ATTACHMENT A



OFFICE OF THE CITY MANAGER July 24, 2007

Manuel Bros. Inc, a Quanta Services Company 908 Taylorville Road, Suite 104 Grass Valley, CA 95949

VIA FACSIMILE (530) 272-3815 and US MAIL

PLEASE TAKE NOTICE THAT:

Pursuant to action of the Pasadena City Council at its regularly scheduled meeting of July 23, 2007, this is to notify you of a potential finding of nonresponsibility of Manuel Bros., Inc. in the matter of the proposed contract with the City of Pasadena for the State Route (SR) 710 Mitigation Traffic Control and Monitoring System – Intelligent Transportation Systems (ITS) Project ("the Project"). The separate and independent grounds for this potential finding are as follows:

- (1) Manuel Brothers may be unable to employ apprentices for the Project as required by California Labor Code Sections 1777.5;
- (2) Manual Brothers has violated applicable California Labor Code provisions concerning the payment of prevailing wages in its contract with the City of Los Angeles and the same mistakes may be made in the performance of the contract for this Project, and
- (3) Manuel Brothers may not be properly licensed to perform the work of the Project by virtue of its holding only an "A" contractor's license alone, without holding a "C-10" specialty license and may not otherwise employ certified electricians to perform the electrical work of the Project.

The evidence supporting these potential findings is as follows:

(1) The International Brotherhood of Electrical Workers, on behalf of residents of the City of Pasadena who are members of IBEW, asserts that the Southern California Transportation Systems Electrical Joint Apprenticeship Committee ("SCTSEJAC"), is the only State approved apprenticeship program offering training in the occupation of "transportation systems electrician" required for the project. (See Attachment 1, page 5). In the public comment period at the July 23, 2007 City Council meeting, a representative of the IBEW, suggested that since Manuel Bros. is a non-union contractor, and not affiliated with the SCTEJAC, Manuel Bros. would not be able to



Manuel Bros. Inc, a Quanta Services Company July 24, 2007 Page Two

access apprentices from the SCTSEJAC and thus, would not be able to supply any apprentices to the Project. City Council Members were also concerned about Manuel Bros. intent to hire apprentices to work on the Project and their ability to comply with apprentice requirements given that Manuel Bros. is not affiliated with any body from which it would have access to apprentices. As described in paragraph 2 below, Manuel Bros. may have violated apprenticeship requirements on one or more City of Los Angeles construction contracts.

- (2) The City of Los Angeles currently has two construction contracts with Manuel Bros. Staff contacted the City of Los Angeles Office of Contract Compliance, who indicated that in connection with soil boring work, Manuel Bros. misclassified workers as laborers when the proper classifications was operating engineer and there was non-compliance with apprenticeship requirements (See Attachment 2). The worker misclassification resulted in underpayment of wages and the expected assessment penalties will be in the range of \$15,000 to \$45,000. It appears that the same mistakes may be made in the performance of the work of the Project since statements made by Manuel Bros. representative at the July 23, 2007 City Council meeting suggest that sufficient changes have not been made by Manuel Bros. to prevent or avoid similar violations. City Council members were concerned that such misclassification was evidence of cheating/intentional underpayment of prevailing wage rates and that a "no tolerance" stance against wage violations may be appropriate for City of Pasadena prevailing wage projects. In the public comment period at the City Council meeting on July 23, 2007, an IBEW representative suggested that intentional misclassification of workers and underpayment of prevailing wages would cause union contractors to refrain from bidding City of Pasadena projects because non-union contractors' bids would be lower than unionaffiliated contractors because of lower wage rates paid to misclassified workers.
- (3) The IBEW and Terno Electrical Contractors, the apparent second low bidder, filed protest letters (See Attachments 1, 3 and 4) and asserted in the public comment period on July 23, 2007 that the majority of the work for the project is electrical and requires a Class C-10 specialty license to bid and perform the contract for the work of the Project, citing the description of work specified in Title 8, Division 1, Chapter 2, Subchapter IV of the California Code of Regulations, Section 832.10. In addition, Terno and IBEW assert that Manuel Bros. does not employ State certified electricians. Manuel Bros. has not provided the City with a sufficient breakdown of the electrical work to be performed by Manuel and by listed subcontractors on the Project. Manuel Bros. has not provided the City with documentation that it employs or will hire State certified electricians to perform the electrical work of the Project.

