

RESOLUTION NO. 2025-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GLENN COUNTY RESOURCE CONSERVATION DISTRICT REJECTING PROTESTS AND AWARDING CONTRACTS FOR (1) NEEDHAM HAZARDOUS FUELS REDUCTION PROJECT AND (2) GLENN COUNTY SMALL LANDOWNER FOREST IMPROVEMENT PROGRAM PROJECT

RECITALS

A. WHEREAS, the Glenn County Resource Conservation District (“District”), in compliance with all applicable law, solicited proposals for the following projects (each, a “Project”, and collectively the “Projects”):

- (1) NEEDHAM HAZARDOUS FUELS REDUCTION PROJECT; and
- (2) GLENN COUNTY SMALL LANDOWNER FOREST IMPROVEMENT PROGRAM PROJECT

B. WHEREAS, the award of a contract for each Project is governed by applicable law and the solicitation documents issued in connection therewith, the latter of which are on file with the District, available upon request, and incorporated herein by reference (for each Project, the “Contract Documents”).

C. WHEREAS, the District Review Committee evaluated the proposals regularly submitted for each Project (each, a “Proposal”), which are on file with the District, available upon request, and incorporated herein by reference.

D. WHEREAS, the District Review Committee determined for the Needham Hazardous Fuels Reduction Program Project that the proposal of Diversified Resources, Inc. (“DRI”) demonstrated that DRI was qualified and an award to DRI was most advantageous to the District with price and all other factors considered pursuant to the criteria set forth in the Contract Documents.

E. WHEREAS, the District Review Committee determined for the Glenn County Small Landowner Forest Improvement Program Project that the proposal of Cook Construction Engineering Partnership (“Cook”) demonstrated that Cook was qualified and an award to Cook was most advantageous to the District with price and all other factors considered pursuant to the criteria set forth in the Contract Documents.

F. WHEREAS, the District received protests to the findings set forth in recital D and recital E above, which were enclosed with the correspondence attached hereto as Exhibit A and incorporated herein by reference (the “Protests”).

G. WHEREAS, the District received in response to the correspondence attached hereto as Exhibit A and incorporated herein by reference the responses attached hereto as Exhibit B and incorporated herein by reference (each, a “Protest Response”).

H. District staff recommends that this Board of Directors reject the Protests as without merit and award the contract for the Needham Hazardous Fuels Reduction Program Project to Diversified Resources, Inc. (“DRI”) and the contract for the Glenn County Small Landowner Forest Improvement Program Project to Cook Construction Engineering Partnership (“Cook”), based on the following proposed findings (“Proposed Findings”):

1. The arguments advanced by DRI and Cook in its Protest Response have legal and factual merit, except with respect to any argument about the qualifications of other proposers which are disregarded as irrelevant.
2. The arguments advanced in the Protests lack legal and factual merit.
3. DRI and Cook have demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience satisfactorily perform the contract for which they submitted a Proposal, and are otherwise qualified.
4. The District’s evaluation process complied with applicable law and the Contract Documents, and is a lawful exercise of discretion guided by considerations of the public welfare.
5. Each official duty of the District Review Committee and other District staff relating to the factual subject matter of the Protests has been regularly performed.

I. WHEREAS, as stated in *Mike Moore's 24-Hour Towing v. City of San Diego* (1996) 45 Cal.App.4th 1294, 1303 (“*Mike Moore’s Towing*”), “[a] public entity's award of a contract, and all of the acts leading up to the award, are legislative in character. [T]he letting of contracts by a governmental entity necessarily requires an exercise of discretion guided by consideration of the public welfare[]”.

J. WHEREAS, as stated in *Judson Pacific-Murphy Corp. v. Durkee* (1956) 144 Cal.App.2d 377, 383 (“*Judson*”):

*It must be remembered that competitive bidding statutes [...] are for the benefit of the public and not for the benefit of bidders [...]. It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal [...] of the low bidder after the fact, cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.*

NOW THEREFORE, BE IT RESOLVED, by the Board of Directors of the Glenn County Resource Conservation District that:

1. The Board of Directors adopts the Proposed Findings as its own.
2. The Protests are rejected and all irregularities are waived.


3. With respect to the Needham Hazardous Fuels Reduction Program Project, DRI is qualified and an award to DRI is most advantageous to the District with price and all other factors considered pursuant to the criteria set forth in the Contract Documents.
4. With respect to the Glenn County Small Landowner Forest Improvement Program Project, Cook is qualified and an award to Cook is most advantageous to the District with price and all other factors considered pursuant to the criteria set forth in the Contract Documents.
5. The contract for the Needham Hazardous Fuels Reduction Program Project is awarded to Diversified Resources, Inc.
6. The contract for the Glenn County Small Landowner Forest Improvement Program Project is awarded to Cook Construction Engineering Partnership.
7. The District Executive Officer is authorized to take such action as is reasonably necessary to carry out the intent of this Resolution and the actions contemplated herein.

ADOPTED by the Board of Directors of the Glenn County Resource Conservation District at a regular meeting held on the 21<sup>st</sup> day of April, 2025, by the following vote:

AYES:	Goedhart, Landini, Lohse, Roundy, Whitney
NOES:	None
ABSENT:	Anderson, Knight
ABSTAIN:	None

  
Gilbert Goedhart, President  
GLENN COUNTY RESOURCE  
CONSERVATION DISTRICT

ATTEST:

  
Kandi Manhart-Belding, Secretary/Clerk  
GLENN COUNTY RESOURCE  
CONSERVATION DISTRICT

*Attached:*  
Exhibit A  
Exhibit B

Exhibit A



Grant R. Orbach  
Of Counsel  
916 329-3692  
[grant.orbach@bbklaw.com](mailto:grant.orbach@bbklaw.com)

File No. 19782.00008

February 24, 2025

Via Email Only

Bordges Timber, Inc.  
c/o Murphy Austin Adams Schoenfeld LLP  
Attn: Lisa D. Nicolls, Esq.  
555 Capitol Mall, Suite 850,  
Sacramento, CA 95814  
[lnicolls@murphyaustin.com](mailto:lnicolls@murphyaustin.com)

Markit! Forestry Management  
Attn: Brad Christiansen  
14330 Musso Road  
Auburn, CA 95603  
[bradchristiansen@markitforestry.com](mailto:bradchristiansen@markitforestry.com)

Diversified Resources, Inc.  
Attn: Traci Holt  
PO Box 676  
Chester, CA 96020  
[traci@driforest.com](mailto:traci@driforest.com)

Cook Construction Engineering Partnership  
Attn.: Ken Cook  
PO Box 127  
Stonyford, CA 95979  
[Kcook3273@yahoo.com](mailto:Kcook3273@yahoo.com)

Re: Needham Hazardous Fuels Reduction Project and Glenn County Small Landowner Forest Improvement Program Protests and Due Process

Dear Proposers and Protesters:

Our office represents Glenn County Resource Conservation District (“District”).

The District has received the enclosed protests, which *as stricken* are being furnished to you so that the proposers whose responsibility is challenged therein are provide the opportunity to confront the accusations against them and attest to their responsibility before the District considers whether to sustain the protests, deny the protests, or take such other action as is lawful and deemed

Best Best & Krieger LLP | 500 Capitol Mall, Suite 2500, Sacramento, California 95814  
Phone: (916) 325-4000 | Fax: (916) 325-4010 | [bbklaw.com](http://bbklaw.com)

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proper by the District's Board of Directors. The District will consider the matter at its **March 17, 2025** meeting or such later date as it deems advisable. If your firm's responsibility was challenged in a protest and your firm is otherwise unavailable to attend a hearing on such date, please notify the undersigned promptly, identifying when your firm is available, so that the District can consider rescheduling the hearing.

In the interim, each proposer whose responsibility is challenged in the enclosed protests may file with the undersigned a written statement setting forth the legal and factual basis for why any characterizations regarding its responsibility are disputed by no later than 5:00 p.m. on **March 7, 2025**. Such statements will be shared with the recipients of this letter, the District's Board of Directors, District staff, members of the public upon request, and such persons as the District deems appropriate.

The District takes the constitutional, due process rights of proposers on its projects extremely seriously, (*Great West Contractors, Inc. v. Irvine Unified School Dist.* (2010) 187 Cal.App.4th 1425, 1450 – 1460); *City of Inglewood-L.A. County Civic Center Auth. v. Superior Court* (1972) 7 Cal.3d 861, 870 - 871), also noting if laws that require competitive bidding are enacted for the benefit of the public and not the benefit of bidders, (*Judson Pacific-Murphy Corp. v. Durkee* (1956) 144 Cal.App.2d 377, 383 (“*Judson*”)), *a fortiori* the absence of laws requiring competitive bidding in this context are likewise is for the benefit of the public and not for the benefit of proposers. If the District's Board of Directors, in its legislative discretion, guided by considerations of the public welfare, decides to award the contracts as it sees fit and consistent with its processes, such a decision rests well within its sound discretion and will not be disturbed by the Court unless arbitrary, capricious or entirely lacking in evidentiary support. (*Mike Moore's 24-Hour Towing v. City of San Diego* (1996) 45 Cal.App.4th 1294, 1303). While proposers may not agree with how the District's Board of Directors exercises its discretion, particularly when such discretion is exercised in a manner which does not further the proposer's economic interest, the District enjoys significant discretion in choosing who it wishes to do business with in the absence of a requirement that the contract be awarded to the lowest responsive bidder.

Sincerely,



Grant R. Orbach  
of BEST BEST & KRIEGER LLP

February 5, 2025

**VIA EMAIL AND PERSONAL DELIVERY**

Attention: Kandi Manhart  
Glenn County Resource Conservation District  
132 N. Enright Avenue, Suite C  
Willows, CA 95988  
kandi@glenncountyrcd.org

Re: Bid Protest of Bordges Timber, Inc.  
Needham Hazardous Fuels Reduction Program

Dear Ms. Manhart:

Bordges Timber, Inc. (“BTI”) hereby objects to and protests any award or intended award to Diversified Resources, Inc. (“DRI”) or Markit! Forestry Management LLC (“Markit!”) of the contract for the Needham Hazardous Fuels Reduction Program (“Project”) by Glenn County Resources Conservation District (“Glenn County RCD” or “Owner”). As detailed below, DRI’s and Markit!’s proposals must be rejected and, further, BTI must have scored higher than both DRI and Makeit! and should be awarded the contract for the Project.

A review of BTI’s Proposal, DRI’s Proposal and Markit!’s Proposal clearly shows that neither DRI nor Markit! can be awarded a contract for the Project and also that the scoring of BTI’s proposal was arbitrary and capricious and appears to have possibly been the result of conflicts of interest within Owner’s organization (since no other explanation is apparent)<sup>1</sup>.

California law and the rules governing this project and contract are clear that a public agency owner must strictly follow its own procurement rules in awarding a public works contract. *Pozar v. Department of Transportation* (1983) 145 Cal.App.3d 269, 271-272. Further, a basic rule of competitive bidding is that bids must conform to specifications and bidding documents, and that if a bid does not so conform, it may not be accepted. 47 Ops.Cal.Atty.Gen. 129, 130 (1966), quoted with approval in *National Identification Systems, Inc. v. State Bd. of Control* (1992) 11 Cal.App.4th 1446, 1453; *Ghillotti Construction Co. v City of Richmond* (1996) 45 Cal.App.4th 897, 904-905; and *Konica Business Machines U.S.A., Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 454 (bidders must strictly comply with bid requirements).

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<sup>1</sup> As but one example of apparent irregularities in the RFP process in DRI’s favor, DRI’s proposal package includes a Timber Operator License Certificate that was issued on January 1, 2025, almost a full month *after* DRI’s proposal was submitted.

A bid that varies materially from the bidding instructions must be rejected. *Id.* at 47 Ops.Cal.Atty.Gen. 130. To be responsive, a bid must be in strict and full accordance with the material terms of the bidding instructions. *Taylor Bus Serv., Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331.

The appearance or possibility of an impropriety is forbidden in public contracting, even where it is clear that no impropriety occurred. See e.g., *Thomson v. Call* (1985) 38 Cal.3d 633, 649; see also *Konica Business Machines v. U.S.A Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449,454 (setting aside a nonresponsive bid is appropriate “even where it is certain there was in fact no corruption or adverse effect upon the bidding process, and the deviations would save the entity money”).

First, DRI’s proposal failed to comply with the proposal requirements and must be rejected. Specifically, Section I of the RFP provides, in part:

Proposers are required to comply with all CARB and Regulation requirements, including, without limitation, all applicable sections of the Regulation, as codified in Title 13 of the California Code of Regulations section 2449 et seq. throughout the duration of the Project. **Proposers must provide, with their Proposal, copies of Proposer’s and all listed subcontractors’ most recent, valid Certificate of Reported Compliance (“CRC”) issued by CARB. Failure to provide valid CRCs as required herein may render the Proposal non responsive.** (Emphasis added.)

DRI failed to submit a valid Certificate of Reported Compliance issued by CARB and also failed to provide a valid Fleet Compliance Certification Form. On DRI’s Fleet Compliance Certification Form, DRI checked the box for “The Fleet is exempt from the Regulation under section 2449.1(f)(2), **and a signed description of the subject vehicles, and reasoning for exemption has been attached hereto.**” (Emphasis added.) DRI also checked the box for “The Fleet does not fall under the Regulation or are otherwise exempted **and a detailed reasoning is attached hereto.**” (Emphasis added.) However, no “reasoning” as referenced in either checked item was attached, rendering DRI’s certification form entirely invalid. On this basis alone, DRI’s proposal must be rejected. The Certifications from Cook Construction Engineering Partnership and Redwood Empire Reforestation, Inc. (DRI’s subcontractors) are invalid for the same reason.

Second, DRI proposes to use Cook Construction Engineering Partnership (“Cook”) as a “partner” to complete the Project. However, Cook is not properly licensed to perform the Project work for two separate reasons. Specifically, Cook holds a Class A General Engineering license. (See the attached license printout.) A Class A license is not appropriate for this Project. Business and Professions Code section 7056 defines the scope of a Class A license as follows:



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

The Project does not involve a *fixed work requiring specialized engineering knowledge and skill* and a Class A license is therefore wholly inappropriate for performing work on this project.

