

ATTACHMENT B

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July 30, 2007

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**VIA FACSIMILE (626) 744-4774,
AND HAND DELIVERY**

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 allow this letter to serve as Manuel Bros., Inc. a Quanta Services Company's ("Manuel Bros.") written response to your letter of July 24, 2007, regarding a potential finding of non-responsibility relating to the proposed contract with the City of Pasadena ("City") for the State Route (SR) 710 Mitigation Traffic Control and Monitoring System-Intelligent Transportation Systems (ITS) Project ("the Project").

Manuel Bros. is a well known, reputable contractor, which has been engaged in the construction business in California for over 30 years. It is licensed as a contractor in California and numerous other states. It is the lowest responsible bidder on this project, and submitted the lowest responsive bid. Manuel Bros. has performed numerous other projects in California similar to the one at issue here (including one for CalTrans on Pacific Coast Highway, which is being performed at the present time) - all with a Class A ("General Engineering") license. The second low bidder, Terno, Inc. ("Terno"), lacks similar length and breadth of experience in Intelligent Transportation System ("ITS") projects. A partial summary of Manuel Bros.' and Terno's relevant experience is attached hereto as Exhibit "A".

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City Staff and its attorneys, including outside counsel with expertise in contract labor compliance, previously found, both as a matter of fact and as a matter of law, that Manuel Bros. was a responsible bidder, and that its bid was responsive. See, Agenda Report dated July 16, 2007, submitted by Cynthia J. Kurtz. The Agenda Report recommends award of the contract for the Project to Manuel Bros. No new facts have been presented which would alter this conclusion and recommendation.

This letter will respond to the three (3) grounds for a potential finding of non-responsibility in the order raised in your letter of July 24, 2007.

1. Apprenticeship Issues:

Manual Bros. will comply with all statutory and regulatory requirements for the employ and training of apprentices on the Project.

The International Brotherhood of Electrical Workers ("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 system electrician" required for the Project. In support of this assertion, the IBEW provided a letter from the Department of Industrial Relations ("DIR") dated May 10, 2006, more than one year and two months ago. A review of the DIR letter reveals that the IBEW's assertion is overstated. The DIR letter confirms simply that the SCTSEJAC is the only State approved program **in the County of Los Angeles**. Our office attempted to contact Mary Sorokolit, the author of the DIR letter, to confirm the existence of other State approved programs. Unfortunately, Ms. Sorokolit was out on vacation. Ms. Sorokolit's telephone number is (415)703-4920, Ext. 34935.

The real substance of the IBEW's assertions regarding apprentices is that, because Manuel Bros. is non-union, the IBEW will not send it apprentices under any circumstances. Thus, according to the IBEW, it has sole control over Manuel Bros.' ability to meet the contractual apprentice requirements. If such an assertion is accepted, it would place the IBEW in sole control over which contractors can comply with the specifications and be awarded contracts by the City. To carry the argument to its logical conclusion, the City could receive bids from 10

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contractors on a project with the 9 lowest bidders coming from non-union contractors and the highest bid coming from a union contractor. The IBEW could then refuse to send apprentices to the 9 low bidders and request that they be declared non-responsible and, thereby, force the City to award the contract to the highest bidder or reject all bids. This would completely circumvent the competitive bidding statutes. The City cannot abdicate its responsibilities and obligations in the award of public contracts to the IBEW.

The IBEW's position is also legally incorrect. Manuel Bros.' obligations regarding the employ of apprentices on public works projects are governed by *Labor Code* Section 1777.5 and 8 *Cal. Code Regs.* 230.1.

Under *Labor Code* Section 1777.5(c), a contractor is required to employ and train apprentices "in accordance with either of the following: (1) The apprenticeship standards and apprenticeship agreements under which he or she is training; (2) The rules and regulations of the California Apprenticeship Council." Additionally, paragraph (e) requires the contractor to "submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work." A copy of *Labor Code* Section 1777.5 is attached hereto as Exhibit "B."

Under 8 *Cal. Code Regs.* Section 230.1, a contractor is required to "request the dispatch of required apprentices from one of the applicable Apprenticeship Committees whose geographic area of operation includes the site of the public work...." "[I]f in response to a written request an Apprenticeship Committee does not dispatch any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section...." A copy of Section 230.1 is attached hereto as Exhibit "C."