Manuel Bros. Inc, a Quanta Services Company July 24, 2007 Page Three

Please submit your written response to this preliminary finding to the Office of the City Manager, Attention Cynthia J. Kurtz, 100 North Garfield Avenue, Pasadena, CA. 91109 no later than 5:30 PM on Monday July 30, 2007.

Please take notice that, at its regularly scheduled meeting of August 6, 2007 commencing at 6:30 PM, you will be afforded the opportunity to present oral testimony and arguments to rebut the evidence described above and to present evidence of Manuel Bros. responsibility to perform the contract to the City Council.

This notice is provided pursuant to Pasadena Municipal Code Section 4.08.131, a copy of which is attached to this letter (See Attachment 5).

Sincerely,

CYNTHIA J. KURTZ

City Manager



IBEW
International Brotherhood of
Electrical Workers, AFL-CIO

P.O. Box 2500 297 North Marengo Avenue Paradena, CA 91102-2500 Priore (626) 243-9700 Prior (626) 796-8612

April 25, 2007

City of Pasadena
Department of Public Works
P.O. Box 7115
Pasadena, Ca. 91109-7215

Re: SR-710 Mitigation Project
Traffic Control and Monitoring System. Art like Intelligent Transportation System (ITS)
In the City of Pasadena, California
Federal Aid Project RABA 01-5064 (045)

Mr. Robert Gardner, P.E. Principal Engineer

Mr. Gardner.

I represent the International Brotherhood of Electrical Workers, Los Angeles (IBEW Local 11), along with the National Electrical Contractors Association, Los Angeles County Chapter (L.A. NECA) and their Intelligent Transportation Systems Contractor Affiliates. In addition I represent the Residents of the City of Pasadena, who are members of our Organizations.

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I write this letter in behalf of the above-mentioned interests in Protest of a pending award of the subject project to the apparent low bidder Manuel Brothers Inc., of Grass Valley, Ca. (A Quanta Services Co. Inc., subsidiary).

For the reasons set forth below, we believe that Manuel Bros. Inc.'s bid is non-responsive and must be rejected and the contract be awarded to the next lowest responsible, responsive bidder, or all bids must be rejected. If necessary we ask that this award be deferred to allow us to provide additional information relevant to the issues raised in this letter.

The Project Must Be Awarded to the Lowest Responsive, Responsible Bidder

The City Council's authority to award contracts for Public Works is set forth in the City's Municipal Cods and, by reference; the California Public Contract Code. The City Council does not have Authority to award a contract for the project except to the "lowest responsible bidder". Public Contract Code Section 20162. Included within the concept of responsibility is whether the bidder's bid is responsive to the requirements of the bid documents. See, e.g., Taylor Bus Service, Inc. v. San Diego Bd. Of

Please be advised that the Department of Industrial Relations, Division of Apprenticeship Standards have approved and registered one and only one State Approved Apprenticeship Program (see attachment).

At a minimum, Manuel Bros. Inc. should be required to produce copies of its Subcontractors' hids or subcontracts demonstrating that the actual amount subcontracted do not exceed fifty percent of the proposed contract price to the City.

Conclusion

Based on the facts presented in this letter, the City Council cannot award a Contract for the Project to Manuel Bros., Inc. as Manuel Bros., Inc. bid is non-responsive. Such an award would violate the competitive bidding laws and ignore the Cities own requirements stated in the bid documents. IBEW/NECA welcomes the opportunity to work with the City Staff and City Council to see that the Public fisc is protected and responsible contractors and subcontractors are camployed to perform public works projects in and for the City of Pasadena.

Please also understand that the funding made available for this project, or future funding of other projects may be affected by non-adherence to careful review.

Please consider the resume of projects that accompany this bidder's package, there are no local projects where all federal, state, and local statutes, regulations, ordinances, rules and governmental orders have been adhered to. The projects represented were in telecom work, not intelligent Transportation Systems in Southern California.

