

CORRESPONDENCE/HANDOUTS

08/08/07 11:00 AM

FACSIMILE TRANSMITTAL

**MONTELEONE AND McCRORY
725 SOUTH FIGUEROA STREET, SUITE 3200
LOS ANGELES, CALIFORNIA 90017-5446**

Our File No. 5436-15751

IMPORTANT NOTICE

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TO: Office of the City Manager
Attention: Cynthia J. Kurtz
City of Pasadena
FAX NUMBER: (626) 744-4774

TO: Michele Beal Bagnaris, Esq.
City Attorney
City of Pasadena
FAX NUMBER: (626) 744-4190

TO: Barbara R. Gadbois, Esq.
Gibbs, Giden, Locher & Turner LLP
FAX NUMBER: (310) 552-0805

FROM: Jeffrey S. Hurst, Esq.

DATE: August 8, 2007

RE: State Route (SR) 710 Mitigation Traffic Control and Monitoring System - Intelligent Transportation Systems (ITS) Project

WE ARE BEGINNING TO SEND 5 PAGES (including this cover page). IF TRANSMISSION IS INTERRUPTED OR OF POOR QUALITY, PLEASE NOTIFY US BY CALLING (213) 612-9900. OUR FAX NUMBER IS (213) 612-9930.

COMMENTS:

Please see attached letter dated August 8, 2007, from Jeffrey S. Hurst, Esq.

STEPHEN MONTELEONE
(888-1982)

MONTELEONE & McCRORY, LLP

LAWYERS

A LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
725 SOUTH FIGUEROA STREET, SUITE 3200
LOS ANGELES, CALIFORNIA 90017-5446
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ORANGE COUNTY OFFICE
450 WEST FOURTH STREET, SUITE 130
SANTA ANA, CALIFORNIA 92701

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(714) 565-3170

FACSIMILE
(714) 565-3184

JEFFREY S. HURST
PARTNER

August 8, 2007

OUR FILE NUMBER

5436-15751

Hon. Bill Bogaard, Mayor
via fax no. (626) 744-3727
and e-mail bbogaard@ci.pasadena.ca.us
City of Pasadena
100 North Garfield Avenue
Pasadena, California 91109

Ms. Jacque Robinson
Councilmember, District 1
via Field Representative Tina Williams
fax no. (626) 396-7300
e-mail district1@ci.pasadena.ca.us
117 East Colorado Boulevard, 6th Floor
Pasadena, California 91105

Ms. Margaret McAustin
Councilmember, District 2
via Field Representative Margo Morales-Fuller
e-mail mfuller@cityofpasadena.net
100 North Garfield Avenue
Pasadena, California 91109

Mr. Chris Holden
Councilmember, District 3
via Field Representative Jacqueline McIntyre
fax no. (626) 744-4774
e-mail jmcintyre@cityofpasadena.net
100 North Garfield Avenue
Pasadena, California 91109

Steve Haderlein, Vice Mayor
and Councilmember, District 4
via Field Representative Rhonda L. Stone
e-mail rstone@cityofpasadena.net
P.O. Box 7115
Pasadena, California 91109-7215

LAW OFFICES

MONTELEONE & MCCRORY, LLP

Hon. Bill Bogaard, Mayor
Ms. Jacque Robinson
Ms. Margaret McAustin
Mr. Chris Holden
Steve Haderlein, Vice Mayor
Victor M. Gordo de Arteaga, Esq.
Steven G. Madison, Esq.
Mr. Sid Tyler

August 8, 2007
Page 2

Victor M. Gordo de Arteaga, Esq.
Councilmember, District 5
via Field Representative Vannia DeLaCuba
e-mail vdelacuba@cityofpasadena.net
P.O. Box 7115
Pasadena, California 91109-7215

Steven G. Madison, Esq.
Councilmember, District 6
P.O. Box 7115
Pasadena, California 91109-7215

Mr. Sid Tyler
Councilmember, District 7
via Field Representative Pam Thyret
fax no. (626) 441-4806
P.O. Box 7115
Pasadena, California 91109-7215

Re: Contract Award to Manuel Bros., Inc., a Quanta Services Co., For the State Route (SR) 710 Mitigation Traffic Control and Monitoring System - Intelligent Transportation Systems (ITS) Project

Dear Mayor Bogaard and Councilmembers:

Manuel Bros, Inc. ("Manuel") was incredibly disappointed with the conduct of the public hearing held by the City Council on August 6, 2007.