Manuel Bros. will fully comply with all applicable statutes and regulations. Attached hereto as Exhibit "D" is an example of Manuel Bros.' standard letter that will be sent to the SCTSEJAC and all other applicable Apprenticeship Committees providing Notification of Contract Award Information and requesting the dispatch of apprentices under *Labor Code* Section

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1777.5 and Section 230.1(a) of the Regulations. Manuel Bros.' standard notification of award and request for dispatch letter specifically confirms that "Apprentices will be employed and trained in accordance with the statutes and regulations governing the employment of apprentices on state public works projects." This fulfills Manuel Bros.' obligations regarding notification of award and request for dispatch of apprentices. If the SCTSEJAC chooses not to dispatch apprentices within 72 hours of this notification, then Manuel Bros. is not in violation of the statute or regulations. If the SCTSEJAC dispatches apprentices, they will be properly employed and trained by Manuel Bros. and onsite certified electricians.

2. Labor Compliance Issues:

Manuel Bros. denies any intentional prevailing wage violations on the referenced City of Los Angeles project and disputes the majority of the assessment which is related to a classification issue. Manuel Bros. has been operating as a contractor in California for over 30 years. Current management is not aware of a single instance where a prevailing wage violation Decision has been issued against it. This is confirmed by the July 23, 2007 letter from yourself to the City Council which indicates that City Staff has contacted CalTrans and "various other agencies and all the response indicated that Manuel Bros., Inc. consistently fulfills contractual expectations. The labor compliance issues pending against Manuel Brothers can be characterized as minor and unintentional." A copy of your letter is attached hereto as Exhibit "E."

In response to an e-mail request from City of Pasadena Principal Engineer Robert Gardner, Manuel Bros. Vice President Logan Teal provided additional information regarding the alleged prevailing wage violation on the City of Los Angeles project. Mr. Teal explained that the majority of the assessment was related to the classification by Manuel Bros. of Juan Sagastume as a Transportation Systems Technician whereas the City of Los Angeles classified him as a Transportation Systems Electrician. The disagreement results from the fact that Mr. Sagastume filled out his time card by entering "E" for electrician. However, the description of the work performed by Mr. Sagastume clearly indicates that he was mostly performing technician work. While Manuel Bros. has agreed to pay an agreed amount, it still maintains that its classification of Mr. Sagastume as a

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technician was proper. Attached hereto as Exhibit "F" are copies of Mr. Teal's letters and supporting documentation.

The other minor violations on the City of Los Angeles project were the result of bookkeeping procedures that allowed errors to be committed between field input and final input of hours. Specifically, Weekly Time Cards that were filled out by the workers in the field were sent to Manuel Bros.' home office for input into the payroll system and certified payrolls. Manuel Bros.' previous procedure had been to rely upon the "Total" hours worked column as accurate, without cross-checking, when inputting time in the home office. Unfortunately, the "Total" hours worked columns were not always accurate. For example, Juan Calderon filled out his Weekly Time Card for the week ending 6-16-06 indicating he worked 8 hours per day for 4 days. This is the number of hours that were inputted into the payroll system and paid. In fact, if Mr. Calderon's hours are recalculated based upon his "In" and "Out" times, he actually worked 9 hours per day and should have been paid 4 hours of overtime for the week. This bookkeeping error was not intentional but did occur occasionally on the City of Los Angeles' project. Attached hereto as Exhibit "K" are some representative time cards where there was an inconsistency between the "Total" hours and the hours as calculated by the "In" and "Out" times.

Manuel Bros. has modified its bookkeeping procedures to avoid this type of occurrence in the future. The "Total" hours on the Weekly Time Cards are now cross-checked at the home office against the hours as calculated by the "In" and "Out" times. If there is a discrepancy, the time card is sent back to the field for the worker to resolve the conflict.