This project should either be awarded to the lowest responsible, responsive bidder or all bids rejected and put out to re-bid.

Thank you for your attention to these concerns.

Sincerely,

Patrick J. Owens Compliance

PJO/bir opelu#537 eff-cio

cc;

William Bogaard, Mayor
Steven L. Wright, Assistant City Engineer
Cinistins B. Harnandez, Project Manger
Couclimember Joyce Streator, District 1
Councilmember Paul Little, District 2
Councilmember Ciris Holden, District 3
Councilmember Steve Haderlein, District 4
Councilmember Victor Gordo, District 5
Councilmember Vice Mayor, Steve Madison, District 6
Councilmember Sid Tyler, District 7.

AGREEMENT TO APLY WITH CALIFORNIA LABOR LAW RET TREMENTS

(To Be Executed By Bidder AND Submitted With Bid)

(Labor Code §§1720, 1773.2, 1773.8, 1775, 1776, 1777.1, 1777.5, 1813, 1860, 1861, 3700)

The undersigned Contractor cartifies that it is awars of and hereby agrees to fully comply with the following provisions of California Law.

- 1. Contractor acknowledges that this Contract is subject to the provisions of California Labor Code Division 2, Part 7, Chapter 1 (commencing with § 1720) relating to public works and the awarding public agency ("Agency") and agrees to be bound by all the provisions thereof as though set forth in full herein.
- 2. Contractor agrees to comply with the provisions of California Labor Code § 1773.8 which requires the payment of travel and subsistence payments to each worker needed to execute the Work to the extent required by law.
- 3. Contractor agrees to comply with the provisions of California Labor Code §§ 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the Agency, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by Contractor or by any Subcontractor.
- 4. Contractor agrees to comply with the provisions of California Labor Code § 1776 which require Contractor and each Subcontractor to (1) keep accurate payroll records, (2) certify and make such payroll records available for inspection as provided by California Labor Code § 1776, and (3) inform the Agency of the location of the records. The Contractor is responsible for compliance with California Labor Code § 1776 by itself and all of its Subcontractors.
- 5. Contractor agrees to comply with the provisions of California Labor Code § 1777.5 concerning the employment of apprentices on public works projects, and further agrees that Contractor is responsible for compliance with § 1777.5 by itself and all of its Subcontractors.
- 6. Contractor agrees to comply with the provisions of California Labor Code § 1813 concerning penalities for workers who work excess hours. The Contractor shall, as a penalty to the Agency, forfelt twenty-five dollars (\$25) for each worker employed in the execution of the Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of California Labor Code, Division 2, Part 7, Chapter 1, Article 3.
- 7. Contractor certifies by submission of bid that they have not been found by the Labor Commissioner to be in violation of Prevailing Wage laws as outlined in the California Labor Code § 1777.1.
- 8. Contractor agrees to cause a copy of the determination of the director of the prevailing rate wages to be posted at each job site in compliance with the provisions of California Labor Code § 1773.2.
- 9. California Labor Code §§ 1860 and 3708 provide that every Contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code § 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of California Labor Code § 3700 which requires every employer to be insured

against liability for worker's compensation or to undertake self- that code, and I will comply with suich provisions before comm	
Contract."	
Signature	Data 4/16/07
Printed Name ARY W. SMITH	
Company MANUEL BROS., INC. A QUANTA SERVICES CO.	•
Title PRESIDENT	•
WD-/PA	•

DP-(1,

APPENDIX A-FED

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS DIVISION OF APPRENTICESHIP STANDARDS 455 Golden Gete Avenue, 10° Floor Sen Francisco, CA 94102 Tel: (415) 703-4920 Fax: (415) 703-5477

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ADDRESS REPLY TO: Div. of Approximation Standards

San Francisco, CA 94142-0603

P. O. Box 420605

May 10, 2006

Mr. Dick Reed Assistant Business Manager L.A. NBCA I.B.B.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,

Sr. Apprenticeship Consultant

DAS



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.

