

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-3

Urgent

Routine

AGENDA DATE May 15, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Award the Construction Contract for the Strategic Business Technology Data Center Server Room Improvements at 3705 Oakdale Road to Cheek Construction Management, Inc. of Ceres, California; Award the Back Up Generator Package to Energy Systems, Inc. of Stockton, California and Related Actions

STAFF RECOMMENDATIONS:

1. Approve the award of the construction contract for the Strategic Business Technology Data Center Server Room Improvements (Bid Package 3) at 3705 Oakdale Road to Cheek Construction Management, Inc. of Ceres, California, for the lump sum amount not to exceed \$626,322.
2. Approve the award of the contract for the back-up generator package to Energy Systems, Inc. (ES) of Stockton, California for the lump sum amount not to exceed \$250,962.

(Continued on Page 2)

FISCAL IMPACT:

The objectives for the Strategic Business Technology Server Room Relocation Project are to ensure that the data center and server room functions are protected and to ensure business continuity in time of an emergency. At completion, the total project budget was originally estimated to be \$1,768,034 funded by the following primary sources: \$858,407 Fund Balance from the Strategic Business Technology Department; \$131,000 from the Chief Executive Office Plant Acquisition budget; \$231,000 from the Criminal Justice Facilities fund, and \$547,627 from Public Facilities Fees (PFF) previously approved by the PFF Committee on March 17, 2011.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2012-226

On motion of Supervisor Withdraw, Seconded by Supervisor Chiesa

and approved by the following vote,

Ayes: Supervisors: Chiesa, Withdraw, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

STAFF RECOMMENDATIONS: (Continued)

3. Direct Staff to return to the Board at the next Board meeting to award the contract for the infrastructure management system component package.
4. Authorize the Project Manager to issue the Notices to Proceed upon receipt of proper insurance and bonds.
5. Authorize the Project Manager to negotiate and sign contracts, work authorizations, and purchase orders for professional services needed in this phase of the project as long as they are within the approved project budget.
6. Authorize the Project Manager to negotiate and sign change orders up to \$25,000, consistent with the County's Change Order Policy for as long as these are within the previously approved project budget.
7. Direct the Auditor-Controller to increase appropriations and estimated revenue for this project as detailed in the attached Budget Journal form.

FISCAL IMPACT: (Continued)

On March 20, 2012, the Board of Supervisors approved the re-designed plans and specifications for the Strategic Business Technology (SBT) Data Center Server Room improvements at 3705 Oakdale Road, authorized the Project Manager to issue a notice inviting bids for Bid Package 3 for the construction of the project; directed staff to open and evaluate bids; and return to the Board of Supervisors to recommend a construction contract award to the lowest responsible bidder. With the Board of Supervisors approval of the redesigned project elements to simplify the construction effort and include acquisition of a larger emergency backup power generator, use of new mechanical equipment and an additional backup dry fire suppression agent tank. The redesign resulted in an estimated increase in the total project cost from \$1.768 million to approximately \$1.9 million.

Current Bid Results

On April 18, 2012, five bids were received from:

- Diede Construction, Inc. of Lodi, California
- Cheek Construction Management of Ceres, California
- SW Allen Construction, Inc. of Sacramento, California
- Barham Construction of Ceres, California, and
- JHK Construction of Escalon, California.

Approval to Award the Construction Contract for the Strategic Business Technology Data Center Server Room Improvements at 3705 Oakdale Road to Cheek Construction Management, Inc. of Ceres, California; Award the Back Up Generator Package to Energy Systems, Inc. of Stockton, California and Related Actions
Page 3

Bids for construction of the project ranged from \$626,322 to \$792,900.

On April 20, 2012, the Project Manager issued the Notice of Intent to Award Bid Package 3 to Cheek Construction, Inc. Any protests were due no later than 3:00 p.m. on the 5th day following the issuance of the Notice of Intent to Award. One protest was received on April 24, 2012, protesting the responsiveness and responsibility of the electrical sub-contractor for the Strategic Business Technology Data Center Server Room Improvements at 3705 Oakdale Road. The protest was submitted by Northern California Electrical Construction Industry. Their letter is Attachment A.

On May 3, 2012, after thorough review of all of the issues raised by the Protestor and additional data provided by Cheek Construction, a response was provided to Northern California Electrical Construction Industry which is Attachment B.

Based upon the contract documents, staff denied the protest but provided the Protestor four days to provide any written rebuttal or further evidence or information for the County's consideration. Staff received no response from the Protestor even after written correspondence with them. Based on the Protestor's failure to provide any response as required by the County's protest procedure, the Protestor has forfeited its right to further proceed with its protest.

At this time, the Chief Executive Office is returning to the Board of Supervisors for approval to award a construction contract for Bid Package 3 for the SBT Data Center Server Room Improvements at 3705 Oakdale Road to Cheek Construction Management, Inc. of Ceres, California, for the lump sum amount not to exceed \$626,322, the lowest responsible respondent and related actions.

The Project Manager has worked directly with the lowest responsible bidder, Cheek Construction, to obtain a Project Management Plan and ensure that the Contractor and sub-contractor have met all requirements for delivering this project.