In addition, Cook's license is completely invalid because it is licensed as a General Partnership comprised of Barney Cook and Kenneth Cook.

Business and Professions Code section 7076(b) provides that "**A partnership license shall be canceled upon the death of a general partner**. The remaining partner or partners shall notify the registrar in writing within 90 days of the death of a general partner. Failure to notify the registrar within 90 days of the death is grounds for disciplinary action." (Emphasis added.) Barney Cook died on July 16, 2024 [REDACTED]. Accordingly, Cook's contractor's license has been cancelled by operation of law and is invalid. Since DRI proposed to use Cook to complete the Mechanical Vegetation Treatment and Cook is not licensed to perform said work, DRI's proposal must be rejected.

Finally, even if DRI's proposal did not have to be outright rejected (as explained above), as explained below, it cannot be reasonably disputed that BTI was improperly scored as compared to DRI and Makeit!. The specifics of the inappropriate evaluation of BTI's proposal are as follows:

- Approach to meet Project needs: BTI scored a 4; DRI scored a 5. BTI was the only contractor in the top three scoring firms that proposed to do the work the way the RFP laid the work out (in two phases with two different project areas). DRI's described approach could not in any way be reasonably found to be superior to that of BTI. Indeed, DRI's timeline is impossible to achieve and a

blatant misrepresentation. **Accordingly, if DRI was awarded 5 points for this item, BTI must be awarded 5 points as well.**

- Cost effective?: BTI scored a 4; DRI scored a 5. This scoring absolutely defies explanation since BTI's bid prices were lower than DRI. **BTI must be awarded 5 points for this item.**
- Environmentally sound?: BTI scored a 4; DRI scored a 5. This scoring also defies explanation since BTI is CARB certified whereas DRI claims an alleged exemption (which is invalid as explained above). There are no other potential distinctions between DRI and BTI as far as environmental soundness and therefore **BTI must be scored no lower than DRI and must be awarded 5 points for this item.**
- Demonstrated understanding of Project scope? BTI scored a 4; DRI scored a 5. There is no basis for awarding BTI 4 points while awarding DRI 5 points. DRI has not demonstrated any understanding of the Project scope which exceeds BTI's demonstration of such knowledge. Therefore **BTI must be scored no lower than DRI and must be awarded 5 points for this item.**
- Demonstrated understanding of Project Scope: technically sound?: BTI scored a 4; DRI scored a 5. There is no basis for awarding BTI 4 points while awarding DRI 5 points. DRI has not demonstrated any understanding of the Project scope which exceeds BTI's demonstration of such knowledge. Therefore **BTI must be scored no lower than DRI and must be awarded 5 points for this item.**
- Staff experience to meet Glenn County RCD written and calculated project reports?: BTI scored a 4; DRI scored a 5. There is no basis for awarding BTI 4 points while awarding DRI 5 points. DRI has not demonstrated any amount of staff experience to meeting the reporting requirements which exceeds BTI's demonstration of such experience. Therefore **BTI must be scored no lower than DRI and must be awarded 5 points for this item.**
- Overall cost is within Glenn County RCD budget?: BTI scored a 4; DRI scored a 5. This scoring absolutely defies explanation since BTI's bid prices were lower than DRI. **BTI must be awarded 5 points for this item.**
- Demonstrated cash flow availability?: BTI scored a 4; DRI scored a 5. DRI has not demonstrated any amount of cash flow availability which exceeds BTI's demonstration of such availability. In addition, BTI was awarded 5 points on its other proposal which contained identical cash flow information. Therefore **BTI**

**must be scored no lower than DRI and must be awarded 5 points for this item.**

- Demonstrated knowledge this Project is subject to availability of grant funding?: BTI scored a 4; DRI scored a 5. DRI has not demonstrated any knowledge that this Project is subject to the availability of grant funding which exceeds BTI's demonstration of such knowledge. Therefore **BTI must be scored no lower than DRI and must be awarded 5 points for this item.**

The above demonstrates that the Owner's scoring of the Project proposals was arbitrary and capricious and BTI's scores must be adjusted.

For the foregoing reasons, DRI cannot be awarded the contract for the Project.

Markit! also cannot be awarded the contract for the Project. This is because Markit! does not possess a California contractors license that would enable it to perform the work in question. Page 6 of the RFP expressly provides that "Contractor(s) may masticate all brush, **trees** less than 10 inches dbh, snags less than 15 inches dbh, and down logs less than 15 inches in diameter and 10 feet in length. **Trees** and brush shall be completely severed from the stump..." (Emphasis added.) A C61/D49 license (tree service contractor) is required to perform work that includes tree removal. Markit!'s failure to possess such a license makes it ineligible to contract for the Project work. In addition, Markit! does not possess and did not list a subcontractor with a Qualified Applicator License or that is a Pest Control Business (PCM). Page 6 of the RFP expressly provided that "Herbicide application may be necessary for follow up treatment; **Pest Control Business main (PCM), a Qualified Applicator License (QAL), and any other applicable licensing shall be required and used.**" (Emphasis added.) **Markit! also has not provided evidence that it holds business license which is also a prerequisite under Page 8 of the RFP and Section 3.2.8 of the Agreement included with the RFP.**

Finally, BTI notes that the grant for the Project requires that "procurement of contractual services should be documented to ensure **selection on a competitive basis and documentation of price analysis.**" (Emphasis added.). It does not appear that Owner has tied its scoring system to the pricing provided. The award of the contract for the Project to either DRI (who proposes to use unlicensed subcontractors, is more expensive than BTI, and is no more qualified than BTI) or Markit! (who is unlicensed and is no more qualified than BTI) would not constitute award of this work on a "competitive basis." Accordingly, the proposals of DRI and Markit! must be rejected, BTI's scores must be adjusted, and the Contract awarded, if at all, to BTI. If you require additional information or clarification of any of the information contained in this letter, please do not hesitate to contact the undersigned.

To the extent the Owner awards this Project to any proposer other than BTI, please consider this correspondence as a formal request on behalf of BTI for an immediate hearing and

Attention: Kandi Manhart  
February 5, 2025  
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be advised that BTI reserves the right to file a Petition for Writ of Mandate in the Superior Court to contest any such award.

Sincerely,

MURPHY AUSTIN ADAMS SCHOENFELD LLP

*Lisa Nicolls*

LISA D. NICOLLS

LDN  
cc: Client



## Contractor's License Detail for License # 1012606

**DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.**

- ▶ CSLB complaint disclosure is restricted by law (B&P 7124.6) If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click [here](#) for a definition of disclosable actions.
- ▶ Only construction related civil judgments reported to CSLB are disclosed (B&P 7071.17).
- ▶ Arbitrations are not listed unless the contractor fails to comply with the terms.
- ▶ Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 2/4/2025 10:17:33 PM

### Business Information

COOK CONSTRUCTION ENGINEERING PARTNERSHIP  
PO BOX 127  
STONYFORD, CA 95988  
Business Phone Number:(530) 713-3158

**Entity** Partnership  
**Issue Date** 04/04/2016  
**Reissue Date** 04/21/2020  
**Expire Date** 04/30/2026

### License Status

**This license is current and active.**

**All information below should be reviewed.**

### Classifications

A - GENERAL ENGINEERING

### Bonding Information

#### Contractor's Bond

This license filed a Contractor's Bond with [AMERICAN CONTRACTORS INDEMNITY COMPANY](#).

**Bond Number:** 100488324

**Bond Amount:** \$25,000

**Effective Date:** 01/01/2023

[Contractor's Bond History](#)

### Workers' Compensation

This license has workers compensation insurance with the [STATE COMPENSATION INSURANCE](#)

[FUND](#)

**Policy Number:** 9215101

**Effective Date:** 07/28/2024

**Expire Date:** 07/28/2025

[Workers' Compensation History](#)

### Miscellaneous Information

- ▶ 04/20/2020 - LICENSE CANCELED PER REQUEST

Other

- ▶ Personnel listed on this license (current or disassociated) are listed on other licenses.

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## Contractor's License Detail (Personnel List)

**Contractor License #** 1012606  
**Contractor Name** COOK CONSTRUCTION ENGINEERING PARTNERSHIP

Click on the person's name to see a more detailed page of information on that person

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### Licenses Currently Associated With

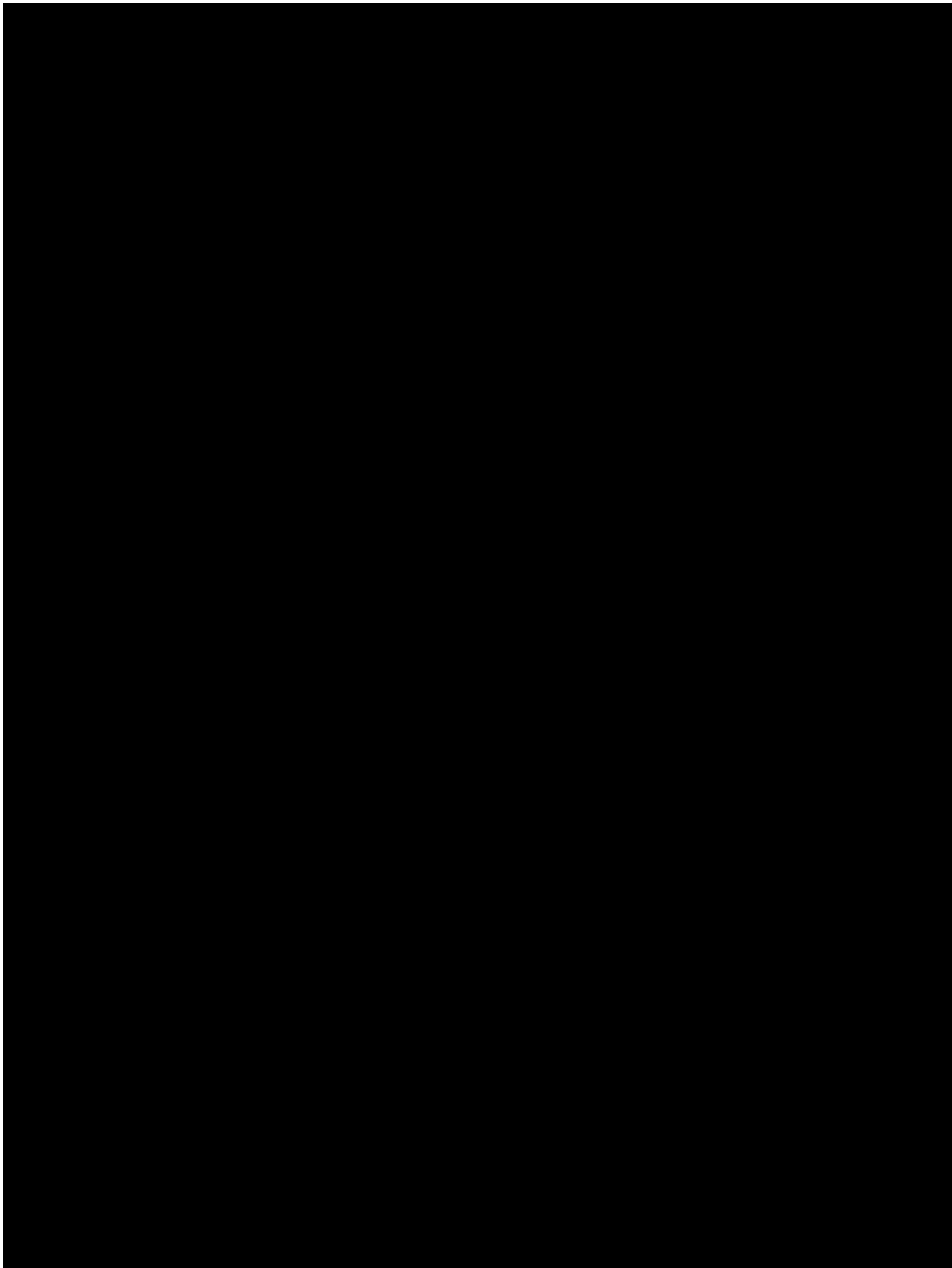
**Name** [BARNEY GENE COOK](#)  
**Title** GENERAL PARTNER  
**Association Date** 04/04/2016