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. KORZ

City Manager

Attachment 3



Terme, Inc. 19701 Heron Avenue La Minda, Culturgie 90036-8206 Talaphonet F14-228-8021 Bana templer com

City of Fasadena Department of Public Works P.O. Box 7115 Pasadena, Ca 91109-7215

Attn:

Robert Gardner, P.E.

Re:

Bid Proposal Protest

Project No.:

5R-710 Miligation Project / Traffic Control and Monitoring System (ITS) Federal

Aid Project RABA 01-5064 (045)

Deer Mr. Gardner

I am contacting you concerning the bid proposals that were recently submitted for the above mentioned project. It is our position to file a formal protest on the bid submitted by the apparent low bidder, Manual Brothess, Inc...

The majority of the project's scope consists primarily of electrical work. More precise, the project falls under the label of intelligent Transportation Systems (175). In order to qualify to bid a unique project of this nature, the contractor needs to posses a valid C-10 contractors license. With the proper license, the contractor can then employee State certified electricians. Manual Brothers, Inc. does not have a G-10 license and nor do they employee State certified electricians. Manual Brothers, Inc. posses a type 'A' Contractors licenses. This license does not qualify to bid nor perform this type of project.

Manual Brothers, Inc. should not be awarded the project. The project should be awarded to the second low bidder Termo, Inc., or, the City should elect to throw out all bids.

Respectfully yours,

Tim Erno President TEKNO, Inc.

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(#-Mydrive/Correspondence)

A PROFESSIONAL LAW CORPORATION

One Embarcadero Center Fifth Floor San Francisco, CA 94111 Phone: 415, 646, 8940 Fax: 415, 276, 1754 www.ErnesiBrown.com

Via facsimile and Fedex

June 14, 2007

Robert Gardner, P.E. City of Pasadena Department of Public Works P.O. Box 7115 Pasadena, CA 91109-7215

Re: BID PROTEST

Project No. SR-710 Mitigation Project Traffic Control and Monitoring System (ITS) Federal Aid Project RABA 01-5064 (045)

Dear Mr. Gardner:

We represent TERNO, INC. (electrical contractor) in regards to its construction bid for the above-referenced Project. Evidently, the City of Pasadena has identified Manuel Brothers, Inc. as the apparent low bidder on this Project. However, as we all know, the Public Contract Code requires award of the contract to the lowest responsive and responsible bidder. We do not believe that Manuel Brothers, Inc. is a responsible bidder or responsive bidder as to this Project.

Accordingly, TERNO, INC. hereby submits its formal bid protest and request that the bid and contract be properly awarded to TERNO, INC. for the following reasons.

PUBLIC CONTRACTS CODE

The California Public Contracts Code states, in pertinent part:

3300. (a) Any public entity, as defined in Section 1100, the University of California, and the California State University shall specify the classification of the contractor's license which a contractor shall possess at the time a contract is awarded. The specification shall be included in any plans prepared for a public project and in any notice inviting bids required pursuant to this code.

This requirement shall apply only with respect to contractors who contract directly with the public entity.

However, it appears that the City of Pasadena did not specify "the classification of the contractor's license which a contractor shall possess at the time a contract is awarded."

Apparently, in the confusion of the Invitation for Bids and Project Specifications, non-responsible contractors bid on the subject Project.

June 14, 2007 Robert Gardner, P.E. City of Pasadena Page 2

Project No. SR-710 Mitigation Project

The subject Project and its construction requirements are very unique in that it involves "Installation of Intelligent Transportation System (ITS) technology and various degrees of traffic signal upgrades along major corridors impacted by the SR 710 freeway gap."

The majority of the Project's scope of work is electrical related and requires a C-10 contractors license. It appears that Manuel Brothers, Inc does not have this license. Furthermore, it would be a possible violation of California Public Contract Code Section 4100 (subcontractor listing laws) to now allow Manuel Brothers, Inc. to try and justify its capability by adding properly licensed electricians or identifying related entities not disclosed in its original bid.

During the City of Pasadena's review of the quality, fitness and capacity of the low bidder to perform the work, we believe that the City should determine that Manuel Brothers, Inc. is not an appropriate contractor for the subject Project and TERNO, INC. is uniquely suited to successfully perform this work.