Establish Full Project Budget

With the Board of Supervisors approval of the construction contract, the total project budget recommended is \$1,798,969, which is below the *revised* estimated project budget of \$1.9 million to complete the SBT Data Center Server Room improvements outlined in the sources and uses chart in Exhibit 1 below:

Approval to Award the Construction Contract for the Strategic Business Technology Data Center Server Room Improvements at 3705 Oakdale Road to Cheek Construction Management, Inc. of Ceres, California; Award the Back Up Generator Package to Energy Systems, Inc. of Stockton, California and Related Actions
 Page 4

Exhibit 1
SBT Server Room Project Sources and Uses

SBT Data Center Estimated Sources	<i>Amount Approved by BOS on 11-1-11</i>	<i>Post-Bid Amount Recommended</i>
Strategic Business Technology Fund Balance	\$858,407	\$889,342
Chief Executive Office Plant Acquisition	\$131,000	\$131,000
Criminal Justice Facilities Fund	\$231,000	\$231,000
Public Facility Fees	\$547,627	\$547,627
Total	\$1,768,034	\$1,798,969

SBT Data Center Estimated Uses	<i>Amount Approved by BOS on 11-1-11</i>	<i>Post-Bid Amount Recommended</i>
Salaries: Project Management	\$115,167	\$131,667
Services and Supplies	\$52,192	\$52,392
Architectural Design Services	\$166,280	\$166,280
Cost Applied Charges	\$3,875	\$5,224
Construction Contractor, Data Communications, Design Contingency	\$1,154,499	\$898,859
Generator Purchase*	*Included in Construction Bid Package 1	\$250,962
Server Room Equipment and Components	\$276,021	\$293,585
Total Estimated Uses	\$1,768,034	\$1,798,969

At this time, staff also recommends increasing appropriations and estimated revenue as outlined in the attached Budget Journal form.

DISCUSSION:

Background

The Strategic Business Technology Department maintains a data center that houses the core County Information Technology systems, such as the County website, Oracle Financial Management System and PeopleSoft Human Resource Management System. In addition to enterprise systems, the County SBT Data Center houses many of the County departments' servers. Due to continued growth, the current facility is at capacity and can no longer provide space for additional servers or network infrastructure equipment.

Approval to Award the Construction Contract for the Strategic Business Technology Data Center Server Room Improvements at 3705 Oakdale Road to Cheek Construction Management, Inc. of Ceres, California; Award the Back Up Generator Package to Energy Systems, Inc. of Stockton, California and Related Actions

Page 5

Previously, the Board of Supervisors authorized the Chief Executive Officer to issue a Request for Proposal (RFP) for design, specifications and scoping phase for the necessary improvements needed for the Strategic Business Technology Data Center. The purpose of the project is to provide essential protections for the County's Server Room for Strategic Business Technologies to ensure that the Center is adequately protected and can withstand emergency conditions. The server room systems manage crucial business and personal data, operate software applications for the County's core business, and maintain the essential computer hardware on which these services and data reside. An outage at any time can be disastrous if the proper procedures and equipment are not in place for a timely recovery. Subsequently, the Board of Supervisors approved awarding a contract for the design and scoping phase for the Strategic Business Technology Data Center improvements to Miller-Pezzoni and Associates, Inc. of Modesto, California. Subsequent to that action, a series of recommendations were approved to plan for the relocation of the Server Room functions to the Stanislaus Regional 911 Center.

The original plans and specifications were approved by the Board of Supervisors on November 1, 2011 and bids were invited for the project and for separate equipment components. Eight bids were received on December 14, 2011 for the construction project, all exceeding the project budget. On the team's recommendation, the Board of Supervisors rejected all bids and directed the team to redesign the project on January 31, 2012.

On March 20, 2012, the Board of Supervisors approved the redesigned plans and specifications for the Strategic Business Technology (SBT) Data Center Server Room improvements at 3705 Oakdale Road, authorized the Project Manager to issue a notice inviting bids for Bid Package 3 for the construction of the project, and to open and evaluate bids and return to the Board to recommend a construction contract award to the lowest responsible bidder. With the Board of Supervisors approval of the redesigned project elements, the total estimated project budget was anticipated to increase from \$1.76 million to \$1.9 million.

The redesigned plan recommends a structure that is self-contained with its own cooling system, electrical systems, environmental remote monitoring, fire suppression, and uninterrupted power supply. The redesign recommends replacing the existing back up emergency generator with a more powerful and efficient back-up emergency generator that will provide power to both SR911 and the SBT Data Center. A back-up generator will minimize any chance of disruption, it will allow business to function in the midst of a power failure, power will be provided to HVAC, and will ensure continued operations for missions critical systems. The project also recommends installation of a second back-up dry fire suppression tank for increased reliability, and Americans with Disability Act (ADA) upgrades to the parking lot to meet ADA requirements. See Attachment C.

Recommended Actions

To deliver the next critical steps for the project it is recommended that the Board of Supervisors approve four actions that will ensure the project proceeds to the Construction Phase of the project including the following:

- 1. Approve the award of the construction contract for Bid Package 3 for the Strategic Business Technology Data Center Server Room Improvements at 3705 Oakdale Road to Cheek Construction Management, Inc. of Ceres, California, for the lump sum amount not to exceed \$626,322.***

This action will approve a construction contract award to the lowest responsible bidder Cheek Construction Management, Inc. for the lump sum amount not to exceed \$626,322 for the Strategic Business Technology Data Center improvements.

- 2. Approve the award of the contract for the back-up generator package to ES, Inc. of Stockton, California for the lump sum amount not to exceed \$250,962.***

This action will approve a direct purchase contract for the back-up generator package with ES, Inc. of Stockton, California. On March 8, 2012, one proposal was received from Energy Systems of Stockton, California for the back-up generator package. On March 9, 2012, the proposal was evaluated by Capital Projects and SBT staff. The back-up generator package was originally part of Bid Package 1 for the construction of the Strategic Business Technology Data Center server room improvements at 3705 Oakdale Road, and the lowest base bid received on December 14, 2011, was \$285,750. The bid received on March 9, 2012, was \$250,962 for the back-up generator package, approximately \$35,000 below the original estimate received as part of the Bid Package 1.

- 3. Direct the Team to return to the Board of Supervisors on May 22, 2012 to recommend an award for the Data Center Infrastructure Management System Component Package.***

Two responsible proposals were received for this portion of the equipment package. Final contract terms are being developed and staff will return to the Board on May 22 to award this component piece of the Project.