**Name** [KENNETH MAXWELL COOK](#)  
**Title** QUALIFY PARTNER  
**Association Date** 04/04/2016

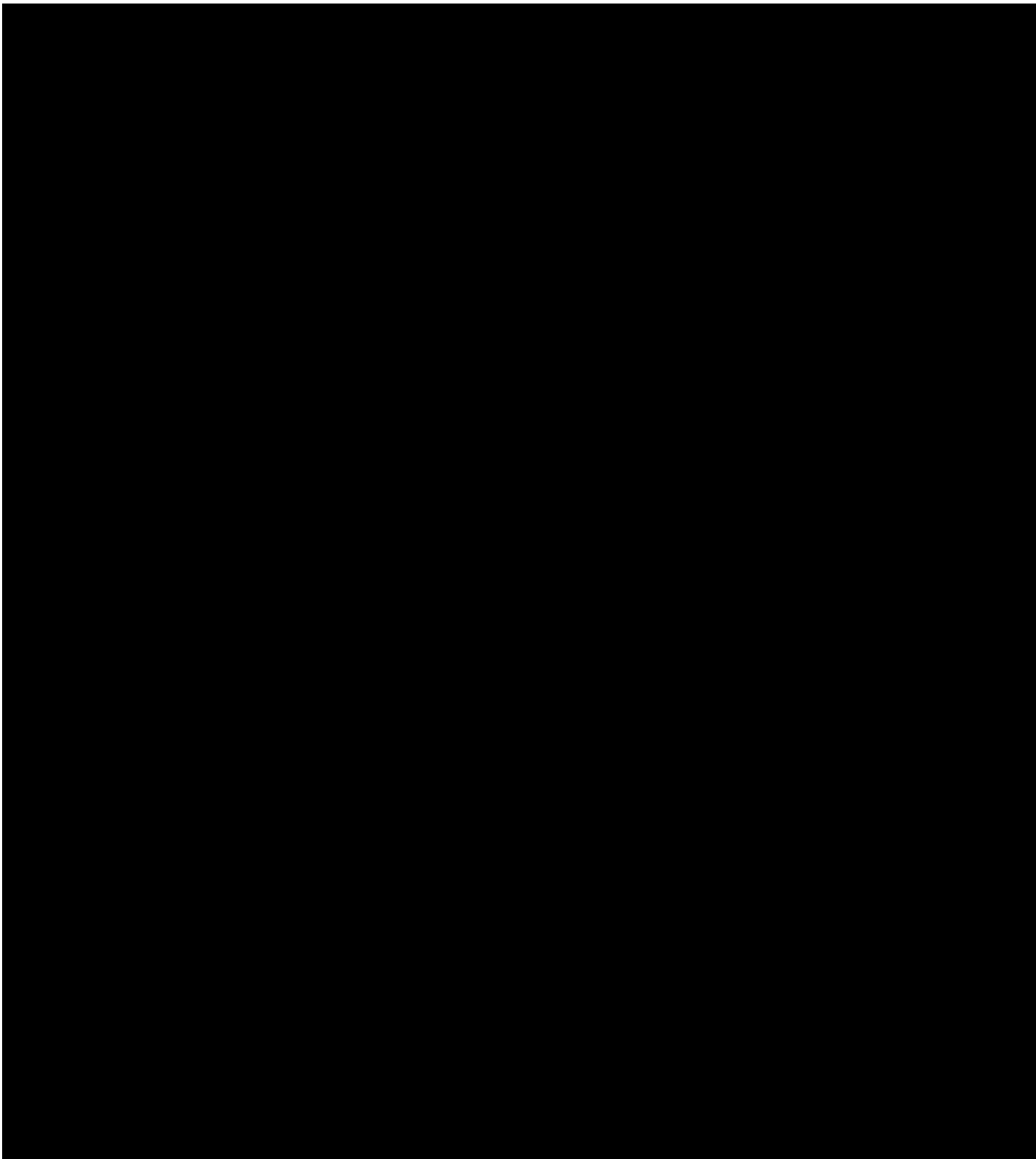
**Classification** A  
**Additional Classification** [There are additional classifications that can be viewed by selecting this link.](#)

### Licenses No Longer Associated With

**Name** [ROBERT ALLEN BURT](#)  
**Title** GENERAL PARTNER  
**Association Date** 04/04/2016  
**Disassociation Date** 04/20/2020







February 5, 2025

**VIA EMAIL AND PERSONAL DELIVERY**

Attention: Kandi Manhart  
Glenn County Resource Conservation District  
132 N. Enright Avenue, Suite C  
Willows, CA 95988  
kandi@glenncountyrcd.org

Re: Bid Protest of Bordges Timber, Inc.  
Reforestation Site Preparation for 600 acres & Mastication Thinning for 250 acres  
for Forest Improvement Project

Dear Ms. Manhart:

Bordges Timber, Inc. (“BTI”) hereby objects to and protests any award or intended award to Cook Construction Engineering Partnership (“Cook”) or J.W. Bamford, Inc. (“Bamford”) of the contract for the Reforestation Site Preparation for 600 acres & Mastication Thinning for 250 acres for Forest Improvement Project (“Project”) by Glenn County Resources Conservation District (“Glenn County RCD” or “Owner”). As detailed below, Cook’s proposal must be rejected and, further, BTI must have scored higher than both Cook and Bamford and should be awarded the contract for the Project.

California law and the rules governing this project and contract are clear that a public agency owner must strictly follow its own procurement rules in awarding a public works contract. *Pozar v. Department of Transportation* (1983) 145 Cal.App.3d 269, 271-272. Further, a basic rule of competitive bidding is that bids must conform to specifications and bidding documents, and that if a bid does not so conform, it may not be accepted. 47 Ops.Cal.Atty.Gen. 129, 130 (1966), quoted with approval in *National Identification Systems, Inc. v. State Bd. of Control* (1992) 11 Cal.App.4th 1446, 1453; *Ghillotti Construction Co. v City of Richmond* (1996) 45 Cal.App.4th 897, 904-905; and *Konica Business Machines U.S.A., Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 454 (bidders must strictly comply with bid requirements).

A bid that varies materially from the bidding instructions must be rejected. *Id.* at 47 Ops.Cal.Atty.Gen. 130. To be responsive, a bid must be in strict and full accordance with the material terms of the bidding instructions. *Taylor Bus Serv., Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331.

Attention: Kandi Manhart  
February 5, 2025  
Page 2

The appearance or possibility of an impropriety is forbidden in public contracting, even where it is clear that no impropriety occurred. See e.g., *Thomson v. Call* (1985) 38 Cal.3d 633, 649; see also *Konica Business Machines v. U.S.A Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449,454 (setting aside a nonresponsive bid is appropriate “even where it is certain there was in fact no corruption or adverse effect upon the bidding process, and the deviations would save the entity money”).

First, Cook’s proposal failed to comply with the proposal requirements and must be rejected. Specifically, Section I of the RFP provides, in part:

Proposers are required to comply with all CARB and Regulation requirements, including, without limitation, all applicable sections of the Regulation, as codified in Title 13 of the California Code of Regulations section 2449 et seq. throughout the duration of the Project. **Proposers must provide, with their Proposal, copies of Proposer’s and all listed subcontractors’ most recent, valid Certificate of Reported Compliance (“CRC”) issued by CARB. Failure to provide valid CRCs as required herein may render the Proposal non responsive.** (Emphasis added.)

Cook failed to submit a valid Certificate of Reported Compliance issued by CARB and also failed to provide a valid Fleet Compliance Certification Form. On DRI’s Fleet Compliance Certification Form, Cook checked the box for “The Fleet is exempt from the Regulation under section 2449.1(f)(2), **and a signed description of the subject vehicles, and reasoning for exemption has been attached hereto.**” (Emphasis added.) DRI also checked the box for “The Fleet does not fall under the Regulation or are otherwise exempted **and a detailed reasoning is attached hereto.**” (Emphasis added.) However, no “description of the subject vehicles” nor “reasoning” as referenced in either checked item was attached, rendering Cook’s certification form entirely invalid. On this basis alone, Cook’s proposal must be rejected. The Certifications from Diversified Resources, Inc. (Cook’s subcontractor) is invalid for the same reason.

Second, Cook is not properly licensed to perform the Project work for two separate reasons. Specifically, Cook holds a Class A General Engineering license. (See the attached license printout.) A Class A license is not appropriate for this Project. Business and Professions Code section 7056 defines the scope of a Class A license as follows:

A general engineering contractor is a contractor whose principal contracting business is in connection with **fixed works requiring specialized engineering knowledge and skill**, including the following divisions or subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, sewers and sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and

other liquid or gaseous substances, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, land leveling and earthmoving projects, excavating, grading, trenching, paving and surfacing work and cement and concrete works in connection with the above mentioned fixed works. (Emphasis added.)

The Project does not involve a *fixed work requiring specialized engineering knowledge and skill* and a Class A license is therefore wholly inappropriate for performing work on this project.

In addition, Cook's license is completely invalid because it is licensed as a General Partnership comprised of Barney Cook and Kenneth Cook.

Business and Professions Code section 7076(b) provides that "**A partnership license shall be canceled upon the death of a general partner.** The remaining partner or partners shall notify the registrar in writing within 90 days of the death of a general partner. Failure to notify the registrar within 90 days of the death is grounds for disciplinary action." (Emphasis added.) Barney Cook died on July 16, 2024 [REDACTED]. Accordingly, Cook's contractors license has been cancelled by operation of law and is invalid and Cook's proposal must be rejected.

Finally, even if Cook's proposal did not have to be outright rejected (as explained above), as explained below, it cannot be reasonably disputed that BTI was improperly scored as compared to Cook. The specifics of the inappropriate evaluation of BTI's proposal are as follows:

- Overview of qualifications and experience to meet Project Needs: BTI scored a 4; Cook scored a 5. However, Cook doesn't show any reforestation or silvicultural experience. Rather, Cook's experience talks about roadwork, etc. Knowledge of the Mendocino road system is not relevant to this Project. **Accordingly, if Cook was awarded 5 points for this item, BTI must be awarded 5 points as well.**
- Ability to coordinate with field personnel and project managers: BTI scored a 3; Cook scored a 5. There is absolutely no basis for this difference in scoring. Cook doesn't have any reforestation experience. **Accordingly, if Cook was awarded 5 points for this item, BTI must be awarded 5 points as well.**
- Approach to meet Project needs: BTI scored a 4; Cook scored a 5. There is no basis for this distinction. Cook's proposal made no reference to contour falling, tree planting, etc. BTI's proposal was way more specific. **Accordingly, if Cook was awarded 5 points for this item, BTI must be awarded 5 points as well.**

Attention: Kandi Manhart  
February 5, 2025  
Page 4

- Demonstrated understanding of Project scope? BTI scored a 4; Cook scored a 5. There is no basis for awarding BTI 4 points while awarding Cook 5 points. Cook has not demonstrated any understanding of the Project scope which exceeds BTI's demonstration of such knowledge. In addition, how could BTI score a 4 for demonstrating a technically sound understanding of the Project scope and not receive full points on this item? Therefore, **BTI must be scored no lower than Cook and must be awarded 5 points for this item.**
- Role and responsibilities well defined for each employee and subcontractor: BTI scored a 3; Cook scored a 5. There is no basis for this distinction at all. BTI has defined its employees' roles and responsibilities to an equal to or greater degree than Cook. Therefore, **BTI must be scored no lower than Cook and must be awarded 5 points for this item.**

The above demonstrates that the Owner's scoring of the Project proposals was arbitrary and capricious and BTI's scores must be adjusted.

For the foregoing reasons, Cook cannot be awarded the contract for the Project.

Finally, BTI notes that the grant for the Project requires that "procurement of contractual services should be documented to ensure **selection on a competitive basis and documentation of price analysis.**" (Emphasis added.). The award of the contract for the Project to either Cook (who is unlicensed and is no more qualified than BTI) or Bamford (who is no more qualified than BTI) would not constitute award of this work on a "competitive basis." Accordingly, the proposal of Cook must be rejected, BTI's scores must be adjusted, and the Contract awarded, if at all, to BTI. If you require additional information or clarification of any of the information contained in this letter, please do not hesitate to contact the undersigned. To the extent the Owner awards this Project to any proposer other than BTI, please consider this correspondence as a formal request on behalf of BTI for an immediate hearing and be advised that BTI reserves the right to file a Petition for Writ of Mandate in the Superior Court to contest any such award.

Sincerely,

MURPHY AUSTIN ADAMS SCHOENFELD LLP

*Lisa Nicolls*

LISA D. NICOLLS

LDN  
cc: Client



## Contractor's License Detail for License # 1012606

**DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.**

- ▶ CSLB complaint disclosure is restricted by law (B&P 7124.6) If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click [here](#) for a definition of disclosable actions.
- ▶ Only construction related civil judgments reported to CSLB are disclosed (B&P 7071.17).
- ▶ Arbitrations are not listed unless the contractor fails to comply with the terms.
- ▶ Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 2/4/2025 10:17:33 PM

### Business Information

COOK CONSTRUCTION ENGINEERING PARTNERSHIP  
PO BOX 127  
STONYFORD, CA 95988  
Business Phone Number:(530) 713-3158

**Entity** Partnership  
**Issue Date** 04/04/2016  
**Reissue Date** 04/21/2020  
**Expire Date** 04/30/2026

### License Status

**This license is current and active.**

**All information below should be reviewed.**

### Classifications

A - GENERAL ENGINEERING

### Bonding Information

#### Contractor's Bond

This license filed a Contractor's Bond with [AMERICAN CONTRACTORS INDEMNITY COMPANY](#).

**Bond Number:** 100488324

**Bond Amount:** \$25,000

**Effective Date:** 01/01/2023

[Contractor's Bond History](#)

### Workers' Compensation

This license has workers compensation insurance with the [STATE COMPENSATION INSURANCE](#)

[FUND](#)

**Policy Number:** 9215101

**Effective Date:** 07/28/2024

**Expire Date:** 07/28/2025

[Workers' Compensation History](#)

### Miscellaneous Information

- ▶ 04/20/2020 - LICENSE CANCELED PER REQUEST

Other

- ▶ Personnel listed on this license (current or disassociated) are listed on other licenses.