Cynthia Kurtz' letter of July 24, 2007, informed Manuel that a determination would be made at the August 6, 2007 City Council meeting as to whether Manuel was a "responsible bidder". As such, the provisions of Pasadena Municipal Code section

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August 8, 2007
Page 3

4.08.131 were applicable to the non-responsibility hearing. Section 4.08.131 D. requires the City to notify Manuel of "any evidence of its non-responsibility," afford Manuel the "opportunity to rebut such evidence" and "present evidence of responsibility to perform the contract." The procedures followed at the meeting unreasonably limited Manuel's time to rebut the evidence and present its own evidence of responsibility. As you will recall, Manuel ran out of time and was cut-off each time it addressed the Council.

Additionally, to the extent the Council allowed public comments that introduced new allegations or evidence, Manuel was not given reasonable notice of this new evidence and, therefore, had no reasonable opportunity to respond. If any determination is made finding Manuel to be non-responsible, Manuel will immediately file a lawsuit challenging the lack of due process afforded by the City and seeking a *de novo* review by the court.

More importantly, certain members of the City Council seemed completely uninterested in understanding the relevant law and applying it to the undisputed facts; relying instead upon a predetermined agenda of denying non-union contractors access to City of Pasadena public works projects. One council member went so far as to state that he saw nothing wrong with Pasadena being a "union city." In fact there is something wrong with a "union city;" The California State Constitution, art. I, §7 and art. IV, §16, prohibits discrimination against Manuel based upon its non-union status. Ultimately, four members of the City Council chose to vote solely based upon the fact that Manuel is a non-union contractor. Union status is not a permissible consideration in deciding whether to award a public works contract.

I urge you to consider the implications of finding that a single labor compliance investigation (not even a finding of a violation) with a negotiated settlement means that a contractor is "not responsible." Will the City be conducting "non-

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Mr. Sid Tyler

August 8, 2007
Page 4

responsibility" hearings for all contractors currently working for the City that have one or more labor compliance investigations? Will the City disqualify all future bidders on public works projects if they have one or more labor compliance investigations? Such a "zero tolerance" position will severely limit the City's ability to contract, and will bring public works construction in Pasadena to a standstill.

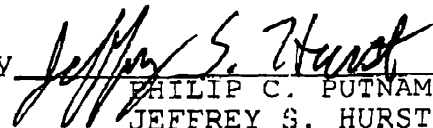
Rejecting all bids and putting this contract out for re-bid will not make this issue go away. What if Manuel is the low bidder in the re-bid? What if the low bidder is not a union contractor? What if the low bidder is a union contractor with one or more labor compliance violations? Will the same council members who voted to find Manuel non-responsible vote the same way if it is a union contractor? The issues should be addressed and resolved now.

Manuel is fully prepared to take every legal action available to protect its rights in this matter. Manuel will not be denied a contract that it is legally entitled to be awarded. I urge you to consider the larger implications of what is taking place, and recommend that the City award this contract to Manuel Bros., Inc.