- 4. Authorize the Project Manager to issue a Notice to Proceed upon receipt of proper insurance and bonds.***

This action will authorize the Project Manager to issue a Notice to Proceed to Cheek Construction Management, Inc. contingent upon providing the County with proper insurance and bonds.

Approval to Award the Construction Contract for the Strategic Business Technology Data Center Server Room Improvements at 3705 Oakdale Road to Cheek Construction Management, Inc. of Ceres, California; Award the Back Up Generator Package to Energy Systems, Inc. of Stockton, California and Related Actions
Page 7

Schedule

If approved by the Board of Supervisors, the Project Manager will issue a Notice to Proceed for the project upon finalization of the contract and the County's receipt of all necessary bonds and insurance. The expected construction duration is six months, with completion expected in the winter 2012.

POLICY ISSUES:

Approval of this matter supports the Board priorities of A Safe Community, A Healthy Community, and Efficient Delivery of Public Services by providing back-up power and emergency fire suppression to core server functions maintained during an emergency.

STAFFING IMPACT:

Current Chief Executive Office staff working with Strategic Business Technology and Stanislaus Regional 911 staff will continue to implement the project.

CONTACT PERSON:

Patricia Hill Thomas, Chief Operations Officer. Telephone: 209-525-6333

:

Database
Balance Type
Data Access Set

FMSDBPRD.CO.STANISLAUS.CA.US.PROD
Budget
County of Stanislaus

DO NOT CHANGE
DO NOT CHANGE
DO NOT CHANGE

Ledger
Budget
Category
Source
Currency
Period
Batch Name
Journal Name
Journal Description
Journal Reference
Organization
Chart Of Accounts

* List - Text County of Stanislaus
List - Text LEGAL BUDGET
* List - Text Budget - Upload
* List - Text CEO NJB
* List - Text USD
List - Text APR-12
Text
Text JV CEO CP000108
Text SBT SERVER ROOM
Text
List - Text Stanislaus Budget Org
Accounting Flexfield

DO NOT CHANGE
DO NOT CHANGE
DO NOT CHANGE
DO NOT CHANGE
ENTER AS MMM-YY (ALL CAPS FOR MMM) EX: NOV-11
DO NOT CHANGE
DO NOT CHANGE

Upl	Fund (4 char)	Org (7 char)	Account (5 char)	GL Project (7 char)	Location (6 char)	Misc. (6 char)	Other (5 char)	Debit incr appropriations decr est revenue * Number	Credit decr appropriations incr est revenue * Number	Line Description Text
		5031	0048100	74670	0000000	000000	000000	00000	412406	Inc Op Transf Out
		2073	0061133	38700	000000	000000	000000		412406	Inc Op Transf In
		5031	0048100	74670	000000	000000	000000	151741		Inc Op Transf Out
		2073	0061133	38700	000000	000000	000000		151741	Inc Op Transf In
		5011	0048200	74670	000000	000000	000000	65000		Inc Op Transf Out
		2073	0061133	38700	000000	000000	000000		65000	Inc Op Transf In
		0100	0016031	80300	000000	000000	000000		108000	dec appr
		0100	0016031	61830	000000	000000	000000		23000	dec appr
		0100	0016031	85850	000000	000000	000000	131000		Inc Op Transf Out
		2073	0061133	46600	000000	000000	000000		131000	Inc Op Trans In
		2408	0064100	85850	000000	000000	000000	547627		Inc Op Transf Out
		2073	0061133	46615	000000	000000	000000		547627	Inc Op Trans In
		2026	0061100	85850	000000	000000	000000	231000		Inc Op Transf Out
		2073	0061133	46600	000000	000000	000000		231000	Inc Op Trans In
		2073	0061133	50120	0000000	000000	000000	41161.18		Inc appr
		2073	0061133	62400	0000000	000000	000000	2611.56		Inc appr
		2073	0061133	62600	0000000	000000	000000	350		Inc appr
		2073	0061133	62630	0000000	000000	000000	1600		Inc appr
		2073	0061133	62730	0000000	000000	000000	1000		Inc appr
		2073	0061133	63640	0000000	000000	000000	17400		Inc appr
		2073	0061133	64200	0000000	000000	000000	1500		Inc appr
		2073	0061133	64210	0000000	000000	000000	20860.4		Inc appr
		2073	0061133	64220	0000000	000000	000000	10000		Inc appr
		2073	0061133	64600	0000000	000000	000000		239.83	Dec appr
		2073	0061133	65000	0000000	000000	000000	200		Inc appr
		2073	0061133	66210	0000000	000000	000000	2700		Inc appr
		2073	0061133	67230	0000000	000000	000000	5000		Inc appr
		2073	0061133	73511	0000000	000000	000000	476		Inc appr
		2073	0061133	73512	0000000	000000	000000	900		Inc appr
		2073	0061133	74080	0000000	000000	000000	925		Inc appr
		2073	0061133	74100	0000000	000000	000000	62.5		Inc appr
		2073	0061133	74110	0000000	000000	000000	62.5		Inc appr
		2073	0061133	74190	0000000	000000	000000		200	Dec appr
		2073	0061133	74306	0000000	000000	000000	1000		Inc appr
		2073	0061133	80300	0000000	000000	000000	626322		Inc appr
		2073	0061133	80310	0000000	000000	000000	293584.54		Inc appr
		2073	0061133	80570	0000000	000000	000000	72020		Inc appr
		2073	0061133	80610	0000000	000000	000000	125000		Inc appr
		2073	0061133	81000	0000000	000000	000000	1382		Inc appr
		2073	0061133	82130	0000000	000000	000000	5000		Inc appr
		2073	0061133	82570	0000000	000000	000000	59135		Inc appr
		2073	0061133	83990	0000000	000000	000000	250961.15		Inc appr
		2073	0061133	63000	0000000	000000	000000		2000	Dec appr

Totals: 3079987.83 1672213.83

Tip: This is not the end of the Template. Unprotect the sheet and insert as many rows as needed.

