date: 1/29/14 Time: \_\_\_\_\_ Project# 10-0421004

Project: Cold Place recycling + HMA, Stanislaus Co.

Item#	Est. Amount	Description	Unit	Est. Total
<u>QUOTONS</u>		<u>SS-1H</u>	<u>560</u> Per Ton + Sales Tax	
			Per Ton + Sales Tax	
		Delivery Charge:	<u>\$ 350</u> EACH DELIVERY	
		Spread Charge:	<u>\$ 175</u> Per hour, 4 hour Minimum	

If spreading at night, Hourly rate is: \$ 185 per hour. Same Minimum Applies.

Comments: SALES TAX NOT INCLUDED

QUOTATION EXPIRES 30 DAYS FROM BID DATE. PRICES GOOD FOR 90 DAYS AFTER QUOTATION IS ACCEPTED

We can arrange for delivery & spread of products, which is not UDBE. You will not be receiving UDBE credit for Spreading and Delivery.

2 Ton Minimum for Oil Purchase. 0% RETENTION TO BE HELD.  
Waiver of Subrogation fee for Workers Comp. Insurance shall be charged at \$250.00

DUE TO MARKET VOLATILITY THE PRODUCT QUOTED MAY BE INFLUENCED UP OR DOWN BY THE CALTRANS ASPHALT INDEX. ALL PRICES QUOTED STRAIGHT OR CUT WITH WATER. PROTECTION OF EXISTING CONCRETE AND STRIPING BY OTHERS. ALL IN ROUTE CANCELATIONS WILL BE CHARGED AT SPREAD RATE PORT TO PORT.

Quoted by: Janet Simas

ATTACHMENT C



State Contractors License  
No. 472697

16490 Vineyard Boulevard, Morgan Hill, CA 95037  
Office (408) 465-2270 Calif (800) 637-2040 Fax (408) 465-2281

American Indian owned and operated  
Member of Chukchansi Tribe of CA

We are CALTRANS Certified  
UDBE, SBE, MBE & WBE  
Material Supplier Only

Bid/Fax# 01014

Submitted to: Knife River Attn: Steve McPeak

Bid Date: 1/29/14 Time: \_\_\_\_\_ Project# 10-0421004

Project: Cadot Ward Ave + Rogers Rd HMA

Item#	Est. Amount	Description	Unit	Est. Total
<u>450 TONS</u>		<u>PG 104-10</u>	<u>529.50</u>	Per Ton + Sales Tax
				Per Ton + Sales Tax
		Delivery Charge:	\$ <u>0</u>	EACH DELIVERY
		Spread Charge:	\$ <u>0</u>	Per hour, 4 hour Minimum

238,275  
19,651.69  
457,932.69

If spreading at night, Hourly rate is: \$ \_\_\_\_\_ per hour. Same Minimum Applies.

Comments: SALES TAX NOT INCLUDED FOB Stockton

QUOTATION EXPIRES 30 DAYS FROM BID DATE. PRICES GOOD FOR 30 DAYS AFTER QUOTATION IS ACCEPTED

We can arrange for delivery & spread of products, which is not UDBE. You will not be receiving UDBE credit for Spreading and Delivery.

2 Ton Minimum for Oil Purchase. 0% RETENTION TO BE HELD.  
Waiver of Subrogation fee for Workers Comp. Insurance shall be charged at \$250.00

DUE TO MARKET VOLATILITY THE PRODUCT QUOTED MAY BE INFLUENCED UP OR DOWN BY THE CALTRANS ASPHALT INDEX. ALL PRICES QUOTED STRAIGHT OR CUT WITH WATER. PROTECTION OF EXISTING CONCRETE AND STRIPING BY OTHERS. ALL IN ROUTE CANCELATIONS WILL BE CHARGED AT SPREAD RATE PORT TO PORT.