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## Contractor's License Detail (Personnel List)

**Contractor License #** 1012606  
**Contractor Name** COOK CONSTRUCTION ENGINEERING PARTNERSHIP

Click on the person's name to see a more detailed page of information on that person

---

### Licenses Currently Associated With

**Name** [BARNEY GENE COOK](#)  
**Title** GENERAL PARTNER  
**Association Date** 04/04/2016

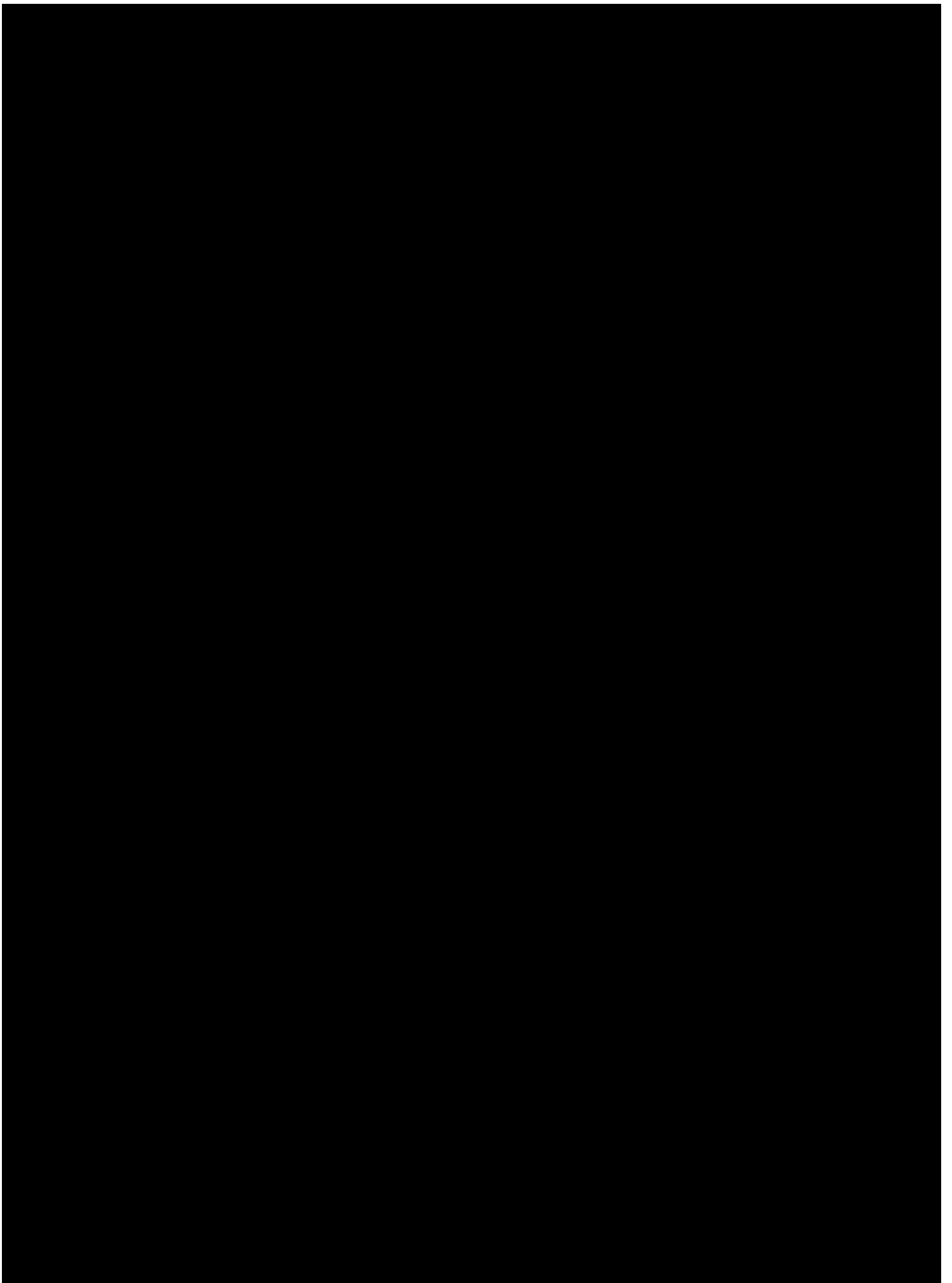
**Name** [KENNETH MAXWELL COOK](#)  
**Title** QUALIFY PARTNER  
**Association Date** 04/04/2016

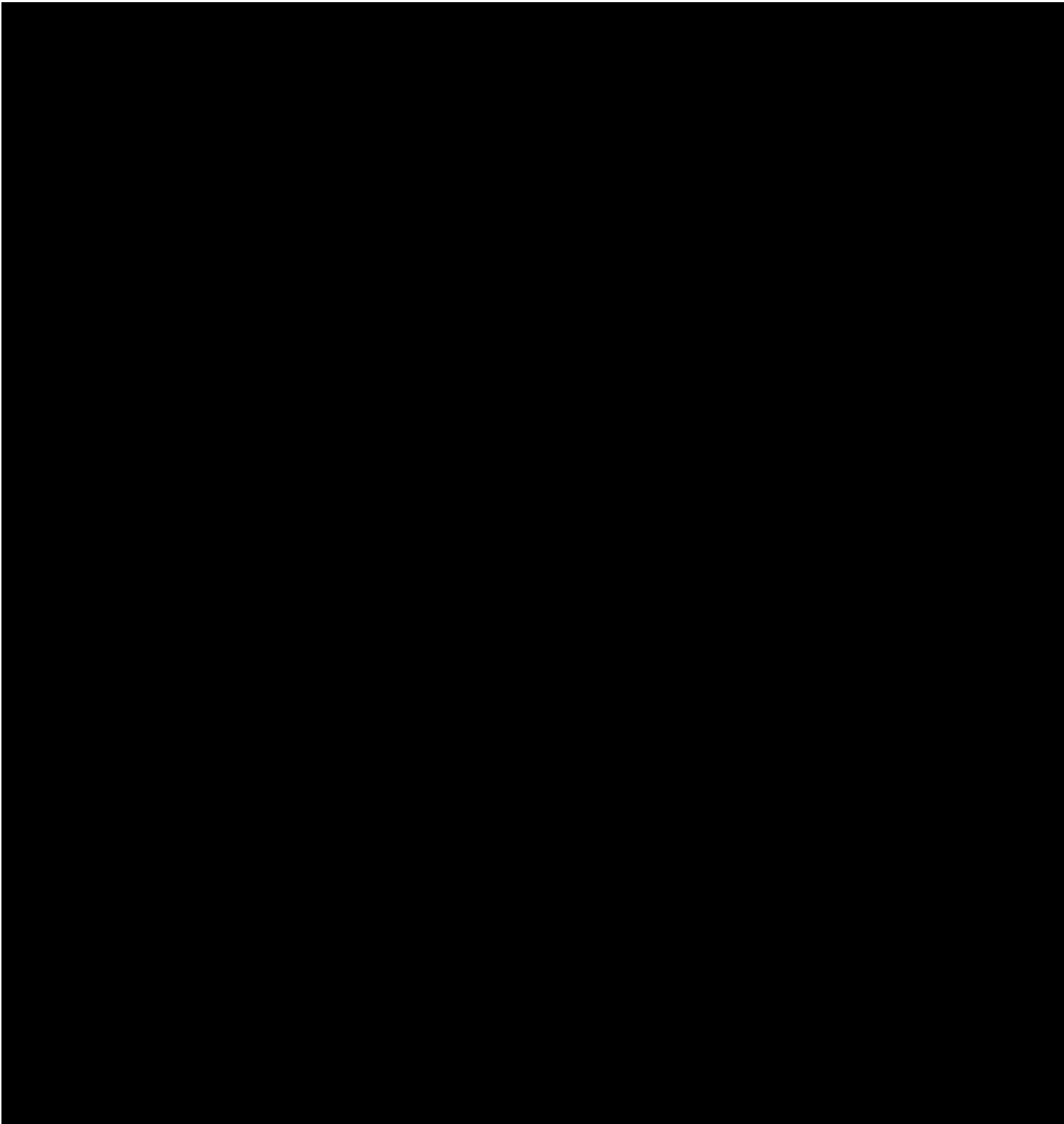
**Classification** A  
**Additional Classification** [There are additional classifications that can be viewed by selecting this link.](#)

### Licenses No Longer Associated With

**Name** [ROBERT ALLEN BURT](#)  
**Title** GENERAL PARTNER  
**Association Date** 04/04/2016  
**Disassociation Date** 04/20/2020









2424 Garden of the Gods Road, Suite 290  
Colorado Springs, CO 80919  
Tel: 719-593-2365

[www.markitforestry.com](http://www.markitforestry.com)

February 4, 2025

Sent via email and FedEx

Glenn County Resource Conservation District  
Attention: Ms. Kandi Manhart (Secretary of the Board)  
132 N. Enright Avenue, Suite C  
Willows, CA 95988

**RE: Protest of Award per the Glenn County Resource Conservation District Request For Proposals for Contractor to provide Mechanical Fuels Treatment for 1,718 acres and Herbicide Application for 1,020 acres for Fuels Reduction Project as Issued on November 7, 2024**

Dear Ms. Manhart,

I am writing to formally protest the selection process and the announced project award as per the Glenn County Resource Conservation District Request For Proposals for "Contractor to provide Mechanical Fuels Treatment for 1,718 acres and Herbicide Application for 1,020 acres for Fuels Reduction Project" as issued on November 7, 2024 (the "Needham Hazardous Fuels Reduction Project" or "the Project").

As the Vice President of Operations for Markit! Forestry Management ("Markit! Forestry") I am filing this protest in accordance with "Section One: Activities and Timeline" as stated on Page 3 of the Request For Proposals ("RFP"). A bullet point in "Section One: Activities and Timeline" states the following: "February 5, 2025 – Deadline for filing protests." Further, the first bullet point and first paragraph on Page 15 of the RFP states, "Written protest shall be submitted in writing to Glenn County Resource Conservation District, 132 N. Enright Avenue, Suite C, Willows, CA 95988, Attention: Kandi Manhart (Secretary of the Board) and, if available, emailed to [kandi@glenncountyrcd.org](mailto:kandi@glenncountyrcd.org)." You will note that I am submitting this formal protest in both printed and email form.

Markit! Forestry is raising the following four points of protest in regard to the Glenn County Resource Conservation District's ("GCRCD") RFP process and award process:

1. The GCRCD Proposal Evaluation Form used to score the bidders for the Project, and its application to the RFP by the GCRCD's Review Committee, is and was severely flawed, leading to an unfair and unjust Project award.

2. The Proposal Evaluation Form did not address the true decision criteria that was used to make the Project award.
3. The Proposal Evaluation Form and its application by the Review Committee did not give adequate consideration to the **huge** cost disadvantage of the awarded bidder's bid versus the bid submitted by Markit! Forestry.
4. The award process was and is essentially a "Direct Award" to a favored local vendor, which you have stated is not permitted by the State of California Department of Forestry and Fire Protection (CAL FIRE), which is the grant funder of the Project.

Please let me use the remainder of this letter to elaborate on the four points above.

### **1. The GCRCF Proposal Evaluation Form Is And Was Severely Flawed**

On Friday, January 31, 2025, Markit! Forestry's senior staff and the project management personnel that were directly involved in developing the cost and technical proposals for the Project (six Markit! Forestry people) met with you via video teleconference to conduct a debriefing on the Project award and evaluation process. During the teleconference we discussed the evaluation process as well as the award criteria. During the teleconference we discussed the following flaws in the GCRCF Proposal Evaluation Form:

- Many of the questions in the Proposal Evaluation Form ("Form") were simply "yes-or-no" questions, yet the answers were supposed to be assigned a scoring value between 1 and 5. For example, all of the questions in "Section D. Cost" (on Page 3 of the Form) are yes-or-no questions, yet were somehow scored for all bidders. The first question under Section D. Cost states, "Cost per acre is identified?" As we commented in our debriefing meeting, what criteria could there possibly be to differentiate one "yes" answer from another "yes" answer? Either the cost per acre was identified by a bidder or it wasn't.
- In our teleconference we discussed that Markit! Forestry received a "4" score in answer to the yes-or-no question of "Demonstrated knowledge this Project is subject to availability of grant funding?" Of course, Markit! Forestry has executed multiple CAL FIRE grant projects and read in the RFP that the Project would be implemented through CAL FIRE grants. In the Markit! Forestry proposal submittal letter that I signed, I wrote that Markit! Forestry's proposal was submitted in response to the RFP and would bind Markit! Forestry accordingly. On the Form it was clear that Markit! Forestry was initially given a score of "5" and that the initial score was scratched out and changed to a "4". You will recall that when I asked why Markit! Forestry received a "4" score, you did not have an explanation.

- Adjacent to the blocks demarking Section B., Section C. and Section D. on the Form is the explanation: "Rank 5, most qualified Rank 1, least qualified". The score for each item supposedly was to be between 1 and 5, yet Markit! Forestry received a score of 0 for the question, "Non-discrimination is acknowledged." Once again, Markit! Forestry has executed multiple projects in California, including multiple projects funded by CAL FIRE, with non-discrimination contractual obligations. In the Markit! Forestry proposal submittal letter that I signed, I wrote that Markit! Forestry's proposal was submitted in response to the RFP, which included the non-discrimination provisions. How Markit! Forestry could receive a score of 0 when the lowest score is supposedly 1 is not explained (or explainable).
- During our teleconference I asked how the awarded bidder scored 5 on the question "Cost effective?" and Markit! Forestry also scored 5 when, in fact, Markit! Forestry's bid was over one million dollars lower and obviously more cost effective. **If the scoring mechanism is supposed to be on some type of scale (with Markit! Forestry even receiving a score of 0, which is off the scale) how could the awarded bidder have received the exact same score as Markit! Forestry when the awarded bidder's Project cost was 68% higher than Markit! Forestry's?**
- How did the awarded bidder receive a score of 4 on the question of "Competitive?" and Markit! Forestry was scored 5 when, in fact, there was over a million dollars difference in the bids, with Markit! Forestry being the low bidder and over 40% more competitive based on price? The second-most cost competitive bidder also received a score of 4 on the "Competitive?" question, even though the second ranked bidder's cost was over \$300,000 less in cost than the awarded bidder. There was obviously no objective measure and no scaling for assessing costs, and the scoring can be and was clearly manipulated to largely eliminate the huge cost competitiveness disparities.
- During our discussion on January 31, I raised the question of why Markit! Forestry scored 4 on the question of "Environmentally sound?" while the awarded bidder received a score of 5? In our debriefing session you didn't have an explanation. From assessing the RFP responses it is clear that Markit! Forestry is a larger company than the awarded bidder and has executed far more Mechanical Fuels Treatment projects – in multiple States – than the awarded bidder has executed. Simply from evaluating the RFP responses, I don't think that there is any objective explanation as to why Markit! Forestry received a lower score than the awarded bidder on the subject of Environmental Soundness.

In our debriefing discussion on January 31, you acknowledged that there are a number of deficiencies in the Proposal Evaluation Form. As was remarked during our discussion, the Proposal Evaluation Form is so flawed that it can be manipulated to generate any result that the Review Committee of the GCRCDC wants to obtain, regardless of the objective facts of the proposals and bids being analyzed. Unfortunately, **when you consider the points outlined above, it is obvious on its face that the Proposal Evaluation Form was manipulated to the huge disadvantage of CAL FIRE and Markit! Forestry. It appears that the scoring in the Proposal**

**Evaluation Form was manipulated to get the result and bidder that GCRC and the Review Committee wanted for reasons that were not revealed in the RFP or in the Proposal Evaluation Form.**

## **2. The Proposal Evaluation Form Did Not Address The True Decision Criteria**

Very early in our debriefing discussion on January 31, you remarked that a key consideration in making the award for the Project was getting the "buy in" and "support" from the Glenn County landowners and the local community. You will remember that you remarked that the Glenn County landowners and the local community were very skeptical of the previous forestry projects undertaken by GCRC, and that a key criteria to the managers of the GCRC was to continue cultivating the support of the local community. You remarked that the Glenn County landowners and the local community were opposed to large-scale forestry projects and were suspicious of forestry companies outside of Glenn County. You stated that GCRC was "under the microscope" in regard to proposing and approving larger-scale forestry projects in Glenn County.