Explanation:			
Increase operating transfer out of from PFF; Criminal Justice Facilities Fund, and Plant Ac into the Capital Project Fund			
Increase project budget through construction completion and closeout			
Requesting Department		Data Entry	Auditors Office Only
Norma Baker		Keyed by	Prepared By
Prepared by			
4/22/2012		Date	Date
Date		Date	Date

CEO
Attorney's Office
 Supervisor's Approval
 5/11/12



NORTHERN CALIFORNIA ELECTRICAL CONSTRUCTION INDUSTRY

LABOR-MANAGEMENT COOPERATIVE TRUST

1800 SUTTER STREET, SUITE 390 • CONCORD, CA 94520

OFFICE 925/688-0163 • FAX 925/688-0165 • www.nceci.info

April 24, 2012

County of Stanislaus
County Clerk of the Board
Patricia Hill Thomas
1010 Tenth Street, Suite 6700
Modesto, California 95354

2012 APR 25 P 2:51
BOARD OF SUPERVISORS

Project: Stanislaus County Strategic Business Technology Server Room

Dear Ms. Thomas:

The Northern California Electrical Construction Industry Labor Management Cooperative Trust (NCECI) is a joint labor-management cooperative established pursuant to the Federal Labor Management Cooperation Act of 1978 (29 U. S. C. Sec.175a) working to ensure fairness and lawful bidding in public contracting and by so doing, protect public funds. We represent over 500 C-10 and C-7 Electrical contractors and 7,000 Electrical workers throughout Northern California. We are currently monitoring over 1,100 public construction projects annually for compliance with the Public Contracts Code, Business and Professions Code and the State Labor Laws.

I, Alex Neang, NCECI Compliance Officer assigned to the California Valley Counties, recently received the bid opening results for the above referenced project. It appears that the apparent low bidder, Cheek Construction submitted a bid that appears to be non-responsible to the bid specifications. The bid submitted by Cheek Construction listed an electrical contractor without Workers' Compensation Insurance. Being a subcontractor, Dynamic Electrical should have a valid Workers' Compensation Policy being that the C-10 license is **not a partnership license**. It should be a major concern to the County whether Dynamic Electrical has completed any prior projects with no policy in place. It is our recommendation to the County of Stanislaus to award this project to the lowest responsible bidder, the second listed low contractor in reference to bid documents section 12.1:

12.1 - If any Apparent Low Bidder is determined to be non-responsive or non-responsible, County may proceed to the next apparent low bidder's bid pursuant to any procedures determined in its reasonable discretion, and proceed for all purposes as if this Apparent low bidder were the original apparent low bidder.

I have prepared this *Protest Letter* on behalf of our contractor Big Valley Electric, a listed bidder on the above referenced project, to inform the County of Stanislaus staff that it is about to enter into contract with an apparent low bidder that appears to be NON-RESPONSIVE and NON-RESPONSIBLE pursuant to Public Contracts Code requirements.

I would also like to bring to your attention in Labor Code section 2810 et seq. which proscribes any entity from entering into a contract where the entity "knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations



governing the labor to be performed.” In the instant case, such laws and regulations would, of course include the proper craft classification of workers, payment of prevailing wages and benefits, employment of apprentices in the ratios specified, **worker’s compensation coverage**, and possession of proper contractor licensing.

Should the apparent low bidder be awarded this job and wish to invoke the rebuttable presumption that the work can be performed in compliance with all local, state and federal laws by providing the documentation outlined in the statute, please regard this letter as a formal request, pursuant to the California Public Records Act, to receive a copy of all such documentation when provided to your agency.

Please acknowledge receipt of this letter and keep this office abreast of the action taken by the County of Stanislaus to research and/or resolve this important issue as stated in bid documents section 13.2:

13.2 - County may conduct reasonable investigations and reference checks of Bidder and other persons and organizations as County deems necessary to assist in the evaluation of any Bid and to establish Bidder’s responsibility, qualifications, financial ability and ability to perform the Work in accordance with the Contract Documents to County’s satisfaction within the prescribed time. Submission of a Bid constitutes Bidder’s consent to the foregoing. County shall have the right to consider information provided by sources other than Bidder. County shall also have the right to communicate directly with Bidder’s surety regarding Bidder’s bonds.

Respectfully Submitted,

Alex R Neang

Field Compliance Officer
Northern California Electrical Construction Industry
1800 Sutter Street, Suite 390
Concord, CA 94520
(Office) 925-688-0163
(Cell) 925-348-6237

LAW OFFICES
**WULFSBERG REESE
COLVIG & FIRSTMAN**

PROFESSIONAL CORPORATION

KAISER CENTER
300 LAKESIDE DRIVE, 24TH FLOOR
OAKLAND, CALIFORNIA 94612-3524

TELEPHONE (510) 835-9100
FACSIMILE (510) 451-2170
www.wulfslaw.com

DEIRDRE JOAN COX
dcox@wulfslaw.com
Direct Dial: (510) 379-1916

FILE NUMBER 2017-004

May 3, 2012

VIA FACSIMILE AND U.S. MAIL

Alex R. Neang
Field Compliance Officer
Northern California Electrical Construction
Industry
1800 Sutter St., Suite 390
Concord, CA 94520
Fax: 925-688-0165

Re: **Stanislaus County Strategic Business Technology Server Room**

Dear Mr. Neang:

We represent the County of Stanislaus. The County received your letter dated April 24, 2012 purportedly protesting on behalf of Big Valley Electric the selection of Cheek Construction as the contractor for the Stanislaus County Strategic Business Technology Server Room Project ("Project") on the basis that the bid of Cheek Construction was both non-responsive and non-responsible.