PASADENA MUNICIPAL CODE

The Pasadena Municipal Code states, in pertinent part:

Section 1002. CONTRACTS REQUIRING COMPETITIVE BIDS.

Except as otherwise provided in this Charter, no contract for supplies, material, labor, or other valuable consideration, to be furnished to the City shall be authorized by the City Council except with the lowest and best bidder after competitive bidding. The City Council may reject any and all bids.

Accordingly, TERNO, INC. requests that the City of Pasadena reject the bid of Manuel Brothers, Inc. as not responsible and award the contract to TERNO, INC.

Should you have any questions in this regard, please don't hesitate to contact me directly.

Very Truly Yours,

ERNEST BROWN & COMPANY

Ernest C. Brown, P.E., Esq.

CC: Christine E. Hernandez, Project Manager

Title 4 REVENUE AND FINANCE*

Chapter 4.08 COMPETITIVE BIDDING AND PURCHASING

4.08.131 Bidder responsibility and debarment.

- A. For the purposes of this section, bidder responsibility includes those factors listed in subsections B, D, E, F, G, I and J of Section 4.08.130.
- B. Prior to any contract award, the city council may find any bidder to be nonresponsible to perform the specific contract to be awarded. The city council may do so on its own motion or on recommendation of the city manager.
- C. In conjunction with any contract award or with any action on a contract, the city council may debar a contractor from bidding on future contracts by finding, upon substantial evidence, nonresponsibility which arises from any one of the following: (1) commission of fraud or a criminal offense in connection with soliciting, obtaining or preparing a public contract; (2) violation of federal or state antitrust statutes in relation to a bid on a public contract; (3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (4) commission of any other offense that indicates a lack of business integrity or business honesty; (5) present debarment by another public entity; (6) breach of a statutory or contract provision which specifies or requires debarment as a remedy; or (7) any other cause so serious it substantially affects the contractor's present responsibility.
- D. Before a finding of nonresponsibility is made, and before a contract requiring competitive bidding is awarded to other than the lowest bidder, a bidder must have been notified of any evidence of its nonresponsibility, must have been afforded an opportunity to rebut such evidence and must have been permitted the opportunity to present evidence of responsibility to perform the contract. Any finding of nonresponsibility shall focus on present non-responsibility, shall be for the purpose of protecting the interests of the public and is not intended to punish a bidder.
- E. A quasi judicial proceeding shall not be required for the council to take action under this section.

 F. The duration of any debarment shall be the period of time the city council finds shall best protect the
- interests of the public but shall not exceed two years. However, in the event of a debarment for breach of a statutory or contract provision which specifies or requires debarment as a remedy, the duration shall be the period specified in said statutory or contract provision, and, if none, then as the city council finds in accord with this subsection.
- G. The provisions of this section are in addition to and not in place of measures set forth as sanctions in the Pasadena living wage ordinance. (Ord. 6899 § 2 (part), 2002: Ord. 6763 § 3, 1998; Ord. 6613 § 1, 1994)

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Title 4 REVENUE AND FINANCE*

Chapter 4.08 COMPETITIVE BIDDING AND PURCHASING

4.08.130 Lowest and best bidder.

In determining the lowest and best bidder, the following shall be considered, in addition to price:

- A. The quality of the material offered;
- B. The ability, capacity and skill of the bidder to perform the contract or provide the material or services;
- C. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference:
- D. The sufficiency of the bidder's financial resources and the effect thereof on his ability to perform the contract or provide the material or services:
- E. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- F. The quality and timeliness of the bidder's performance on previous orders or contracts for the city;
- G. Litigation by the bidder on previous orders or contracts with the city;
- H. The ability of the bidder to provide future maintenance and service where such maintenance and service is
- I. Certification by bidder of compliance with the Equal Employment Opportunity--Non-discrimina-tion requirements.
- J. Certification by bidder of compliance with the Pasadena living wage ordinance, where applicable. (Ord. 6899 § 2 (part), 2002: Ord. 6763 § 2, 1998; Ord. 5068 § 3.08, 1972)

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