You will recall that you discussed that Markit! Forestry's California office in Auburn was about a two (2) hour drive from the Project site in Glenn County and that people in Glenn County regarded Auburn as being a world away from Glenn County. You complimented Markit! Forestry's Project Manager, Bo Luhellier, for going on site visits in Glenn County, and you remarked that it would be helpful to mention in future proposals that he and/or his relatives might live in or near Glenn County.

Near the end of our nearly one-hour teleconference you remarked that **the 'tipping point' in the award decision was the preference for a local company to gain the support of the landowners and the local community.** You remarked that a prominent subcontractor for the awarded bidder – Cook Construction Engineering Partnership, which is headquartered in Willows in Glenn County – knew all of the subject landowners, which was instrumental in getting the buy-in from the land owners and the local community.

Unfortunately, however, nowhere in the RFP or in the Proposal Evaluation Form was it stated that the key factor, or "tipping point" as you phrased it, in the Project award would be that the vendor(s) would be based in Glenn County or have a connection with the Glenn County landowners and community. Consistent with its name, Section 5: Minimum Qualifications, on Page 8 of the RFP specifies the minimum and required qualifications for a proposer. The Minimum Qualifications do not include a preference for a "local contractor," nor do they mention any evaluation of benefits of a proposer to the local community, apart from completing the forestry work. If there was to be a **local contractor preference** for the Project, it should have been explicitly included in the RFP requirements and it should have been evaluated in the Proposal Evaluation Form.

As was stated by me and by multiple Markit! Forestry personnel on the call, had the "tipping point" criteria been stated in advance, Markit! Forestry would not have replied to the RFP since it is impossible for Markit! Forestry to be headquartered in Glenn County since the company executes

forestry projects all around California. Markit! Forestry had bid on a number of GCRCDC projects in the past and always lost in the bidding process to the awarded vendors that are either located in Glenn County or have preexisting relationships in Glenn County. However, until our teleconference Markit! Forestry never understood – because it was never disclosed – the paramount importance of being a resident company in Glenn County or having previously established a relationship in Glenn County to garner the support of the local community.

As was remarked during our teleconference, Markit! Forestry has successfully completed numerous forestry projects – including forestry projects very similar to the Project – in California, Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming. Markit! Forestry has never run into a situation in which we were told that the "tipping point" in one of our bidding processes was being based or headquartered in the county or neighborhood of the forestry project. **In the case of Markit! Forestry's bid for the Project, the "local vendor" criteria appears to be worth more than one million dollars (\$1,000,000). However, I do not believe that this unpublished decision criteria is consistent with CAL FIRE's public funding grant standards.**

**3. The Proposal Evaluation Form And Its Application By The Review Committee Did Not Give Adequate Consideration To The Huge Cost Disadvantage Of The Awarded Bidder**

In reviewing the outcome of the selection process, I believe that Markit! Forestry's proposal was unfairly evaluated. **Markit! Forestry's proposal was over 40% lower in cost – \$1.168 million (One Million One Hundred Sixty-eight Thousand U.S. Dollars) lower – than the awarded bidder's proposal.** This significant difference in pricing should have been a key consideration in the selection process since it represents a potential for substantial cost savings and increased project scope. Based on Markit! Forestry's mastication unit price, the \$1.168 million could have resulted in an additional 1,581 treated acres, significantly expanding the reach and impact of the Project and the grantors' funds, which California drastically needs, especially in light of the unfathomable destruction in Los Angeles and the ongoing wildfire risks around the State. Markit! Forestry had a much lower mastication unit price due to the in-house availability of resources such as wheeled masticators, which results in an overall lower cost compared to tracked or boom machines proposed by the other bidders.

**The Project was awarded to the third lowest bidder at an additional cost of \$1,168,397.32 above Markit! Forestry's low bid, and \$302,067.32 above the second lowest bidder's price. This cost discrepancy is concerning, as it results in an inflated Project budget without clear justification, except – as we were told – that the landowners and the residents of Glenn County prefer to have a local vendor execute forestry projects. Of course, Glenn County is integrated into the economy of California and the United States, and it is hard to conceive of any other competitive governmental bidding situation in which the preference of the residents of a county for a local vendor justifies the dissipation of grantors' or taxpayers' money of over \$1.1 million on a \$1.7 million dollar project (68%).**

In the RFP, Page 13, Section F, Point 4. Award, states "Award will be made to the qualified proposer(s) whose proposal will be most advantageous to the Glenn County RCD, with price and all other factors considered." However, after thoroughly reviewing the scoring system in the Proposal Evaluation Form and comparing it against the Project's outlined goals and budget constraints, it is clear that price and cost were almost totally eliminated from the evaluation criteria for the Project.

As noted above, all of the questions in "Section D. Cost" (on Page 3 of the Proposal Evaluation Form) are yes-or-no questions that establish **NO** cost comparison criteria among bidders. As you noted on the January 31 debriefing call, there is only **ONE** question in the Form that could be construed as relating to a cost comparison among bidders: under "Section C. Approach and Timeline" the question of "Cost effective?".

You will recall that on the January 31 debriefing call you stated that the sole criteria for considering pricing and cost for the Proposal Evaluation Form was whether the proposed pricing and cost fell within the Project budget or not. The reality is that for the evaluation of the proposals and the bidders, cost was an afterthought: hardly a factor.

On the debriefing teleconference you stated that GCRCD was not obligated to choose the lowest bidder. However, when asked, you couldn't explain what magnitude of price discrepancy would have resulted in a different decision. If the awarded bidder's bid was two million dollars (\$2,000,000) more than Markit! Forestry's bid, would there have been a different outcome? It seems that the winning bidder could have bid right up to the amount of the budget of the Project (the limit of the grantors' funds?) and would have been awarded the Project regardless of the overspending.

Markit! Forestry appreciates that the lowest bidder is not always the best bidder, but you didn't indicate that the awarded bidder had any better qualifications than Markit! Forestry, and you didn't indicate any reason to believe that the awarded bidder would do a better job than Markit! Forestry in executing the Project. GCRCD is simply overpaying by over \$1.1 million to get a local vendor that may meet with better approval of the Glenn County landowners and certain community members (especially the local vendors and their circle of supporters). I don't believe that this is in alignment with CAL FIRE's objectives and requirements as the fund's grantors.

**4. The award process was and is essentially a "Direct Award" to a favored vendor, which generally is not permitted by State grant funders.**

During our January 31 debriefing teleconference, it was noted and acknowledged that over the past few years GCRCD has gone through multiple RFP processes for forestry projects and **ALL** of the projects have been awarded to the **same** bidder/vendor. As noted above, you explained that the project awards did not have to go to the low-cost bidder, and that GCRCD was primarily interested in gaining the approval of the landowners and local community.



Ms. Kandi Manhart

February 4, 2025

Page 7

During the debriefing Markit! Forestry's Chief Administrative Officer, Ms. Alyssa Priest, observed that GCRCD was essentially giving a direct award to the awarded bidder, since the awarded bidder was/is the only qualified bidder that meets the criteria of being a vendor who has the approval of the local community and/or who is headquartered in Glenn County (i.e., Cook Construction Engineering Partnership is a company headquartered in Willows in Glenn County, and is a prominent subcontractor for Diversified Resources, Inc., which was awarded the Project).

In a roundabout reply you remarked that the continual award of forestry project after forestry project to the same bidder/vendor was not direct awarding because when the Needham Hazardous Fuels Reduction Project RFP was issued, GCRCD did not know whether the vendor who previously won awards would reply to the RFP.

However, the determinative factor regarding the question of "direct awarding" is not whether a bidder/vendor chooses to reply to a RFP, but rather, the acts of continual awarding to the bidder/vendor regardless of the costs or qualifications of other bidders/vendors.

Of course, we know with 20-20 hindsight that the perpetually winning bidder/vendor has answered all of the recent GCRCD RFPs (and why not, that bidder/vendor is "winning" all of the awards, and some at extremely premium prices).

From a practical point of view, GCRCD has set up RFP processes and enticed companies like Markit! Forestry to participate in those RFP processes. On the surface it appears that GCRCD has established an impartial and competitive RFP process, but the reality is that only one of the prospective RFP bidders can win the award. Except that GCRCD wants to give the appearance of a competitive award process, the process is really a direct award process – and a direct award process for the benefit of one vendor in particular: the bidder/vendor that has a relationship in Glenn County and that has a partner/subcontractor headquartered in Glenn County.

On our debriefing teleconference call you observed that CAL FIRE does not permit a direct award process for its projects. However, by any objective judgement, the GCRCD RFP process is a "fig leaf" that barely disguises a direct award process in violation of CAL FIRE's requirements.

## **Conclusions**

I appreciate you taking the time on Friday, January 31, to participate in the debriefing teleconference. I thought that our conversation was very productive in identifying many of the weaknesses of the GCRCD RFP review process.

As I commented when we spoke, I think that the Needham Hazardous Fuels Reduction Project RFP is one of the best forestry project RFPs that I have seen, and I have literally reviewed hundreds of similar RFPs. However, we also discussed that the Proposal Evaluation Form is one of the most flawed and weakest evaluation forms that I have seen.

During our discussion you acknowledged many of the weaknesses and asked for help in identifying and correcting the weaknesses. Though this letter is intended as a formal protest of the evaluation and award of the Project, I hope that it can/will also serve as a critique of GCRC's current review process that will lead to a better review process in the future.

Considering the serious flaws and concerns that I have outlined above, I respectfully request that GCRC re-evaluate the RFP proposals with an appropriate emphasis on the price and cost components. If GCRC institutes a revised points scoring system, it should be recalibrated for fairness, transparency, and alignment with the goals of the Needham Hazardous Fuels Reduction Project and CAL FIRE. If GCRC decides to revise the RFP process, qualified proposers should be allowed to revisit proposals and allowed to answer new requirements as necessary, and at this point the project should, at the very least, be re-advertised with the new requirements.

Please consider this letter a formal challenge and protest to the award of the Project in accordance with the relevant Protest Process as outlined in the RFP.

I would appreciate your prompt attention to this matter and look forward to your response. Of course, I hope that after further consideration Markit! Forestry will be awarded the Project since Markit! Forestry was judged to be the second ranked vendor before due consideration was given to the price/cost components of the project. As outlined above, there was no indication in GCRC's (flawed) evaluation process that Markit! Forestry would not or could not execute the Project as well as the awarded bidder, and the price/cost considerations are overwhelmingly in Markit! Forestry's favor.

**Markit! Forestry appreciates that GCRC wasn't required to award the Project to the low-cost bidder. Markit! Forestry appreciates that many times a higher-cost vendor can provide much better value through quality of work or through time to completion than a lower-cost vendor. However, as related just above, there is NO indication that the awarded bidder can or will deliver higher quality work or can deliver the Project on a faster timeline than Markit! Forestry. If the cost differential between the awarded bidder and Markit! Forestry was \$50,000 or \$100,000 or even \$200,000, perhaps there would be a justification for the award to the higher-cost bidder. However, the cost differential is over \$1,100,000, or 68 percent!! The cost differential means that the possibility of treating an additional 1,580 acres in California vanishes! The horrific fires in California in the last few years, and the tragic fires in Los Angeles, highlight the fact that there are no funds and no treatable acres to waste. I urge GCRC to reconsider whether overpaying a forestry vendor by over \$1,100,000 is justified given the dire fire situation that California finds itself in.**

I hope that upon further consideration Markit! Forestry can/will receive the Project award, which will spare all parties wasted time and costs in pursuing this matter through CAL FIRE's appeals process and/or the courts.

Finally, the second bullet point and second paragraph on Page 15 of the RFP states, "The protest must include the name, address, telephone number and e-mail address of the person representing

the protesting party, as well as reasons for the challenge." I trust that "reasons for the challenge" are clear from this letter. In accordance with the RFP protest requirements let me give the following information:

**Name of Representative of Protesting Party:** Brad Christiansen  
**Address of Protesting Party:** Markit! Forestry Management  
14330 Musso Road  
Auburn, CA 95603  
**Telephone Number of Protesting Party:** 505-274-8979 (Brad Christiansen)  
**Email Address of Protesting Party Representative:** bradchristiansen@markitforestry.com

Thank you for your time and consideration of this matter.

Sincerely,



Brad Christiansen  
Vice President

cc: D. Pedersen - State of California Department of Forestry and Fire Protection  
K. Welchans - State of California Department of Forestry and Fire Protection  
  
S. Lemmo - California Association of Resource Conservation Districts  
M. Scheid - California Association of Resource Conservation Districts  
N. Wahl-Scheurich - California Association of Resource Conservation Districts  
  
G. Goedhart - Glenn County Resource Conservation District  
B. Lohse - Glenn County Resource Conservation District  
  
B. Luhellier - Project Manager, Markit! Forestry Management  
S. Miller - Director of Business Development, Markit! Forestry Management  
A. Priest - Executive Vice President, Markit! Forestry Management  
A. Smith - Proposal Coordinator, Markit! Forestry Management  
G. Thurston - Co-Owner, Markit! Forestry Management

Exhibit B

**BENBROOK LAW GROUP**

Professional Corporation  
701 UNIVERSITY AVENUE, SUITE 106  
SACRAMENTO, CALIFORNIA 95825

www.benbrooklawgroup.com

TELEPHONE: (916) 447-4900

STEPHEN M. DUVERNAY

steve@benbrooklawgroup.com

March 7, 2025

**Via E-Mail**

Grant R. Orbach  
Best Best & Krieger LLP  
500 Capitol Mall, Suite 2500  
Sacramento, CA 95814  
grant.orbach@bbklaw.com

Re: Glenn County Resource Conservation District; Response to Bid Protests of Bordges  
Timber, Inc.  
Needham Hazardous Fuels Reduction Project  
Glenn County Small Landowner Forest Improvement Program

Dear Mr. Orbach:

My office represents Diversified Resources, Inc. (“DRI”) and Cook Construction Engineering Partnership (“Cook Construction”). DRI and Cook Construction are the proposed awardees of two contracts issued by the Glenn County Resource Conservation District, which were announced last December. This letter responds to bid protests submitted by Bordges Timber, Inc. related to the Needham Hazardous Fuels Reduction Project (awarded to DRI) and the Glenn County Small Landowner Forest Improvement Program (awarded to Cook Construction).