Procedural Analysis

We have carefully reviewed your protest letter received by the County. Unfortunately, your protest does not comply with the requirements of Document 00200 of the Notice to Bidders dated March 16, 2012 for this Project, in the following aspects:

1. **NCEC and Big Valley Electric Lack Standing to Protest.** Paragraph 15.4 of Document 00200 Notice to Bidders requires: "Only Bidders who County otherwise determines are responsive and responsible are eligible to protest a Bid; protests from any other Bidder will not be considered." Obviously, Northern California Electrical Construction Industry ("NCEC") is not a "Bidder who County otherwise determines is responsive and responsible." Your letter states without substantiation that it is transmitted on behalf of Big Valley Electric. However, Big Valley Electric is also not a Bidder that is responsive and responsible. Big Valley Electric was simply an electrical subcontractor that was listed on another Bidder's Bid Form. Accordingly, pursuant to Document 00200 Notice to Bidders, the County is not required to consider your protest.

Alex R. Neang

May 3, 2012
Page 2

2. Your Protest Was Incomplete. Paragraph 15.5 of Document 00200 Notice to Bidders requires: "The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest." Accordingly, at a minimum, the protest of NCEC should have been transmitted to Cheek Construction, the bidder specifically challenged by the NCEC protest, as well as BC Construction, the second apparent low bidder that listed Big Valley Electric as its electrical subcontractor, as BC Construction would appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest. None of these entities was copied with NCEC's protest letter.
3. Your Failure to Comply With Procedures Protest Constitutes a Waiver of Any Right to Further Pursue the Bid Protest. Paragraph 15.6 of Document 00200 explains: "The procedure and time limits set forth in this Paragraph 15 are mandatory and are Bidder's sole and exclusive remedy in the event of Bid protest. Bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings."

According, County Staff intends to deny your protest at this time for the specific reasons enunciated above.

Substantive Analysis

Although not required to do so, the County has also evaluated the substantive basis of the NCEC protest letter. The County disagrees with your contention that Stanislaus County should reject Cheek Construction as a non-responsive and non-responsible bidder for the following reasons:

1. Workers' Compensation Insurance. The County has verified that the electrical subcontractor listed by Cheek Construction, Dynamic Electrical Contracting & Controls, Inc. has had and continues to have a valid policy of insurance that includes workers' compensation insurance. We enclose for your reference a copy of the Certificate of Insurance provided to the County by Cheek Construction. Therefore, at this stage of the bidding process, consistent with the requirements of the Bid Documents, the County cannot disqualify Cheek Construction on the basis of the insurance coverage of one of its listed subcontractors.

For both the procedural and substantive reasons set forth above, County staff intends to deny your protest at this time.

**WULFSBERG REESE
COLVIG & FIRSTMAN**
PROFESSIONAL CORPORATION

Alex R. Neang

May 3, 2012
Page 3

If you wish to discuss this matter with myself and the Project Manager, please contact me directly by the close of business on Friday, May 4, 2012. Further, if you intend to continue to pursue this matter, please advise me by the close of business on Monday, May 7, 2012, of your plans.

The County appreciates the interest you and Big Valley Electric have expressed in the Stanislaus County Strategic Business Technology Server Room Project.

Sincerely,

WULFSBERG REESE COLVIG & FIRSTMAN
PROFESSIONAL CORPORATION



DEIRDRE JOAN COX

cc: Patricia Hill Thomas
Cheek Construction
John Doering, Esq., County Counsel



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/25/2012

PRODUCER Contractors Direct Insurance Clayton A. Hatfield 1885 Los Altos Dr. San Mateo, CA 94402	THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Patrick Anderson DBA- Dynamic Electrical Contracting & Controls, Inc. 1546 La Sierra Street Merced, CA 95348	INSURER A: Navigators Specialty Insurance Company	42307
	INSURER B: Progressive Insurance Company	11851
	INSURER C: Hartford Insurance Company	38288
	INSURER D: Travelers Insurance Company	56962
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR/ADD'L LTR/INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	SIG0900365-00	06/01/2011	06/01/2012	EACH OCCURRENCE \$ 1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence) \$
					MED EXP (Any one person) \$ 5,000
					PERSONAL & ADV INJURY \$ 1,000,000
					GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COM/OP AGG \$ 1,000,000
					FIRE DAMAGE \$ 50,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	04738396-01	06/04/2011	06/04/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
					BODILY INJURY (Per person) \$ 1,000,000
					BODILY INJURY (Per accident) \$ 1,000,000
					PROPERTY DAMAGE (Per accident) \$ 1,000,000
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
					OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$
					AGGREGATE \$
					\$
					\$
					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	46WECAC5604	08/10/2011	08/10/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
					E.L. EACH ACCIDENT \$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
D	OTHER INLAND MARINE COVERAGE	QT-660-601M9379-TIL-10	11/30/2010	11/30/2012	\$22,500 - Replacement Cost Value \$50,000 - Leased or Rented

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The Blanket Waiver of Subrogation and Additional Insured applies to all operations including its divisions, subsidiaries, partners & shareholders, for whom the named Insured has agreed by written contract to furnish this waiver.
 The Blanket Waiver of Subrogation and Additional Insured applies to:
 Stanislaus County Strategic Business Technology Server Room

CERTIFICATE HOLDER

Stanislaus County Strategic Business Technology Server Room
 3705 Oakdale Road
 Modesto, CA 95357