Very truly yours,

MONTELEONE & MCCRORY, LLP

By


PHILIP C. PUTNAM
JEFFREY S. HURST

JSH/sr

cc: Cynthia J. Kurtz, City Manager
(via facsimile (626) 744-4774 and U.S. mail)
Michele Beal Bagnaris (via e-mail
mbeal@ci.pasadena.ca.us, facsimile (626) 744-4190 and U.S. mail)
Barbara R. Gadbois, Esq. (via facsimile (310) 552-0805 and U.S. mail)



MANUEL BROS., INC.
 General Engineering Contractor
 A Quanta Services Company

P.O. Box 995
 908 Taylorville Rd., Suite 104
 Grass Valley, CA 95949
 (530) 272-4213
 FAX (530) 272-3815
 License No. 380718
 May 1, 2007

VIA FACSIMILE: (626)-744-3823

Mr. Robert Gardner – Principal Engineer
 Department of Public Works
 City of Pasadena

Re: ITS Federal-Aid Project RABA01-5064 (045)

Dear Mr. Gardner:

This letter is in response to your e-mail to Mr. Jim Ortiz dated April 25, 2007; in which you request that Manuel Bros. respond to a protest filed by the IBEW and the 2nd low Bidder, on the basis that Manuel Bros. will not be performing at least 50 percent of the contract work.

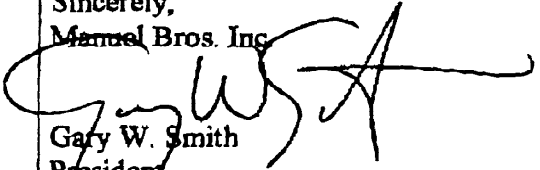
Per page BP-(b) of Manuel Bros. proposal dated April 17, 2007 for the above-mentioned project, we have listed the four subcontractors that will be used. Below is a list of those subcontractors, the description of work to be performed and the amount to be paid to each subcontractor.

PAR Electric	Traffic Signal Work	\$470,000.00	
California Boring	Directional Bores	\$380,000.00	
Sterndahl Enterprise	Striping	\$10,000.00	
Traffic Loops	Detector Loops	<u>\$220,000.00</u>	
		\$1,120,000.00	24.7%
Manuel Bros	All other work	\$3,414,000.00	75.3%
Total Schedule "A"		\$4,534,000.00	100%

Clearly, Manuel Bros. will perform more than 50% of the Contract Price per Section 2-3.2 Additional Responsibility, of the Greenbook 2003.

If you have any questions please call me at (530) 272-4213.

Sincerely,
 Manuel Bros. Inc


 Gary W. Smith
 President

08/06/2007
 Item 4.A.
 Handout by staff

STEPHEN MONTELEONE
(1886-1962)

JEFFREY S. HURST
PARTNER

MONTELEONE & McCRORY, LLP

LAWYERS

A LIMITED LIABILITY PARTNERSHIP
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(714) 565-3170

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(714) 565-3184

August 2, 2007

**VIA FACSIMILE (626) 744-1774,
AND U.S. MAIL**

Office of the City Manager
Attention: Cynthia J. Kurtz
City of Pasadena
100 North Garfield Avenue
Pasadena, California 91109

Re: Contract Award to Manuel Bros., Inc., a Quanta
Services Co., For the State Route (SR) 710
Mitigation Traffic Control and Monitoring System -
Intelligent Transportation Systems (ITS) Project
Response to Bid Protest by Terno, Inc. and IBEW

Dear Ms. Kurtz:

Please be advised that Manuel Bros., Inc. ("Manuel Bros.") and I will be attending the City Council meeting on Monday, August 6, 2007, for the purpose of presenting oral testimony and arguments to rebut the unfounded allegations of alleged non-responsibility on the part of Manuel Bros. Given the due process nature of this hearing, Manuel Bros. requests 20 minutes to present its testimony and arguments.

I am also in receipt of a July 30, 2007 letter from The Law Office of Ellen Moscovitz written on behalf of IBEW Local 11. While I am in disagreement with almost every assertion in that letter¹, time constraints permit only a limited written response at this time.

¹ I do agree with the statement in the fourth paragraph on page one that "there is no question they [Manuel Bros.] could perform the overall job as an "A" licensed contractor ..."