Given the unusual proceedings thus far, it is worth noting at the outset that neither DRI nor Cook Construction are interested in engaging in unprofessional behavior in this bid protest, and will not respond to Bordges’ scurrilous, unfounded attacks. Their reputations have been built over decades in the timber industry doing the difficult, essential work that keeps our Northern California communities safe. They will not compromise that hard-earned reputation to score cheap points. DRI and Cook Construction will instead let their work speak for itself, as they always have.

Turning to the merits. Bordges’ protests fall short on the facts and fail as a matter of law. The challenged bids were both responsive to the District’s requests for proposals. To the extent Bordges has raised any issues with DRI’s and Cook Construction’s bids, they amount to minor technicalities that had no impact on the proposed awards. Such inconsequential deviations are

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insufficient to call the competitive bidding process into question. The protests must therefore be denied so that the contracts can proceed as awarded.

### **I. Disappointed Bidders Like Bordges Face a High Bar When Challenging Public Contract Awards.**

Bordges argues in each protest that the winning bids were not responsive to the requests for proposals. These arguments go nowhere because DRI and Cook Construction actually complied with the District's requirements and specifications. To the extent any minor deviations existed (which respondents deny), Bordges comes nowhere close to meeting its high burden to prevail on these theories.

A brief review of the legal principles governing these protests is necessary to put Bordges' flimsy claims into context. To begin with, a public contract bid is bid is responsive if it "promises to do what the bidding instructions demand." *D.H. Williams Constr., Inc. v. Clovis Unified Sch. Dist.*, 146 Cal. App. 4th 757, 764 (2007) (citation omitted). Public entities have leeway to accept bids with minor deviations from strict requirements set forth in a request for proposal. To that end, it is "well established" that a public entity may consider a bid that "substantially conforms" to a request for proposal so long as the "variance is inconsequential." *Konica Bus. Machines U.S.A., Inc. v. Regents of Univ. of Cal.*, 206 Cal. App. 3d 449, 454 (1988) (citations omitted). A variance is "inconsequential" if it does not "affect[] the amount of the bid or give[] the bidder an advantage or benefit not allowed other bidders." *Id.* Consistent with this standard, a public entity may waive a deviation that "neither give[s] the bidder an unfair competitive advantage nor otherwise defeat[s] the goals of insuring economy and preventing corruption in the public contracting process." *Bay Cities Paving & Grading, Inc. v. City of San Leandro*, 223 Cal. App. 4th 1181, 1189 (2014) (quoting *Ghilotti Constr. Co. v. City of Richmond*, 45 Cal. App. 4th 897, 900 (1996)).

This standard embodies a "pragmatic approach" that is necessary to protect the "public interest": It prevents "disappointed bidder[s]" from derailing the public contracting process by seizing on "minor technicalities" in a winning bid. *Ghilotti*, 45 Cal. App. 4th at 908–09. "It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid." *Id.* at 909 (citation omitted). Accordingly, "responsiveness considerations 'must be evaluated from a practical rather than a hypothetical standpoint'" and "'viewed in light of the public interest, rather than the private interest of a disappointed bidder'" hoping to secure a contract by fixating on trivial deviations. *Cypress Sec., LLC v. City & Cty. of San Francisco*, 184 Cal. App. 4th 1003, 1015 (2010) (quoting *Ghilotti*, 45 Cal. App. 4th at 909).

In light of these considerations, disappointed bidders like Bordges looking to invalidate a contract award face a high bar when claiming that a winning bidder failed to satisfy the requirements of a procurement. To warrant setting aside a bid, a "deviation must be capable of facilitating corruption or extravagance, or likely to affect the amount of bids or the response of

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potential bidders.” *Ghilotti*, 45 Cal. App. 4th at 908. And when challenging the award of a public contract, “[t]here is a presumption that the [public entity’s] actions were supported by substantial evidence,” such that a challenger “has the burden of proving otherwise.” *Id.* at 903. To be successful, a losing bidder must show that the award is arbitrary, capricious, or entirely lacking in evidentiary support. *Id.*; see also, e.g., *Mike Moore’s 24-Hour Towing v. City of San Diego*, 45 Cal. App. 4th 1294, 1303 (1996); *Bay Cities Paving*, 223 Cal. App. 4th at 1187.

## **II. Bordges Has Not Met Its High Burden To Call The Contract Awards Into Question.**

Bordges has not met its high burden here. Each protest simply flyspecks DRI’s and Cook Construction’s winning bids and then seizes on immaterial (or nonexistent) issues to call the District’s awards into question, with the hope that Bordges can swoop in and take the contracts.

These efforts fail across the board. DRI and Cook Construction actually complied with the District’s requirements and specifications. But even if Bordges’ allegations were accurate, none of the purported deviations affected the price of the bids or gave DRI and Cook Construction an advantage over the other bidders. The only two issues Bordges ginned up—an allegedly deficient CARB certification (which, in fact, confirmed the bidders’ regulatory exemption) and vague concerns over DRI’s and Cook Construction’s licensure (when both bidders are appropriately licensed for the work)—are, at best, mere technicalities. To be sure, there is no basis to either claim. Yet these issues, even if substantiated, would be “inconsequential” because they “cannot have affected the amount of the bid[s] or given [DRI or Cook Construction] an advantage or benefit not allowed” to Bordges. *Ghilotti*, 45 Cal.App.4th at 904.

Beyond that, Bordges quibbles with the District’s scoring and asks for a do-over. The District’s decisions, however, are well-supported by the bids, and a losing bidder’s mere dissatisfaction provides no basis to disturb the awards.

### **1. DRI And Cook Construction Documented Their Exemption From CARB Fleet Compliance.**

Bordges leads both protests with a claim that DRI and Cook Construction failed to satisfy the RFPs’ CARB compliance requirements for the In-Use Off-Road Diesel-Fueled Fleets Regulation. Needham Protest 2; Forest Improvement Protest 2. This argument is meritless. Both DRI and Cook Construction strictly complied with the RFPs’ terms.

Each RFP required bidders to “comply with all CARB and [In-Use Off- Road Diesel-Fueled Fleets] Regulations requirements ... throughout the duration of the Project.” Needham RFP 14; Forest Improvement RFP 15. In conjunction with the solicitations, the District provided a “Fleet Compliance Certification” form for bidders to confirm, under penalty of perjury, that they either meet CARB’s regulatory requirements or are not subject to them. Needham RFP 44; Forest Improvement RFP 45. Included among the prescribed options on the form is a statement that “[t]he Fleet does not fall under the Regulation or are otherwise exempted and a detailed reasoning is attached hereto.”

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DRI and Cook Construction each included Fleet Compliance Certifications in their bid packages confirming that neither business is subject to the regulation, and each attached a letter explaining in detail why they are not subject to the CARB regulation. Specifically, DRI and Cook Construction are classified as “forest operations” under the regulation, so they fall under the general exemption for vehicles used for agricultural operations. 13 C.C.R. § 2449(b)(2)(H)(8) (exempting “[e]quipment or vehicles used exclusively in agricultural operations”); *id.*, subds. (c)(1), (30) (defining “agricultural operations” and “forest operations”). The letters also explained that DRI and Cook Construction were exempt from the regulation’s renewable diesel requirements because they would be operating in a captive attainment area. *See* 13 C.C.R. §§ 2449(c)(6), 2449.1(f)(2)(A). DRI and Cook Construction included a separate certification for their herbicide subcontractor (Redwood Empire Reforestation, Inc.) and that it too is exempt: Redwood Empire’s vehicles are used in agricultural operations and, in any event, its fleet is comprised of vehicles that are not subject to the regulation. Finally, each explanatory letter detailed the bidders’ communications with CARB to confirm their exemption from the agency’s reporting requirements.

Bordges, by contrast, failed to comply with the requirement that it provide CARB certifications for “all listed subcontractors.” Needham RFP 14; Forest Improvement RFP 15. And it didn’t even bother to include a complete certification in its Forest Improvement bid. This was sufficient for the District to deem Bordges’ bids nonresponsive. Needham RFP 14; Forest Improvement RFP 15.

In sum, DRI and Cook Construction satisfied the RFPs’ CARB compliance requirements. Bordges did not.

## **2. DRI And Cook Construction Are Appropriately Licensed For The Projects.**

Bordges next calls into question whether DRI and Cook Construction are properly licensed for the projects. The Needham protest suggests—in a footnote—that DRI’s proposal was somehow flawed because it included the company’s Timber Operator License with an effective date of January 1, 2025. The implication, it seems, is that something nefarious was afoot because DRI submitted its bid nearly a month before its license took effect. Bordges asserts that this is somehow evidence of “conflicts of interest” within the District. Needham Protest 1 & n.1

This absurd argument shows just how far Bordges is stretching to conjure up purported irregularities. DRI has been continuously licensed for well over a decade. DRI included its recently renewed license in the Needham bid package (rather than the license set to expire at the end of 2024) to demonstrate its licensure for the project because the work was set to begin in 2025. Timber licenses are issued on a two-year basis; businesses (like DRI and Bordges) that have odd-numbered licenses expire on January 1 of odd-numbered years. 14 C.C.R. § 1026(b). Cal Fire’s regulations generally require that renewal applications be submitted by December 1 of their year of expiration to prevent a lapse. *See id.* Consistent with that guidance, DRI submitted



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its renewal paperwork for its 2025/2026 license in late 2024 and the company received a new license before the District's bidding deadlines in early December.

Indeed, Bordges knows all about these expirations and renewals: The timber license included in its own bid packages expired on December 31, 2024. DRI presumes that Bordges had its renewed license in hand before January 1, 2025, and certainly before submitting its protest last month. Otherwise Bordges would be unlicensed and ineligible for either of the jobs at issue here. This is a nonsense argument raised in desperation.

Bordges also objects to Cook Construction's qualifications. Needham Protest 2–3; Forest Improvement Protest 2–3. The protests first assert that Cook's license—a Class A General Engineering license—is “wholly inappropriate” for the projects. *See id.* Bordges offers no analysis whatsoever for this conclusory assertion. Most tellingly, it points to no specification or requirement in the RFPs to support its claim that the license is not suitable for the projects. In fact, the Forest Improvement RFP specifically outlines several tasks that fall squarely within the scope of a General Engineering license, including erosion control, site preparation, and ensuring proper drainage for the project. Forest Improvement RFP 5. Beyond that, there can be no question that Cook Construction possesses the qualifications necessary to satisfy the District's needs. The company has more than 20 years' direct involvement with fuels reduction in the region, including significant experience navigating the unique challenges presented by the Mendocino National Forest roads system. Indeed, Cook Construction's intimate familiarity with the MNF roads system—called out as an essential element of the project, *see* Forest Improvement RFP 8—is in stark contrast to Bordges' lack of experience in the region.

Each protest also makes a passing argument that Cook Construction's contractor license was “cancelled by operation of law” resulting from Barney Cook's death in July 2024. Needham Protest 3; Forest Improvement Protest 3. This is incorrect. Cook Construction's contractor license remains active. Since his father's death, Ken Cook has taken steps to update the partnership's licensure with the Contractors State License Board to associate his individual license with the business. Setting aside the facts, the purported licensure lapse would be in any event be “inconsequential” because it did not impact the amount of Cook Construction's bid or give it an advantage in the bidding process.

DRI and Cook Construction are both appropriately licensed for the projects.

### **3. The District's Scoring Decisions Are Supported By The Bids.**

With nothing to make of actual deviations from the bid specifications, Bordges resorts to a laundry list of gripes over the District's scoring decisions. This unconventional exercise boils down to Bordges demanding to be re-scored so that it is equivalent to the proposed awardee. Needham Protest 3–5; Forest Improvement Protest 3–4. The protests' featherweight analysis come nowhere close to satisfying Bordges' burden of rebutting the heavy presumption that the District's awards were proper. While it is not necessary to respond to each of Bordges' drive-by assertions and empty criticisms in detail, a few items are worth highlighting to show just how far these protests stray from reality.

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### *Needham Project*

Bordges claims DRI's timeline is "impossible to achieve," characterizes it as a "blatant misrepresentation," and calls into question DRI's understanding of the project, its staffing, and its ability to perform the work. Needham Protest 3–4.

Strong words with nothing behind them. With decades of industry expertise, DRI has successfully completed numerous projects on time and within scope, often under similarly demanding conditions. DRI's proposal sets forth a comprehensive outline of the work that confirms its understanding of the project and details the company's approach, methodologies, and execution plan. DRI stands by its proposal, its timeline, and its ability to execute this project as outlined.

Moreover, Bordges' protest fails to acknowledge the deficiencies in its own proposal. While Bordges claims an entitlement to equal scores, DRI's proposal addressed cash flow availability and grant-funding constraints, and demonstrated its experience to meet the District's reporting obligations. Bordges' proposal was silent on each of these points. DRI also included a thorough description of how it would integrate subcontractors into the work and provided a staffing plan, including references, for each company that would touch the job. Bordges simply identified which subcontractors it planned to use and provided no details, which deviates from several of the RFP's requirements. DRI thus demonstrated a superior understanding of the project, and set forth a clear and comprehensive staffing plan designed to meet the District's expectations.

### *Forest Improvement Project*

Bordges runs the same playbook in its protest against Cook Construction: Questioning the company's qualifications, its project management expertise, and its ability to perform the work. Forest Improvement Protest 3–4. Each of these points fall flat. Bordges asserts, for example, that "[k]nowledge of the Mendocino road system is not relevant to this Project." *Id.* at 3. That is false. The RFP emphasizes that such knowledge is, in fact, essential to the work:

Due to deteriorating and everchanging road conditions within the Mendocino National Forest (MNF), a contractor with knowledge and experience of the Mendocino National Forest Roads System is required. Proposals that **do not** demonstrate knowledge and experience of the Mendocino National Forest Roads System will not be considered for this RFP.