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN

NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Clayton A. Hatfield

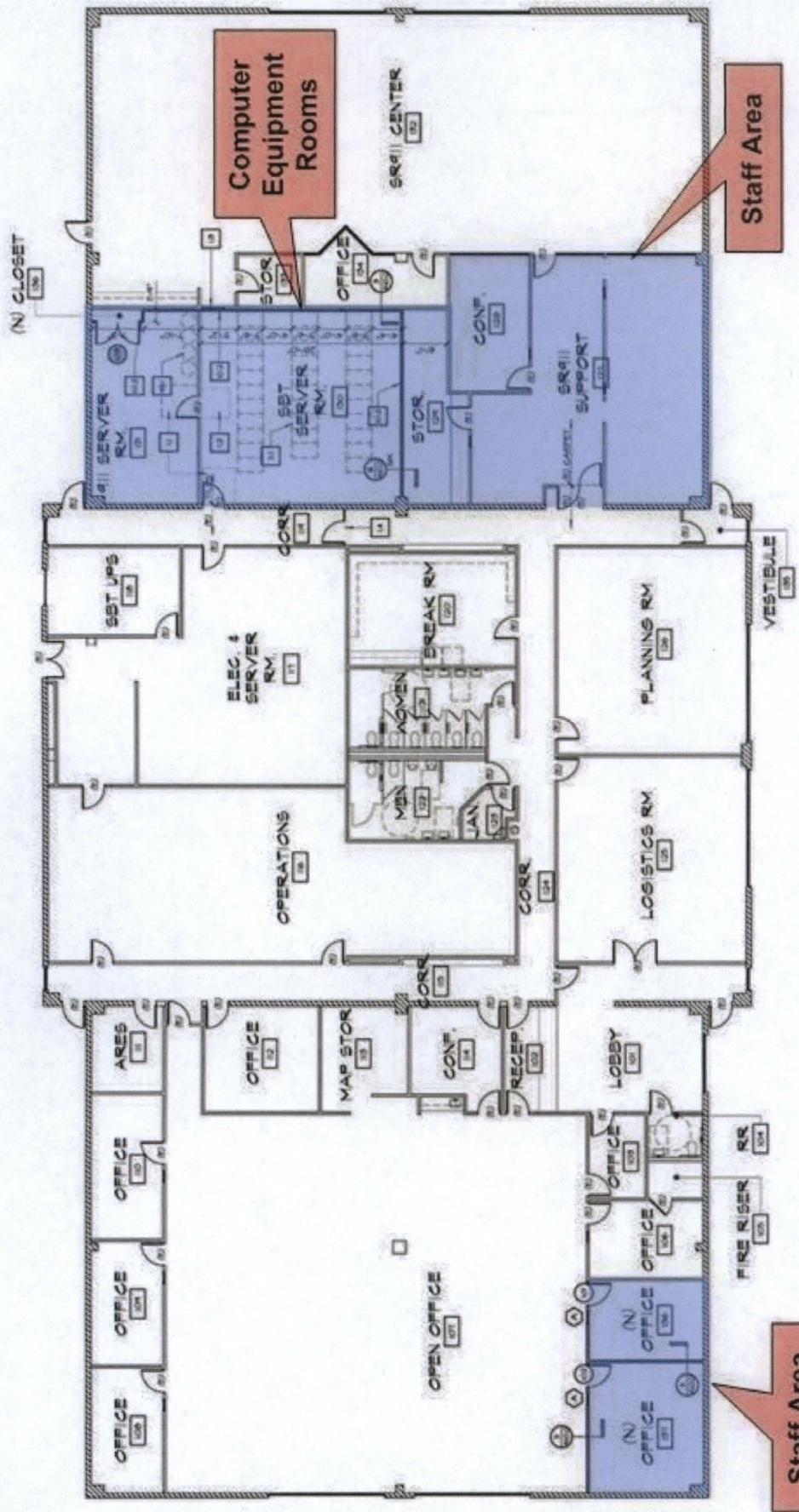
IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



SCALE: 1/8" = 1'-0"

OAKDALE ROAD

Project Area
FLOOR PLAN

Staff Area

**AGREEMENT
FOR
INDEPENDENT CONTRACTOR SERVICES**

This Agreement for Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and E.S. Inc. dba Energy Systems ("Contractor") as of May 15, 2012.

Recitals

WHEREAS, the County has a need for services involving the Engine Generator for the Strategic Business Technology Server Room; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1) **Scope of Work**

a) The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

b) All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

c) Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

2) **Consideration**

a) County shall pay Contractor as set forth in Exhibit A.

b) Except as expressly provided in Exhibit A of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

c) County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

d) Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and material men shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

3) Term

a) The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

b) Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

c) This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

d) The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

4) Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

5) Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

6) Insurance

a) Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

i) General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any

act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

ii) Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

iii) Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

b) Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

c) The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming Stanislaus County, its officers, directors, officials, agents, employees, and volunteers as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against Stanislaus County, its officers, directors, officials, agents, employees and volunteers for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

d) The Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.

e) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

f) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

g) Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

h) Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

i) Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

j) At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

k) The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.

7) Defense and Indemnification

a) To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

b) Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

8) Status of Contractor

a) All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

b) At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

c) Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities

of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

d) If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

e) It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

f) It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

g) As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9) Records and Audit

a) Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

b) Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10) Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11) Nondiscrimination

During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex, or sexual orientation. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all

applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12) Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13) Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14) Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus
Capital Projects Office
Attention: Patricia Hill Thomas
1010 10th Street, Suite 2300
Modesto, CA 95354

To Contractor: E.S., Inc. dba Energy Systems
Attn: Damien Oxendine
7100 Longe Street
Stockton, CA 95206

15) Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16) Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17) Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18) Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19) Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20) Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21) Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the day and year first hereinabove written.

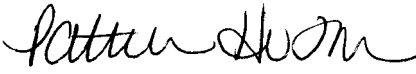
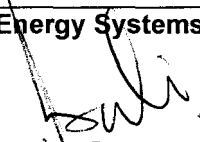

<p>COUNTY OF STANISLAUS</p> <p>By:  Patricia Hill Thomas Chief Operations Officer / Assistant Executive Officer</p> <p style="text-align: center;">"County"</p>	<p>E.S., Inc. dba Energy Systems</p> <p>By:  Name: RAVI RANE Title: GENERAL MANAGER</p> <p style="text-align: center;">"Contractor"</p>
<p>APPROVED AS TO FORM:</p> <p>By:  John P. Doering County Counsel</p>	

EXHIBIT A

A. SCOPE OF WORK

The Contractor shall provide services under this Agreement as outlined in RFP #12-09-CP Data Center Engine Generator Solution.