OUR FILE NUMBER
97-157-157
5436-157
CITY OF PASADENA
CITY CLERK
RECEIVED
AUG - 6 P 1:44

MONTELEONE & MCCRORY, LLP

Office of the City Manager
Attention: Cynthia J. Kurtz
City of Pasadena
August 2, 2007
Page 2

Regarding labor compliance issues, Manuel Bros. does not have a "demonstrated history of violations," as falsely asserted by Ms. Moscovitz. As indicated in my letter of July 30, 2007, current management at Manuel Bros. is not aware of a single instance of a prevailing wage decision being issued against it. The only investigation that management is aware of is the one on the City of Los Angeles project that has already been discussed. There have been no labor compliance issues with Cal Trans District 7.

The allegations regarding *Labor Code* Section 2810 are simply ridiculous. Manuel Bros.' bid on this project is \$4,751,100. This is more than \$1,250,000 over the Engineer's Estimate. Terno, Inc.'s bid was \$4,898,421; only \$147,321 (2½%) lower than Terno's bid. If the City is at risk of Section 2810 violations for accepting Manuel Bros.' bid, it is at equal risk in accepting Terno's bid. The reality is there is no risk at all as both bids are well above the Engineer's Estimate and contain plenty of money to complete the project paying prevailing wages.

Manuel Bros. reserves the right to present additional evidence in response to Ms. Moscovitz' letter and in response to your letter of July 24, 2007.

Very truly yours,

MONTELEONE & MCCRORY, LLP

DICTATED BUT NOT READ TO AVOID DELAY

By _____
PHILIP C. PUTNAM
JEFFREY S. HURST

JSH/sr

cc: Barbara R. Gadbois, Esq.
(via facsimile (310)552-0805 and U.S. mail)

Rodriguez, Jane

From: Martin Truitt [mtruitt@trustrow.com]
Sent: Friday, July 20, 2007 12:24 AM
To: Rodriguez, Jane
Subject: Taxpayer Protection Act disclosure form

Jane...can you please include this as public comment on agenda item 4.A. for the July 23 council meeting?
Thank you.

martin truitt

Dear City Council:

Re: Manual Bros. disclosure docs

The Pasadena Taxpayer Protection Act disclosure form prepared by Manual Bros. appears to be incorrect where it responds "NONE" to Question 3. "Names of those with more than a 10% equity, participation or revenue interest in Contractor/Organization".

The Taxpayer Protection Act language states that it applies to "any individual or person who, during a period where such benefit is received or accrues...has more than a 10% equity, participation, or revenue interest in that entity..."

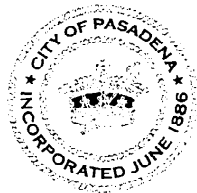
Assuming that the word "person" refers to a juristic person like a corporation then the appropriate answer should have been "Quanta Services" not "NONE" (Manual Bros.,Inc. is owned by Quanta) and should have gone on to list those individuals or entities that have more than a 10% interest in Quanta.

I would suggest you change the question on the disclosure form to read: "Names of INDIVIDUALS OR ENTITIES with more than a 10% DIRECT OR INDIRECT equity, participation, or revenue interest in Contractor/Organization:" in order to eliminate confusion in the future.

I am assuming that the use of the phrase "revenue interest" means that the Taxpayer Protection Act is intended to apply to individuals and entities that indirectly own a contract beneficiary. If the TPA does not cover indirect ownership interests, then that obviously creates a massive loophole. In that case an individual could escape the provisions of the TPA simply by creating a parent corporation to stand between himself/herself and the corporation that is receiving the benefit.

07/23/2007
Item 4.A.

7/23/2007



OFFICE OF THE CITY MANAGER

DATE: July 23, 2007
TO: City Council
FROM: City Manager
RE: Contract Award to Manuel Bros., Inc. for the SR 710 Mitigation – Traffic Control and Monitoring System – ITS Project
Federal-Aid Project No. RABA02-5064(045)

IBEW has raised labor compliance issues both in writing and in meetings with City staff held after receipt of their protest letter. Staff investigated these by contacting the City of Los Angeles (LA) and the State of California Department of Transportation (Caltrans). Both of these agencies have contracted with Manuel Bros., Inc. and the results of staff's findings are summarized below.