Forest Improvement RFP 8 (emphasis in original). Cook Construction's bid details the company's direct work with these roads and the challenges they present. *See* Cook Construction Forest Improvement Bid 2–3. Bordges has no such experience.

Bordges also claims that the District's scoring was flawed because Cook Construction "doesn't have any reforestation experience" and its proposal "made no reference to contour falling [or] tree planting," and Bordges was "way more specific" on those points Forest Improvement Protest 3. Fair enough. But the project involves *site preparation* for reforestation,

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the RFP does not contemplate tree planting or define specifics (such as contour falling). And on that score, Cook Construction's bid set out a detailed approach that focused on the key tasks actually required by the RFP (mastication, site, preparation, and piling dead and dying material for future burning and reforestation activities). Based on the project parameters, Cook Construction's proposal contemplates consultation and assessment with landowners and the District to then develop property-specific plans implementing the forest improvement tasks.

Beyond that, Bordges again fails to acknowledge the defects in its own proposal, which demonstrates a significant misunderstanding of the project's objectives. For example, Bordges includes extensive details about reforestation even though reforestation is not a treatment option outlined in the RFP. The company's proposal pays little attention to the crucial component of familiarity with the MNF's roads system. By contrast, Cook Construction details its extensive experience and sets forth an action plan demonstrating that it has a clear understanding of the current challenges posed by the MNF's severely damaged roads. And, once again, Bordges fails to detail its experience with and expected use of subcontractors—though it nevertheless received full points in the District's scoring. Put simply, the District correctly recognized that Cook Construction's bid was head and shoulders above Bordges' proposal.

#### *Cost Considerations*

Bordges closes each protest with a brief argument that the District did not properly consider pricing when awarding the contracts and suggests that it offered a less expensive bid. Needham Protest 5; Forest Improvement Protest 4. This piggybacks on Bordges' claim that the District's scoring on project costs "absolutely defies explanation since [Bordges'] bid prices were lower than DRI." Needham Protest 4.

This is mystifying. DRI's Needham proposal clocked in at just under \$2.9 million for the mechanical and herbicide treatments, and bonding fees, compared to Bordges' bid, which on the surface appears to be lower. But including the mechanical and herbicide treatments (listed as a separate line item) pushes Bordges' bid past \$3 Million. This is all before Bordges' fuzzy math, which pushes its actual costs even higher. Taking into account the 6% upward adjustment (3% for "performance" and another 3% allocated to "performance" bonding) that Bordges did not include in the sticker price puts its bid just north of \$3.2 million. As for the Forest Improvement project, Cook Construction's proposal offered a range of potential costs based on the key variable factors at play in the project, just as Bordges did. (Bordges' Forest Improvement bid, of course, also did not include the 6% enhancement in the sticker price.) Bordges' opaque proposal makes its costs impossible to pin down: By presenting a structure that deviates from the format outlined in the RFP—through the use of limitations and alternative methods—the price tag for Bordges' work could far exceed the District's budgetary expectations.

In short, Bordges cannot credibly claim to offer a better price on either project.

\* \* \*

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Bordges' protests to the contract awards for the Needham Hazardous Fuels Reduction Project and the Glenn County Small Landowner Forest Improvement Program should be denied.

Sincerely,

/s/ Stephen M. Duvernay

Stephen M. Duvernay

cc: Bordges Timber, Inc.  
c/o Murphy Austin Adams Schoenfeld LLP  
Lisa D. Nicolls  
555 Capitol Mall, Suite 850  
Sacramento, CA 95814  
lnicolls@murphyaustin.com

Markit! Forestry Management  
Brad Christiansen  
14330 Musso Road  
Auburn, CA 95603  
bradchristiansen@markitforestry.com



2424 Garden of the Gods Road, Suite 290  
Colorado Springs, CO 80919  
Tel: 719-593-2365

[www.markitforestry.com](http://www.markitforestry.com)

March 6, 2025

**Sent via email**

Mr. Grant R. Orbach  
Of Counsel  
Best Best & Krieger LLP  
500 Capitol Mall, Suite 2500  
Sacramento, CA 95814

**RE: Needham Hazardous Fuels Reduction Project and Glenn County Small Landowner Forest Improvement Program Protests and Due Process**

Dear Mr. Orbach,

Thank you for your letter of February 24, and thank you for providing the opportunity for Markit! Forestry Management LLC ("Markit! Forestry") to reply to accusations lodged against Markit! Forestry in regard to the Needham Hazardous Fuels Reduction Project (the "Project").

As you know, in December, 2024, Markit! Forestry submitted a reply to the Glenn County Resource Conservation District Request For Proposals for "Contractor to provide Mechanical Fuels Treatment for 1,718 acres and Herbicide Application for 1,020 acres for Fuels Reduction Project". The result of the Glenn County Resource Conservation District ("GCRCDD") Request For Proposal ("RFP") process was that Markit! Forestry provided by far the most beneficial price proposal – with over \$866,000 of cost savings versus the second-place low-cost bidder – and Markit! Forestry received the second highest score based on the GCRCDD subjective scoring system. Overall, Markit! was judged to be the "second place" bidder for the Project.

On February 5, 2025, Bordges Timber, Inc., through its law firm Murphy Austin ("Bordges"), filed a protest letter against ". . . any award or intended award to Diversified Resources, Inc. ("DRI") or Markit! Forestry Management LLC ("Markit!") of the contract for the Needham Hazardous Fuels Reduction Program ("Project") by Glenn County Resources Conservation District. . . ." In its February 5 letter, Bordges spent one paragraph raising some misguided accusations and objections to Markit! Forestry being awarded the Project.

For convenience, the full text of Bordges's paragraph about Markit! Forestry's RFP proposal is reproduced as Appendix A to this letter (please see below). Bordges's letter makes three accusations against Markit! Forestry. For the sake of simplicity, the three points that Bordges makes are summarized below, with the actual accusations quoted, but with filler text removed.

The three accusations that Bordges makes against Markit! Forestry, and Markit! Forestry's responses are as follows:

### **Accusation 1**

". . . Markit! does not possess a California contractors license that would enable it to perform the work in question. . . . A C61/D49 license (tree service contractor) is required to perform work that includes [sic] tree removal. Markit!'s failure to possess such a license makes it ineligible to contract for the Project work."

**This statement from Bordges is completely wrong**, which is especially surprising since Bordges engaged an attorney to write its letter. The C-61/D-49 license and classification became **defunct** on January 1, 2024, and was replaced by the C-49 classification and license. The C-49 classification is formally titled "§832.49. Class C-49 - Tree and Palm Contractor." As the name of the classification implies, this license is for general tree and palm tree planting, pruning, stump grinding and limb guying. For convenience, the full text of classification C-49 is reproduced as Appendix B (please see below).

As the C-49 classification makes clear, it is intended for tree trimming companies, not forestry companies. The Needham Hazardous Fuels Reduction Project is a landscape scale (1,718 acre) **forestry** project that does not require tree planting, limb pruning, palm frond pruning or limb guying. The relevant certificate and credential for the Needham Hazardous Fuels Reduction Project is the California State Board of Forestry Timber Operator License, a copy of which Markit! Forestry submitted with its RFP response. For convenience, a copy of Markit! Forestry's California Timber Operator License is reproduced in Appendix C (please see below).

The Cal Fire website is explicit about the controlling authority for **forestry operations** as opposed to tree trimming. The Cal Fire website states, "Licensed Timber Operators or 'LTOs' are persons who have been licensed under the Forest Practice Act law and are authorized to conduct forest tree cutting and removal operations. LTOs must understand and comply with all laws relating to such tree cutting or removal." [Licensed Timber Operators | CAL FIRE](#). There is nothing in the Class C-49 – Tree and Palm Contractor classification that relates to the Forest Practice Act law.

As I write this letter, Markit! Forestry is actively engaged in two large-scale forestry projects in California without objection or challenge under its California Timber Operators License. In fact, Markit! Forestry just received a Contractor Performance Assessment Report (CPAR) for one of those projects, a \$3,851,000 project in the Plumas National Forest. I have attached the CPAR report – which was issued on February 26, 2025 – as Appendix D (please see below). Contrary to what Bordges wrote, Markit! Forestry can and does perform large-scale forestry projects in California with all the required forestry licenses.

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Although it is not directly germane to Bordges's accusation, let me note some of the commentary from the Supervisory Contracting Officer who assessed Markit! Forestry's performance in the attached Contractor Performance Assessment Report:

QUALITY: Performance meets contractual requirements and exceeds some to the Government's benefit. (Appendix D, Page 2)

MANAGEMENT: Markit! is very conscious of resources and are great communicators of any issues, accidents, or matters that need attention or question. They are very willing to correct any issues or missed areas untreated which makes it smooth sailing. Markit!'s subcontractors (PCC) professionalism, and keen eye for safety, only reflects good management. Communication before invoicing and adequate itemized list of acres treated, have been established with their accountant to make invoice tracking much more efficient. Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being evaluated was accomplished with some minor problems for which corrective actions taken by the Contractor were effective. (Appendix D, Page 2)

ADDITIONAL/OTHER: Thank You! (Appendix D, Page 3)

RECOMMENDATION: Given what I know today about the contractor's ability to perform in accordance with this contract or order's most significant requirements, I would recommend them for similar requirements in the future. (Appendix D, Page 3)

Anyone that is familiar with contractor evaluations in Contractor Performance Assessment Reports (CPARs) will appreciate that Markit! Forestry just received **very high** praise for its work on the Plumas National Forest Project.

Markit! Forestry has executed with excellence thousands of acres of forestry projects in California under the authority of the California State Board of Forestry Timber Operator License. Markit! Forestry has completed forestry projects in California for the U.S. Forest Service, for Cal Fire and for multiple counties, conservation districts and regional authorities with its California Timber Operator License. If-and-when it is adjudicated – including during the Needham Hazardous Fuels Reduction Project – that a C-49 license is required, Markit! Forestry will obtain that license.

## **Accusation 2**

"Markit! does not possess and did not list a subcontractor with a Qualified Applicator License or that is a Pest Control Business (PCM). Page 6 of the RFP expressly provided that "Herbicide application may be necessary for follow up

treatment; (Pest Control Business main (PCM), a Qualified Applicator License (QAL), and any other applicable licensing shall be required and used."

**Contrary to what Bordges wrote, Markit! Forestry DID list in multiple places in its RFP response a qualified subcontractor – Highlanders Forest LLC – that will apply herbicide treatments for the Project** (see, for example, Page 7 of Markit! Forestry's RFP response). Highlanders Forest LLC is a qualified herbicide applicator with local and state-required licenses for herbicide treatments. Markit! Forestry did not reproduce Highlanders Forests' licenses in the RFP because it was not required. Markit! Forestry, however, is pleased to present Highlanders Forest's licenses in the attached Appendix E (please see below).

In Markit! Forestry's proposal submittal letter that I signed, I wrote that Markit! Forestry's proposal was submitted in response to the GCRC D RFP and would bind Markit! Forestry accordingly, including to all licensing requirements for the Project. As with all its forestry work, Markit! Forestry and its subcontractors will complete the Needham Hazardous Fuels Reduction Project with all the required licenses.

### **Accusation 3**

"Markit! also has not provided evidence that it holds business [sic] license which is also a prerequisite under Page 8 of the RFP and Section 3.2.8 of the Agreement included with the RFP."

**This point appears to be nothing more than a rehashing of Point 1 above in an attempt to confuse the Glenn County Resource Conservation District.** As explained above, Markit! Forestry has completed thousands of acres of forestry projects in California with all of the necessary licenses and permits. Markit! Forestry has been a certified contractor in California for years. Markit! Forestry is registered with the State of California Department of Industrial Relations and is a certified California contractor. A copy of Markit! Forestry's contractor registration at the State of California Department of Industrial Relations is reproduced in Appendix F (please see below).

Although Markit! Forestry's headquarters office is in Colorado, Markit! Forestry is a resident of California for tax and regulatory purposes (please note the Auburn, California office address on the attached contractor registration form displayed in Appendix F). Markit! Forestry pays California income and business taxes, and like any taxpayer is interested in seeing the most efficient and effective utilization of government funds.

### **Conclusions**

In response to the Needham Hazardous Fuels Reduction Project RFP, Bordges was in the unenviable position of being in third place in the RFP scoring – behind Markit! Forestry – and



Mr. Grant R. Orbach

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being in second place in project cost – again behind Markit! Forestry – with a proposal that is over \$866,000 more expensive than Markit! Forestry's proposal. To be awarded the project, Bordges not only needed to elevate itself above the indicated awardee – Diversified Resources, Inc. – but also needed to elevate itself above Markit! Forestry. In regard to Markit! Forestry, Bordges's strategy appears to have been to hire an attorney to make offhand and ill-considered accusations against Markit! Forestry. As demonstrated above, the accusations against Markit! Forestry have no merit.

Despite Bordges's meritless accusations, the following facts remain regarding the Needham Hazardous Fuels Reduction Project:

1. Markit! Forestry is the largest and most accomplished vendor of forestry services of the top three contenders for the Project, having executed numerous forestry projects across California and across the southwest United States.
2. Markit! Forestry's technical forestry capabilities match or exceed the capabilities of every other proposer for the Project.
3. Markit! Forestry's price proposal is far, far superior to every other proposer for the Project, producing cost savings of over \$866,000 versus the second-place low-cost bidder (Bordges), and producing cost savings of over \$1,100,000 (68% !!) versus the third-place low-cost bidder (Diversified Resources, Inc.).
4. Selecting Markit! Forestry as the vendor to complete the Needham Hazardous Fuels Reduction Project creates the possibility of treating an additional 1,580 acres!! **The catastrophic fires across California in the last few years, and the tragic fires in Los Angeles less than 2 months ago, highlight the fact that there are no funds and no treatable acres to waste. I urge GCRCO to reconsider whether overpaying a forestry vendor by over \$1,100,000 is justified given the dire fire situation that California finds itself in.**

Thank you for your time and consideration of this matter, and thank you for allowing Markit! Forestry to address and refute the misinformed and baseless accusations that were made in the Bordges letter.