B. COMPENSATION

The Contractor shall be compensated for the services provided under this Agreement as follows:

1) Contractor will be compensated on a lump sum basis for each task as set forth in the proposal and scope of work dated January 17, 2012 and, by this reference, made a part hereof. In addition to the aforementioned fees, Contractor will be reimbursed for the following expenses, plus any expenses agreed to by the parties as set forth in a Schedule of Rates attached hereto, that are reasonable, necessary and actually incurred by the Contractor in connection with the services:

- (a) Any filing fees, permit fees, or other fees paid or advanced by the Contractor.
- (b) Expenses, fees or charges for printing, reproduction or binding of documents at actual costs.

2) The County shall retain five (5) percent of all periodic or progress payments made to the Contractor until completion and acceptance of all work tasks.

3) The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$250,961.15, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement.

AGREEMENT

THIS AGREEMENT, dated this _____ day of _____, 2012, by and between CHEEK CONSTRUCTION MANAGEMENT, INC. ("Contractor"), and the COUNTY OF STANISLAUS ("County"), acting under and by virtue of the authority vested in the County by the laws of the State of California.

WHEREAS, County, by its Resolution No. _____ adopted on the _____ day of _____, 2012 awarded to Contractor the following Contract:

**STRATEGIC BUSINESS TECHNOLOGY SERVER ROOM
BID PACKAGE 3, CONSTRUCTION**

at

**3705 OAKDALE ROAD
MODESO, CA 95357**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and County agree as follows:

Article 1. Work

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents.

Article 2. Project Representatives

- 2.1 County has designated **Patricia Hill Thomas** as its Project Manager to act as County's Representative in all matters relating to the Contract Documents. The Project Manager shall have final authority over all matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of the County, to accept work, and to make decisions or actions binding on the County, and shall have sole signature authority on behalf of the County.
- 2.2 The County may assign all or part of the Project Manager's rights, responsibilities and duties to a Construction Manager.
- 2.3 Contractor has designated **Seth Cheek** as its Project Manager to act as Contractor's Representative in all matters relating to the Contract Documents.
- 2.4 **Miller Pezzoni & Associates, Inc.** designed the Project and furnished the Plans and Specifications. **Miller Pezzoni & Associates, Inc.** shall have the rights assigned to Architect/Engineer in the Contract Documents. **Miller Pezzoni & Associates, Inc.** has designated Kevin Pezzoni as its Project Manager to act as its representative for receiving and making communications authorized under the Contract Documents.

Article 3. Contract Time and Liquidated Damages

3.1 Contract Time

Contractor shall commence Work on the date established in the Notice to Proceed. County reserves the right to modify or alter the Commencement Date of the Work.

Contractor shall achieve Substantial Completion of the entire Work within **180 Days** from the date when the Contract Time commences to run as provided in Document 00700 (General Conditions). Contractor

shall achieve Final Completion of the entire Work and be ready for Final Payment in accordance with Section 01770 (Contract Closeout) within 60 Days after Substantial Completion.

3.2 Liquidated Damages

County and Contractor recognize that time is of the essence of this Agreement and that County will suffer financial loss in the form of Contract administration expenses (such as Project management and consultant expenses), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Contractor and County agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by County because of a delay in completion of all or any part of the Work. Accordingly, County and Contractor agree that as liquidated damages for delay Contractor shall pay County:

3.2.1 One Thousand dollars (\$1,000.00) for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.

3.2.2 One Thousand dollars (\$1,000.00) for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by County resulting from delay in completion of the Work.

3.3 Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by County as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from County (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

Article 4. Contract Sum

4.1 County shall pay Contractor the Contract Sum for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

[ATTACHMENT]

Article 5. Contractor's Representations

In order to induce County to enter into this Agreement, Contractor makes the following representations and warranties:

5.1 Contractor has had the opportunity to visit the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

5.2 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, which have been made available for Bidders or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 00700 (General Conditions) of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.

- 5.3 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Document 00520 that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00700 (General Conditions); and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 5.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

Article 6. Contract Documents

- 6.1 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00510	Notice of Award
Document 00520	Agreement
Document 00550	Notice to Proceed
Document 00610	Construction Performance Bond
Document 00620	Construction Labor and Material Payment Bond
Document 00630	Guaranty
Document 00650	Agreement and Release of Any and All Claims
Document 00660	Substitution Request Form
Document 00680	Escrow Agreement for Security Deposits in Lieu of Retention
Document 00700	General Conditions
Document 00821	Supplementary Conditions – Insurance
Document 00822	Apprenticeship Program
Specifications	Divisions 1 through 16
Drawings listed in Document 00015	
Addenda 1 and 2	

- 6.2 There are no Contract Documents other than those listed in this Document 00520, Article 6. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

Article 7. Miscellaneous

- 7.1 Terms and abbreviations used in this Agreement are defined in Document 00700 (General Conditions) and Section 01420 (References and Definitions) and will have the meaning indicated therein.
- 7.2 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of County or acting as an employee, agent, or representative of County, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the County is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 7.3 Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*
- 7.4 The Contract Sum includes all allowances (if any).

- 7.5 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time County tenders final payment to Contractor, without further acknowledgment by the parties.
- 7.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at County's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §1861, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 7.7 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 7.8 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Stanislaus, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in Stanislaus County Superior Court. Contractor accepts the Claims Procedure in Document 00700, Article 12, as a claims procedure by agreement under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.

IN WITNESS WHEREOF the parties have executed this Agreement in quadruplicate the day and year first above written.

CONTRACTOR:

CHEEK CONSTRUCTION MANAGEMENT, INC.