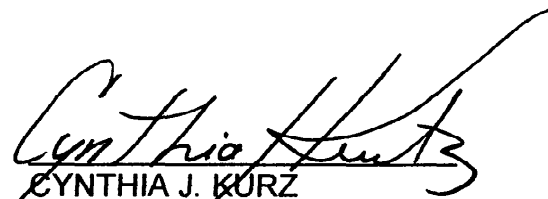
The City of LA currently has two construction contracts with Manuel Bros., Inc. in the amounts of approximately \$5 million and \$5.7 million. Staff contacted the City of LA Labor Compliance Section and found there had been misclassification of some workers for particular types of work and apprenticeship requirements. Although these are violations, they were categorized as minor. Manuel Bros., Inc. is working with the City of LA to remedy the labor compliance violations, and they expect penalties to be less than \$25,000 (½ percent of the contract amount). The \$5.7 million LA project started after the \$5 million project. Manuel Bros., Inc. has been working with the City of LA to avoid having similar labor compliance penalties on this contract. The City of LA staff also indicated that Manuel Bros., Inc. provides good quality of work and that they would hire them again if the opportunity arises.

Caltrans was also contacted regarding their experience with Manuel Bros., Inc. They indicated that Manuel Brothers met Caltrans standards. Caltrans staff rated the quality of work, timeliness of work, and project management as excellent and their labor compliance submittals as above average. Lastly, the labor compliance officer for Caltrans indicated that there are no past or current labor compliance issues with Manuel Bros., Inc.

07/23/2007
Item 4.A.
Handout by staff

In addition to the above, staff contacted various other agencies and all of the responses indicate that Manuel Bros., Inc. consistently fulfills contractual expectations. The labor compliance issues pending against Manuel Brothers can be characterized as minor and unintentional. Staff believes violations can be avoided in Pasadena with our diligent oversight and enforcement of construction activities.

A determination that Manuel Bros., Inc. is not the lowest and best bidder (nonresponsive contractor) cannot be made until the bidder (Manuel Bros.) is notified of any evidence of nonresponsibility, is afforded an opportunity to rebut such evidence, and has been permitted the opportunity to present evidence of responsibility to perform the contract. Any finding of nonresponsibility shall focus on present nonresponsibility and shall be for the purpose of protecting the interest of the public and is not intended to punish a bidder (PMC 4.08.131).



CYNTHIA J. KURZ
City Manager

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS

455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Tel: (415) 703-4920
Fax: (415) 703-5477

www.dir.ca.gov



ADDRESS REPLY TO:
Div. of Apprenticeship Standards
P. O. Box 420603
San Francisco, CA 94142-0603

May 10, 2006

Mr. Dick Reed
Assistant Business Manager
L.A. NECA I.B.E.W. Local #11
297 N. Morengo Ave.
Pasadena, CA 91101

Dear Mr. Reed:

The DAS received an inquiry from your office requesting information on approved apprenticeship programs offering training in the occupation of Transportation Systems Electrician also known as Intelligent Transportation System Installer, DOT Code No. 824.381 010 in the county of Los Angeles.

My review of our records revealed that the Southern California Transportation Systems Electrical JAC, Das file No. 10243, is currently the only program approved to offer training in the occupation of Transportation Systems Electrician also known as Intelligent Transportation System Installer, DOT Code No. 824.381 010 in the county of Los Angeles.

Sincerely,

A handwritten signature in cursive script that reads "Mary Sorokolit".

Mary Sorokolit
Sr. Apprenticeship Consultant
DAS

07/23/2007
Item 4.A.
Handout by Patrick Owens

CONTRACTORS

§ 7056

Ch. 9

bid by contractor on specialty work was not prerequisite to grant of declaratory relief. *Chas. L. Harney, Inc. v. Contractors' State License Bd.* (1952) 39 Cal.2d 561, 247 P.2d 913.

2. Subcontracting

An individual who has secured a landscape contractor's license may employ other duly licensed contractors to install lawn-sprinkling systems. *Lasley v. Baldwin* (App. 1958) 159 Cal.App.2d 468, 324 P.2d 108.