Manuel Bros. strongly disputes that there were any violations of apprenticeship requirements on the City of Los Angeles' project. On Friday July 27, 2007, I spoke with Chris Jenson with the City of Los Angeles' Office of Contract Compliance. According to Mr. Jenson, Manuel Bros. had not made the proper attempts to obtain apprentices by sending out "Request for Dispatch of Apprentice" and "Contract Award Information" to the proper apprenticeship committees. Mr. Jenson did indicate that Manuel Bros. disputed this and had allegedly sent information verifying compliance with the apprenticeship requirements although he had not seen it yet. In fact, Manuel Bros. did send out the proper requests for apprentices and contract award information to the correct apprenticeship

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committees. Attached hereto as Exhibit "L" are the Request For Dispatch Of Apprentice" and "Contract Award Information" forms that were sent to the Laborers Southern California JAC, NECA JAC and Southern California Operating Engineers JAC. Similar requests for dispatch and contract award information will be sent to all appropriate apprenticeship committees, including one to the SCTSEJAC in the form of Exhibit "D" referenced above.

Manuel Bros. has moved promptly to correct the procedures that led to the minor violations on the City of Los Angeles' project. Its managers have attended a class given by the City of Los Angeles addressing prevailing wage and payroll issues. See, Exhibit F, letter of July 25, 2007, item 2. These are the same managers who will be responsible for the management of the Pasadena Project. While mistakes do happen, Manuel Bros. believes that even one minor violation is too many and will work with the City to ensure full compliance with all prevailing wage laws.

3. License Issues:

A person holding a Class A (General Engineering) contractor's license "is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including ... dams and hydroelectric projects ... highways, streets and roads, ... power plants and other utility plants and installations, ... [and] paving and surfacing work...." *Cal. Bus. & Prof. Code* §7056. The holder of a Class A license is not required to use subcontractors - it is authorized to perform the work on these projects with its own forces if it so chooses. In fact, a contractor with a Class A license is generally more qualified to perform the work than a specialty contractor holding only a C-10 specialty license.

A person holding a Class C license is a "specialty contractor" who is authorized to perform only a specific building trade or craft. *Cal. Bus. & Prof. Code* §7058(a). A Class C-10 ("Electrical") contractor, for example, "places, installs, erects or connects any electrical wires, fixtures, appliances, apparatus, ... [or] conduits ... which generate, transmit, transform or utilize electrical energy in any form or for any purpose." 16 *Cal. Code Regs.* §832-10. That is the only work a C-10 contractor is licensed to perform. A specialty contractor

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"shall not act in the capacity of a contractor in any classification other than one in which he/she is classified except on work incidental or supplemental to the performance of a contract in a classification in which any contractor is licensed by the Board." 16 Cal. Code Regs. §834(c). Thus, the holder of a C-10 license may not perform any work outside of its very narrow trade classification.

Many public entities soliciting bids on projects such as the one at issue here, allow only Class A (General Engineering) contractors to submit bids, since the scope of work a Class A licensee may perform is very broad; on the other hand, some public entities do permit contractors with only specialty licenses to submit bids on projects such as this, however, since such subcontractors may perform only the specialty work for which they are licensed - everything else must be subcontracted out. Further, such specialty contractors are not "general contractors" (only those holding Class A or Class B licenses are licensed as "general contractors"), and thus do not have the same experience, background and training to perform large complicated public works projects.

In a case very similar to the situation at hand, the California Court of Appeal found that a Class A contractor is fully qualified to perform all of the electrical work on a project such as this. This is because such public works of improvement require the type of "specialized engineering knowledge and skill" possessed by a Class A contractor. See, unpublished opinion, California Court of Appeal, Second Appellate District, Case No. B093103 [a copy of which is attached as Exhibit "G"].

The RFP for this Project provides as follows at Part I, Section 2, subsection I-2.03:

"I-2.03 Registration and Qualifications of Contractors - Contractors must be licensed in accordance with provisions of 7-1.01C, 'Contractor's Licensing Laws,' of the State Specifications."

The Standard Specifications issued by the State of California, Department of Transportation, at Section 7, Legal Relations and Responsibility, provides, in part, as follows:

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"7-1.01C Contractor's Licensing Laws

- Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors.
- All bidders and contractors shall be licensed in accordance with the laws of this State and any bidder or contractor not so licensed is subject to the penalties imposed by those laws...."

Thus, the Project specifications merely state that the bidder must be properly licensed. There is no requirement for a particular class of license.