By: _____
(Signature)

By: _____
(Signature)

Its: _____
Title (If Corporation: Chairman, President
or Vice President)

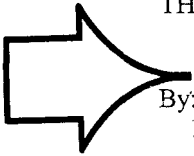
Its: _____
Title (If Corporation: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer)

COUNTY:

COUNTY OF STANISLAUS

By: _____
(Signature)
Patricia Hill Thomas
Chief Operations Officer
Assistant Executive Officer

APPROVED AS TO FORM AND LEGALITY
THIS ____ DAY OF _____, 2012



By: _____
John P. Doering, County Counsel

COUNTY RESOLUTION NO. _____

END OF DOCUMENT

BID FORM

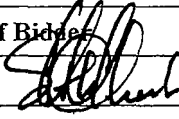
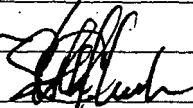
TO THE COUNTY OF STANISLAUS

THIS BID IS SUBMITTED BY:

Chcek Construction Management, Inc.
(Firm/Company Name)

Re: County of Stanislaus Strategic Business Technology (SBT) Server Room Project at 3705 Oakdale Road, Modesto, CA 95357

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with the County of Stanislaus, ("County") in the form included in the Contract Documents, Document 00520 (Agreement), to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Bid and in accordance with all other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Contract Documents, Document 00100 (Notice Inviting Bids), and Document 00200 (Instructions to Bidders), including, without limitation, those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for 90 Days after the day of Bid opening.
3. In submitting this Bid, Bidder represents:
 - (a) Bidder has examined all of the Contract Documents and the following Addenda (receipt of all of which is hereby acknowledged).

Addendum Number	Addendum Date	Signature of Bidder
1	4/3/12	
2	4/13/12	

- (b) Bidder acknowledges receipt of Pre-Bid Conference minutes, if any.
- (c) Bidder has had the opportunity to visit the Site and has performed all tasks, research, investigation, reviews, examinations, and analysis and given notices, regarding the Project and the Site, as set forth in Document 00520 (Agreement), Article 5.
- (d) Bidder has given the County prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by the County is acceptable to Contractor.

4. Based on the foregoing, Bidder proposes and agrees to fully perform the Work within the time stated and in strict accordance with the Contract Documents for the following sums of money listed in the following Schedule of Bid Prices:

SCHEDULE OF BID PRICES

All Bid items must be filled in completely. Bid items are described in Section 01100 (Summary of Work). Quote in figures only, unless words are specifically requested.

BID ITEM	DESCRIPTION	TOTAL
1.	Base Bid	\$ <u>626,322⁰⁰</u>

Total Base Bid Price: Six Hundred Twenty Six Thousand Three Hundred Twenty Two
dollars & zero cents ^(Words)

5. Subcontractors for work included in all Bid items are listed on the attached Document 00430 (Subcontractors List).
6. The undersigned Bidder understands that County reserves the right to reject this Bid.
7. If written notice of the acceptance of this Bid, hereinafter referred to as Notice of Award, is mailed or delivered to the undersigned Bidder within the time described in Paragraph 2 of this Document 00400 or at any other time thereafter before it is withdrawn, the undersigned Bidder will execute and deliver the documents required by Document 00200 (Instructions to Bidders) within the times specified therein. These documents include, but are not limited to, Document 00520 (Agreement), Document 00610 (Construction Performance Bond), and Document 00620 (Construction Labor and Material Payment Bond).
8. Notice of Award or request for additional information may be addressed to the undersigned Bidder at the address set forth below.
9. The undersigned Bidder herewith encloses cash, a cashier's check, or certified check of or on a responsible bank in the United States, or a corporate surety bond furnished by a surety authorized to do a surety business in the State of California, in form specified in Document 00200 (Instructions to Bidders), in the amount of ten percent (10%) of the Total Bid Price and made payable to "County of Stanislaus."
10. The undersigned Bidder agrees to commence Work under the Contract Documents on the date established in Document 00700 (General Conditions) and to complete all Work within the time specified in Document 00520 (Agreement). The undersigned Bidder acknowledges that the County has reserved the right to delay or modify the commencement date. The undersigned Bidder further acknowledges County has reserved the right to perform independent work at the Site, the extent of such work may not be determined until after the opening of the Bids, and that the undersigned Bidder will be required to cooperate with such other work in accordance with the requirements of the Contract Documents.
11. The undersigned Bidder agrees that, in accordance with Document 00700 (General Conditions), liquidated damages for failure to complete all Work in the Contract within the time specified in Document 00520 (Agreement) shall be as set forth in Document 00520 (Agreement).
12. The names of all persons interested in the foregoing Bid as principals are:

IMPORTANT NOTICE:

If Bidder or other interested person is a corporation, give the legal name of corporation, state where incorporated, and names of president and secretary thereof; if a partnership, give name of the firm and names of all individual co-

partners composing the firm; if Bidder or other interested person is an individual, give first and last names in full.

NAME OF BIDDER: Check Construction Management, Inc.

licensed in accordance with an act for the registration of Contractors, and with license number: 933038

Expiration: 5/31/13

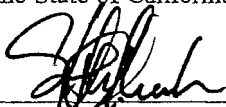
California
(Place of Incorporation, if Applicable)

Seth M. Check/President
(Principal)

Charles D. Check Sr./Sec.-Tres.
(Principal)

(Principal)

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



(Signature of Bidder)

NOTE: If Bidder is a corporation, set forth the legal name of the corporation together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business Address: 1231 Partee Lane
Ceres, Ca. 95307

Contractor's Representative(s): Seth M. Check/President
(Name/Title)

(Name/Title)

(Name/Title)

Officers Authorized to Sign Contracts

Seth M. Check / President
(Name/Title)

Charles D. Check Sr. / Sec. - Tres.
(Name/Title)

(Name/Title)

Telephone Number(s):

(209) 541-0689
(Area Code) (Number)

(Area Code) (Number)

Fax Number(s):

(209) 541-1171
(Area Code) (Number)

(Area Code) (Number)

Date of Bid:

4/18/12

END OF DOCUMENT