3. Supplemental classification

Evidence that contractor when he constructed building held a license to do general contracting business and had no actual knowledge of regis-

trar's rule requiring a supplemental classification established that contractor was acting in substantial compliance with the law, so that contractor would not be denied recovery of contract price for building. *Oddo v. Hedde* (App. 1950) 101 Cal.App.2d 375, 225 P.2d 929.

A judgment refusing contractor recovery of contract price for building on theory that contractor was not licensed would be denied as inequitable, where contractor substantially complied with all the statutory law enacted for his governance and only failed to secure a supplemental classification as required by registrar's rule because of ignorance thereof. *Oddo v. Hedde* (App. 1950) 101 Cal.App.2d 375, 225 P.2d 929.

§ 7056. General engineering contractor

A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, sewers and sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, land leveling and earthmoving projects, excavating, grading, trenching, paving and surfacing work and cement and concrete works in connection with the above mentioned fixed works.

(Added by Stats.1945, c. 1159, p. 2207, § 2. Amended by Stats.1951, c. 1606, p. 3608, § 1.)

Historical and Statutory Notes

Former § 7056, added by Stats.1939, c. 37, § 1, defining a general engineering contractor, was repealed by Stats.1941, c. 971, § 6. See, now, this section.

Derivation: Former § 7056, added by Stats. 1939, c. 37, § 1.

Stats.1929, c. 79, § 3½, added by Stats.1935, c. 816, § 4, amended by Stats.1937, c. 499, § 3.

Cross References

Registered civil and professional engineers exempt from chapter, see Business and Professions Code § 7051.

Code of Regulations References

Limitation of classifications, see 16 Cal. Code of Regs. § 834.
Solar system contractors, see 16 Cal. Code of Regs. § 832.62.

07/23/2007

Item 4.A.

Handout by Philip Putnam

Rodriguez, Jane

From: Wright, Steve
Sent: Monday, July 16, 2007 2:25 PM
To: Rodriguez, Jane
Cc: Jomsky, Mark
Subject: FW: ITS Projects - Transportation Enhancements funded through FHWA and Caltrans

FYI

From: Subodh Kumar [mailto:cfmgroupsk@earthlink.net]
Sent: Monday, July 16, 2007 10:00 AM
To: Bogaard, Bill; Robinson, Jonathan; McAustin, Margaret; Holden, Chris; Haderlein, Steve; Gordo, Victor; Madison, Steve; Tyler, Sid
Cc: Kurtz, Cynthia; Wright, Steve; 'Claire W. Bogaard'; david.worrell@att.net
Subject: ITS Projects - Transportation Enhancements funded through FHWA and Caltrans

Mayor Bogaard and Council Members:

I am writing to you as a long-time resident of the City of Pasadena, former Chair of the Transportation Commission, and as a member of the Pasadena Design Advisory Group (DAG).

Most of you are aware that the Pasadena DAG has led the selection of projects funded by, and the investment of funds provided by, Transportation Bill H.R. 5394 as related to SR 710. Our principal focus for almost the past decade has been to work to improve traffic mobility while protecting affected neighborhoods from its impact. I am also familiar with the national impacts of traffic flow improvements as a result of ITS programs, having managed the design of such a system a while back for 150 miles of LA County freeways.

One of the comprehensive projects long recommended by the DAG is the Traffic Control and Monitoring System-ITS which is on the Council agenda item 7 (A) (1), for this evening. I am writing to urge your approval of the recommendation of the City Manager (Contract Award to Manuel Bros., Inc.). This is the second phase of the ITS program, having installed the supporting infrastructure in the first phase.

Further delays in the implementation of this project will only continue to delay these items which are intended to improve the traffic flow and quality of lives of Pasadena residents.

Subodh Kumar, IFMA Fellow, CFM
Chartered Facility Management Group, Inc
Strategic Value Enhancement Leaders
T: 626.351.9145
F: 626.351.7645
M: 626.318.8590

7/16/2007

7/16/07
Item 7.A.1