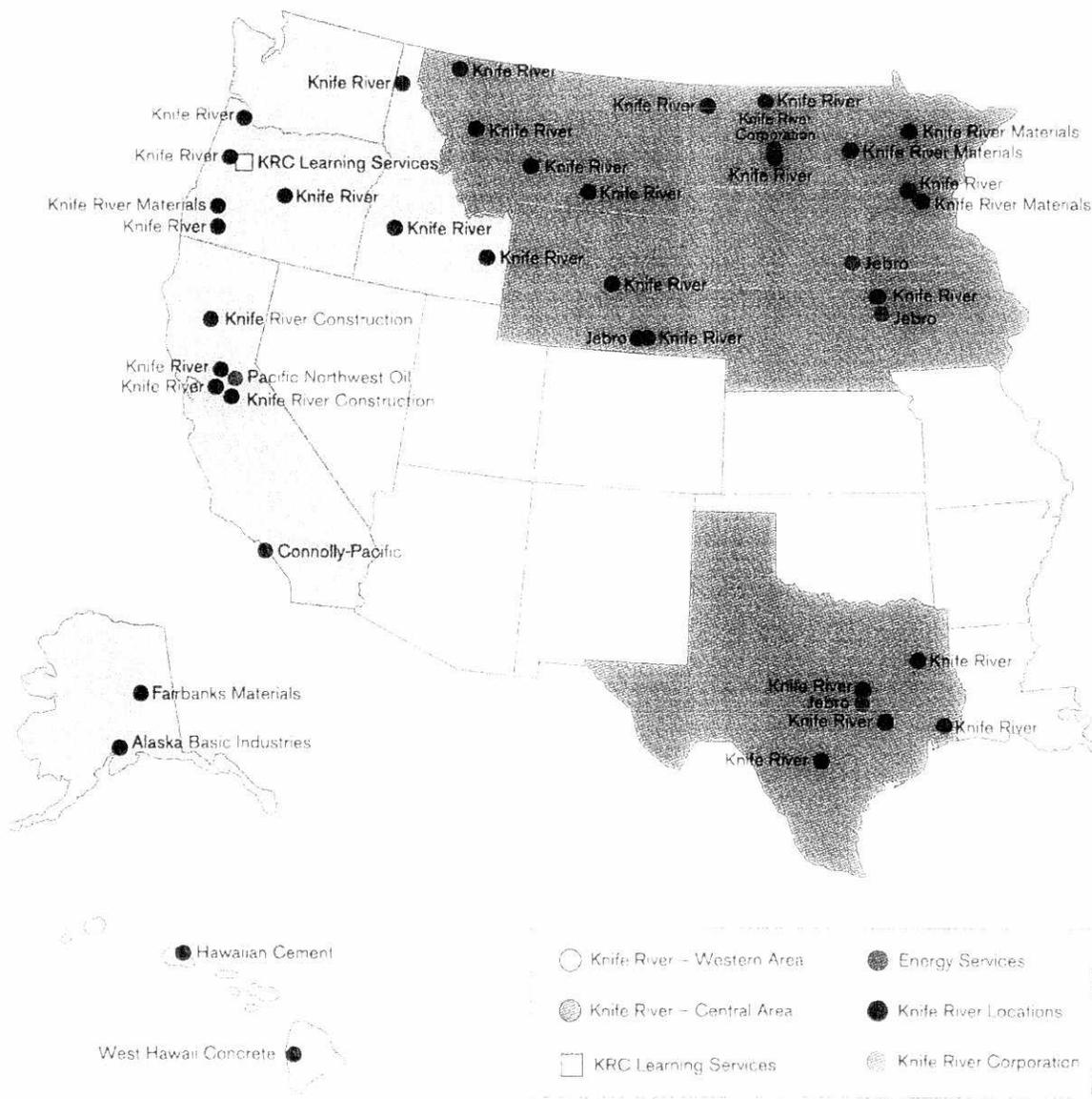
Quoted by: Janet Simas

ATTACHMENT D

# Who is Knife River?

Knife River Corporation, based in Bismarck, N.D., is one of the Top 10 aggregate producers in America and is one of only three companies with that distinction that remains U.S.-owned and operated. Built on a foundation of more than 1.1 billion tons of aggregate reserves, Knife River's operating companies provide aggregate, asphalt, building materials, construction services, liquid asphalt and ready-mix concrete for private, commercial and public projects.

Knife River companies are physically located in 13 states and operate in 17 states in the central, western and southern United States, and Alaska and Hawaii. At each location, we are committed to providing you with local, personalized solutions for your construction materials and contracting needs.



ATTACHMENT E