The City may not now unilaterally change its RFP for the Project to prohibit Class A contractors from bidding - after bids have already been submitted and opened. This would violate the intent of the competitive bidding laws, which not only prohibit fraud, favoritism or corruption, but even the appearance of impropriety. *Konika Bus. Machines U.S.A., Inc. v. Regents of University of California* (1988) 206 Cal.App.3d 449, 456. The City's RFP does not provide that only contractors with C-10 licenses may bid on this Project, and bidders cannot now be so restricted.

The City should also note that the California State Contractor's License Board, which is the entity responsible for licensing contractors, provides advisory opinions to public entities. We strongly suggest that the City of Pasadena contact the Contractor's State License Board to confirm that a Class A license is in fact appropriate for this Project.

With regard to the contention by the IBEW that Manuel Bros. "may not ... employ certified electricians to perform the electrical work on the Project", this contention is completely unfounded.

Manuel Bros. employs certified electricians Leon Hernandez (Certification No. E108538G, expiration date 10/16/2009) and Aaron E. Trevino (Certification No. E131512G, expiration date 03/10/2010). Manuel Bros. also utilizes the consulting services of certified electrician Omar Echeverri (Certification No. E108538G, expiration date 10/16/2009). Copies of a print-out showing these certifications from the State of

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California, Department of Industrial Relations, are attached as Exhibit "H."

In its bid, Manuel Bros. supplied the information regarding its listed subcontractors as required by applicable state and municipal law and the RFP. The submission of information in advance regarding the certified electricians to be employed by Manuel Bros. on the Project was not a requirement of the City's RFP, nor is it a requirement of any state or local law. The allegations (made by Terno, Inc. and/or the I.B.E.W., without any factual basis whatsoever) that Manuel Bros. will not scrupulously follow applicable laws are simply the scurrilous statements of an unhappy second low bidder.

Manuel Bros. has performed numerous projects similar to the one at hand for Caltrans, the City of Los Angeles and other municipalities. All of these entities recognize that Class A licenses is proper for Traffic Control/Monitoring System and Intelligent Transportation System projects.

4. Conclusion:

Pasadena Municipal Code §4.08.131 provides:

"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."

A copy of *Pasadena Municipal Code* §4.08.130 is attached hereto as Exhibit "I."

Subsection B relates to the "ability, capacity and skill of the bidder to perform the contract ..." Manuel Bros. has clearly demonstrated, and the City's staff investigations have confirmed, that it is qualified and competent to perform the contract. Subsection D relates to financial resources and there is not even an allegation that Manuel Bros. does not have sufficient financial resources. Subsection E relates to "... character, integrity, reputation, judgment, experience and efficiency of the bidder." There have been no allegations made against Manuel Bros. that fall into this category. The alleged prevailing wage violations have all been characterized as "unintentional" and procedures have been implemented to make sure

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they do not occur again. Subsections F and G both deal with the bidder's prior performance on contracts with the City. Manuel Bros. has not had any prior contracts with the City. Subsections I and J both deal with certifications of compliance and no allegations have been made against Manuel Bros. in this respect. Thus, there is absolutely no basis for finding Manuel Bros. to be a non-responsible bidder.

It must be remembered that the responsibility of a bidder is judged in the present tense. The *Pasadena Municipal Code* §4.08.131, Bidder Responsibility and Debarment, specifically states:

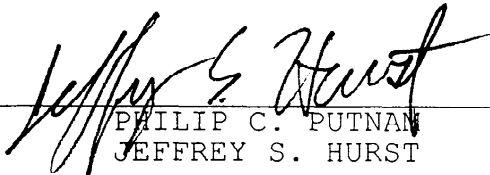
"D. ... Any finding of nonresponsibility shall focus on present non-responsibility, shall be for the purpose of protecting the interests of the public and is not intended to punish a bidder."

A copy of *Pasadena Municipal Code* 4.08.131 is attached hereto as Exhibit "J."

It is not appropriate for the City to review Manuel Bros.' history to determine if mistakes were made in the past. The purpose of a non-responsibility hearing is to determine if Manuel Bros. is currently a responsible bidder based upon the factors enumerated in subsections B, D, E, F, G, I and J of Section 4.08.130. Clearly, Manuel Bros. is a responsible bidder and, as such, the Project must be awarded to it as the lowest responsive and responsible bidder.

Very truly yours,

MONTELEONE & MCCRORY, LLP

By 
PHILIP C. PUTNAM
JEFFREY S. HURST

JSH/sr
enclosures