



December 31<sup>st</sup>, 2024

Via email only: DES.OE.FMIII.Awards@dot.ca.gov  
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DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER  
1727 30th Street, MS-43  
SACRAMENTO, CA 95816-8041

Re: **Contract number 11-430364** (the "Contract")  
Bid opening Date: December 04, 2024

Subject: Protest response to Hazard construction

This letter serves as Nationwide Contracting Services, Inc.'s ("Nationwide") formal response to the protest filed by Hazard Construction Engr LLC ("Hazard") regarding the award of Contract No. 11-430364. Hazard's allegations, while wrongfully detailed, are based on clerical discrepancies that do not materially affect the responsiveness of Nationwide's bid. As such, the claims lack substantive merit and should not preclude Nationwide from receiving the award.

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## Response to Allegations

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### 1. Alleged Discrepancies in the SBE Commitment Form

Hazard claims inconsistencies between the Subcontractor List submitted at the time of bid and the amounts listed in the post-bid Small Business Enterprise (SBE) Commitment Form. Specifically, Hazard references percentage allocation for line item 79 MOBILIZATION:

- **Performance Pipeline Technologies Inc. ("PPT")**: 6% allocated at bid time (\$19,500) versus \$28,000 on the SBE Commitment form.
- **Traffic Loops Crackfilling, Inc. ("TLC")**: 0.7% allocated at bid time (\$136.50) versus \$20,000 on the SBE Commitment form.
- **Ace Fence Company ("Ace")**: 0.5% allocated at bid time (\$1,625) versus \$5,250 on the SBE Commitment form.
- **Diversified Landscape Co. ("Diversified")**: 1% allocated at bid time (\$3,050) versus \$33,300 on the SBE Commitment form.

Nationwide acknowledges these discrepancies; however, they stem from clerical errors in transferring data and do not reflect any post-bid subcontractor scope reductions or bid-shopping. The higher amounts listed in the SBE Commitment form align with quotes submitted post-bid and demonstrate Nationwide's intent to honor subcontractor agreements without seeking cheaper alternatives.



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Furthermore, Hazard's assertion that Nationwide's post-bid submissions reflect an attempt to secure an unfair advantage is fundamentally flawed. As a certified Small Business Enterprise (SBE), Nationwide already benefits from the SBE preference. Logically, Nationwide would have no incentive to increase the percentage or dollar amount of SBE commitments in post-bid documentation, as this would result in higher costs. Had Nationwide intended to manipulate the process, it would have reduced the allocated percentages or amounts during post-bid submissions, not increased them.

This reasoning clearly demonstrates that the discrepancies were unintentional clerical errors and negate Hazard's claim that Nationwide sought an unfair advantage through bid-shopping or increasing SBE participation post-bid. This was solely a clerical error on a Mobilization line item that does not even have any scope of work performed.

**Legal Precedent:** California courts have consistently held that immaterial errors in bid documentation do not justify bid rejection when the errors do not alter the substantive nature of the bid. In *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, the court noted that discrepancies should not disqualify a bid if they do not affect the competitive nature or responsiveness of the bid.

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## 2. Alleged Inconsistencies in the Certified DVBE Summary

Hazard asserts that the Certified DVBE Summary lacks clarity regarding KEE Solutions, Inc. ("KEE")'s scope for Bid Items #1 and #12-16. Specifically:

- KEE is listed as performing 70% of Bid Item #1 in the Subcontractor List, yet 100% in the Certified DVBE Summary without specifying the exact portion of work.
- Payco is listed as performing 30% of Bid Item #1 in the Subcontractor List but 100% in the SBE Confirmation form.

Nationwide acknowledges this discrepancy but emphasizes that it does not reflect any intent to misrepresent subcontractor participation. Nationwide is a certified SBE and selected the SBE preference at bid time. Post-bid documentation, including the DVBE Summary, was submitted solely to comply with Caltrans' requirements and should not supersede the initial bid documents. The discrepancy in the percentages listed in those specific forms make was due to clerical errors and actual percentage not carried through and meant to show 100% of actual subcontractor quote submitted at time of bid.

Further, per Caltrans' protest response in this matter, DVBE post-bid submissions are deemed null and void if they do not include subcontractor quotes. Since no subcontractor quotes accompanied the post-bid DVBE submissions, these documents are irrelevant and should be disregarded in evaluating Nationwide's bid.

**Legal Precedent:** In *Great West Contractors, Inc. v. Irvine Unified School District* (2010) 187 Cal.App.4th 1425, the court held that post-bid submissions clarifying subcontractor scopes or certifications are permissible when they do not prejudice other bidders or affect the fairness of the



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bidding process. Nationwide’s post-bid submittals are consistent with this principle and, where unsupported by subcontractor quotes, are null per Caltrans’ own guidance.

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### 3. Alleged Ambiguity in NSBP Submittals

Hazard contends that Nationwide’s submission of the Non-Small Business Preference (NSBP) form creates ambiguity in subcontractor roles and bid item allocations. Nationwide maintains that:

- The NSBP form was submitted to ensure comprehensive compliance with post-bid forms.
- Nationwide never requested the NSBP preference at bid time, and the form can be disregarded without affecting the validity of the bid.

The inclusion of the NSBP form does not alter the material facts of Nationwide’s bid, nor does it provide any unfair competitive advantage as proven by Caltrans’ protest response letter to Nationwide vs Ral investment stating that since Nationwide did not submit DVBE quotes, DVBE incentive would not apply, making Nationwide’s post bid DVBE form null and void.

**Legal Precedent:** In *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, the court emphasized that discrepancies should be evaluated in light of their materiality and whether they undermine the competitive bidding process. Nationwide’s NSBP submittal does not meet this threshold.

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### 4. Compliance with Caltrans Specifications

Nationwide fully complied with all Caltrans requirements, including:

- Submitting an accurate Subcontractor List at the time of bid.
- Providing post-bid documentation, including the SBE Commitment and DVBE Summary forms, as required by Caltrans.

The clerical discrepancies highlighted by Hazard do not materially affect the bid’s compliance or responsiveness. Caltrans’ initial determination of Nationwide as the lowest responsive and responsible bidder confirms this compliance.

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### Conclusion

Nationwide respectfully requests that Caltrans:

1. Dismiss Hazard Construction’s protest as unfounded.
2. Uphold Nationwide’s status as the lowest responsive and responsible bidder.
3. Proceed with the award of Contract No. 11-430364 to Nationwide.



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Nationwide is committed to completing this project in full compliance with all Caltrans specifications and requirements. Should you require further clarification or additional documentation, please contact me directly at 949-500-0894 or [Elie@nationwidecontractors.net](mailto:Elie@nationwidecontractors.net).

Sincerely,

Nationwide Contracting Services, Inc.

Elie Nader  
President