Sincerely,



Brad Christiansen  
Vice President

Mr. Grant R. Orbach

March 6, 2025

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cc: K. Welchans - State of California Department of Forestry and Fire Protection

G. Goedhart - Glenn County Resource Conservation District

B. Lohse - Glenn County Resource Conservation District

K. Manhart - Glenn County Resource Conservation District

B. Luhellier - Project Manager, Markit! Forestry Management

S. Miller - Director of Business Development, Markit! Forestry Management

A. Priest - Executive Vice President, Markit! Forestry Management

A. Smith - Proposal Coordinator, Markit! Forestry Management

G. Thurston - Co-Owner, Markit! Forestry Management

## APPENDIX A

### **Paragraph of Accusations Against Markit! Forestry Management From Murphy Austin Attorneys Letter Dated February 5, 2025 On Behalf of Bordges Timber, Inc.**

#### **From Page 5 of Letter:**

Markit! also cannot be awarded the contract for the Project. This is because Markit! does not possess a California contractors license that would enable it to perform the work in question. Page 6 of the RFP expressly provides that “Contractor(s) may masticate all brush, **trees** less than 10 inches dbh, snags less than 15 inches dbh, and down logs less than 15 inches in diameter and 10 feet in length. **Trees** and brush shall be completely severed from the stump...” (Emphasis added.) A C61/D49 license (tree service contractor) is required to perform work that includes tree removal. Markit!’s failure to possess such a license makes it ineligible to contract for the Project work. In addition, Markit! does not possess and did not list a subcontractor with a Qualified Applicator License or that is a Pest Control Business (PCM). Page 6 of the RFP expressly provided that” Herbicide application may be necessary for follow up treatment; **Pest Control Business main (PCM), a Qualified Applicator License (QAL), and any other applicable licensing shall be required and used.**” (Emphasis added.) Markit! also has not provided evidence that it holds business license which is also a prerequisite under Page 8 of the RFP and Section 3.2.8 of the Agreement included with the RFP.

# APPENDIX B

THOMSON REUTERS

## WESTLAW California Code of Regulations

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[Home Table of Contents](#)

§ 832.49. *Class C-49 - Tree and Palm Contractor.*

16 CAADC § 832.49

Barclays Official California Code of Regulations

Effective: January 1, 2024

Barclays California Code of Regulations  
Title 16. Professional and Vocational Regulations  
Division 8. Contractors' State License Board  
Article 3. Classification

Effective: January 1, 2024

16 CCR § 832.49

§ 832.49. *Class C-49 - Tree and Palm Contractor.*

### Currentness

(a) A tree and palm contractor plants, maintains, and removes trees and palms. The duties include pruning, stump grinding, and tree, palm, or limb guying.

(b) Effective January 1, 2024, this regulation shall become operative.

(c) This regulation does not apply to, and a license shall not be required for, incidental pruning of trees or guying of planted trees and their limbs by a nurseryperson or incidental pruning of trees by a gardener as described in Section 7026.1 of the Code.

### **Credits**

NOTE: Authority cited: Sections 7008 and 7059, Business and Professions Code. Reference: Sections 7026.1, 7058 and 7059, Business and Professions Code.

### HISTORY

1. New section filed 3-30-2022; operative 1-1-2024 (Register 2022, No. 13).

This database is current through 1/24/25 Register 2025, No. 4.


Cal. Admin. Code tit. 16, § 832.49, 16 CAADC § 832.49

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END OF DOCUMENT


# APPENDIX C

## Markit! Forestry Management LLC California State Board of Forestry Timber Operator License

License Number: <b>A11808</b>	STATE OF CALIFORNIA	
Date of Issuance: 5/28/2024	THE RESOURCES AGENCY	
License Valid Period: 5/28/2024-12/31/2025	STATE BOARD OF FORESTRY	
<b>TIMBER OPERATOR LICENSE</b>		
MARKIT FORESTRY MANAGEMENT LLC 2424 GARDEN OF THE GODS ROAD SUITE 290 COLORADO SPRINGS, CO 80919		
		<p>This timber operator license is issued pursuant to the provisions of Article 6, Chapter 8, Division 4 of the Public Resources Code; the regulations of the State Board of Forestry in Article 3, Subchapter 4.1, Chapter 2, Division 2, Title 14 of the Administrative Code; and in response to the licensee's application in the prescribed manner.</p> <p>This timber operator license does not purport to confer property rights in timber, land, or the products thereof.</p>
		CDF STOCK 75401300491

RM-61 (10/98)

(SEE REVERSE SIDE)

License Number: <b>A11808</b>	STATE OF CALIFORNIA	
Date of Issuance: 5/28/2024	THE RESOURCES AGENCY	
License Valid Period: 5/28/2024-12/31/2025	STATE BOARD OF FORESTRY	
<b>TIMBER OPERATOR LICENSE</b>		
MARKIT FORESTRY MANAGEMENT LLC 2424 GARDEN OF THE GODS ROAD SUITE 290 COLORADO SPRINGS, CO 80919		
		<p>This timber operator license is issued pursuant to the provisions of Article 6, Chapter 8, Division 4 of the Public Resources Code; the regulations of the State Board of Forestry in Article 3, Subchapter 4.1, Chapter 2, Division 2, Title 14 of the Administrative Code; and in response to the licensee's application in the prescribed manner.</p> <p>This timber operator license does not purport to confer property rights in timber, land, or the products thereof.</p>
		CDF STOCK 75401300491

RM-61 (10/98)

(SEE REVERSE SIDE)

# APPENDIX D

2/26/25, 1:57 PM

## CONTRACTOR PERFORMANCE ASSESSMENT REPORT (CPAR)

### Name/Address of Contractor:

Vendor Name: MARKIT! FORESTRY MANAGEMENT LLC

Division Name:

Street: 2424 GARDEN OF THE GODS RD

City: COLORADO SPRINGS

State: CO Zip: 809193143

Country: USA

CAGE Code:

Unique Entity ID: DM5MQYBBNML7

Product/Service Code: F099 Principal NAICS Code: 115310

**Evaluation Type:** Interim

**Contract Percent Complete:** 35

**Period of Performance Being Assessed:** 01/16/2024 - 01/14/2025

**Contract Number:** 12363N24C4003 **Business Sector & Sub-Sector:** Nonsystems - Facilities Services

**Contracting Office:** USDA-FS, STEWARDSHIP CONTRACTING BRANCH **Contracting Officer:** MARK PHILLIPP **Phone Number:** 541-410-1187

### Location of Work:

Plumas National Forest, Feather River Ranger District, West side of Plumas National Forest

**Date Signed:** 01/31/2024 **Period of Performance Start Date:** 01/16/2024

**Est. Ultimate Completion Date/Last Date to Order:** 10/31/2026 **Estimated/Actual Completion Date:**

**Funding Office ID:** 129A13

**Base and All Options Value :** \$3,851,487 **Action Obligation:** \$3,851,487

**Complexity:** Medium **Termination Type:** None

**Extent Competed:** Full and Open Competition **Type of Contract:** Firm Fixed Price

### Key Subcontractors and Effort Performed:

**Unique Entity ID:**

**Effort:**

**Unique Entity ID:**

**Effort:**

**Unique Entity ID:**

**Effort:**

**Project Number:**

**Project Title:**

The objectives of this project are to perform mitigation treatment of standing and downed fire killed fuels along and adjacent to roads and recreation sites within the North Complex Fire of 2020 and Dixie and Beckwourth Fires of 2021. These roadside fuels treatments are a vital step of the continued post-fire restoration activities to ensure safe access and working conditions. The project will also reduce the risk of future wildfire and insect or disease infestation and protect, restore, and enhance forest ecosystem components within the project area.

**Contract Effort Description:**

**Elapsed time = 1:30 (Page times out in 15 minutes)**

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1. Mechanically remove unmerchantable trees and small diameter hazardous fuels along roadsides to landings to be later burned by Forest Service or chipped/removed from contract area. Decking and Processing of trees is required in Mandatory and Optional Work Items 3 and 5 and associated sub-items.
2. Remove product per Timber Subject to Agreement if awarded.
3. Re-opening access roads as needed of newly downed trees and debris blocking access to treatment units and/or haul routes.

**Small Business Subcontracting:**

Does this contract include a subcontracting plan? Yes

Date of last Individual Subcontracting Report (ISR) / Summary Subcontracting Report (SSR): 09/30/2026

Evaluation Areas	Past Rating	Rating
Quality:	N/A	Very Good
Schedule:	N/A	Satisfactory
Cost Control:	N/A	N/A
Management:	N/A	Very Good
Small Business Subcontracting:	N/A	Very Good
Regulatory Compliance:	N/A	Satisfactory
Other Areas:		
(1) :		N/A
(2) :		N/A
(3) :		N/A

**Variance (Contract to Date):**

Current Cost Variance (%): Variance at Completion (%):

Current Schedule Variance (%): 46

**Assessing Official Comments:**

QUALITY: Performance meets contractual requirements and exceeds some to the Government's benefit. Progress is at the 46% completed for the entire contract. The contractual performance of the element or sub-element being evaluated was accomplished with some minor problems for which corrective actions taken by the Contractor were effective. Contractor corrects any issues within a reasonable timeframe

SCHEDULE: Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the Contractor appear, or were, satisfactory. Predicted 50% completion will be end of February 2025. This will be about 50% of the completion date.

MANAGEMENT: Markit! is very conscious of resources and are great communicators of any issues, accidents, or matters that need attention or question. They are very willing to correct any issues or missed areas untreated which makes it smooth sailing. Markit!'s subcontractors (PCC) professionalism, and keen eye for safety, only reflects good management. Communication before invoicing and adequate itemized list of acres treated, have been established with their accountant to make invoice tracking much more efficient. Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being evaluated was accomplished with some minor problems

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for which corrective actions taken by the Contractor were effective.

**SMALL BUSINESS SUBCONTRACTING:** Met all of the statutory goals or goals, as negotiated. Had significant success with initiatives to assist, promote, and utilize SB, SDB, WOSB, HUBZone, VOSB, and SDVOSB. Complied with FAR 52.219-8, Utilization of Small Business Concerns. Met or exceeded any other small business participation requirements incorporated in the contract or order, including the use of small businesses in mission critical aspects of the program. Endeavored to go above and beyond the required elements of the subcontracting plan. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner. Pacific Coast Contractors, or PCC, has performed at high standards with a high importance on safety.

**REGULATORY COMPLIANCE:** Only one minor problem that the Contractor recovered from without impact to the contract or order. There have been NO significant weaknesses identified. A fundamental principle of assigning ratings is that Contractors will not be evaluated with a rating lower than Satisfactory solely for not performing beyond the requirements of the contract or order. Contractor's performance was not altered because on late payment to sub-contractor.

**ADDITIONAL/OTHER:** Thank You!

**RECOMMENDATION:**

Given what I know today about the contractor's ability to perform in accordance with this contract or order's most significant requirements, I would recommend them for similar requirements in the future.

**Name and Title of Assessing Official:**

Name: MARK PHILLIPP

Title: Supervisory CO

Organization: USDA, FS

Phone Number: 541-410-1187 Email Address: mark.phillipp@usda.gov

Date: 02/11/2025

**Contractor Comments:**

**ADDITIONAL/OTHER:** Contractor agrees with the ratings assigned.

**CONCURRENCE:** I concur with this evaluation.

**Name and Title of Contractor Representative:**

Name: Shaina Miller

Title: Director of Business Operations

Phone Number: 7195932365 Email Address: shainamiller@markitforestry.com

Date: 02/12/2025

**Review by Reviewing Official:**

Review by Reviewing Official not required.

**Name and Title of Reviewing Official:**

Name:

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Title:

Organization:

Phone Number: Email Address:

Date:

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**APPENDIX E**

**Qualified Applicator License  
For Highlanders Forest LLC**

 **DEPARTMENT OF PESTICIDE REGULATION  
LICENSING/CERTIFICATION PROGRAM**



**QAL**  
**QUALIFIED APPLICATOR LICENSE**

**LICENSE #: 119469**                      **EXPIRES: 12/31/2025**  
Categories: CE                              Issued: 1/1/2024

**EOUCARIO MEJIA**  
2348 BEALL LN  
CENTRAL POINT, OR 97502



**This License must be shown to any representative of the Director or  
Commissioner upon request.**

# APPENDIX F

## Markit! Forestry Management LLC Registration With California Department of Industrial Relations



[Home](#) > [Contractor](#) > Markit! Forestry Management LLC

### Markit! Forestry Management LLC

#### Contractor

Contractor business email

caraknippling@markitforestry.com

Contractor dba name

Contractor c ation eff date

2023-07-13

Contractor entity number

2.01928E+11

Contractor first name

Cara

Contractor ID

PW-LR-1000624009

Contractor mailing city

Colorado Springs

Contractor last name

Knippling

Contractor mailing state

CO

Contractor mailing address2

Contractor mailing zip

80919

Contractor physical address1

14330 Musso Rd

Contractor physical city

Auburn

Contractor physical address2

Contractor physical state

CA

Contractor source

PWCR

Contractor physical zip

95603

Contractor wc cert date

2019-10-17

Contractor certify date

2023-07-13

Contractor wc exp date

2023-10-17

Contractor company type

LLC

Contractor wc policy number

926252322

Contractor craft legacy

Landscape; Laborer

Contractor wc selection

Insured by carrier

Contractor craft snow

Contractor legal entity name

Markit! Forestry Management LLC

Contractor c ation exp date

2025-06-30

Contractor mailing address1

2424 Garden of the Gods Rd, Suite 290

Contractor date deactivated

Contractor wc carrier

State Compensation Insurance Fund of Cal

Checked

April 15, 2025

**VIA EMAIL**

Grant R. Orbach  
Best Best & Krieger LLP  
500 Capitol Mall, Suite 2500  
Sacramento, California 95814  
grant.orbach@bbklaw.com

Re: Reply to Response to Bid Protest of Bordges Timber, Inc.  
Reforestation Site Preparation for 600 acres & Mastication Thinning for 250 acres  
for Forest Improvement Project; Needham Hazardous Fuels Reduction Program

Dear Mr. Orbach:

Bordges Timber, Inc. (“BTI”) hereby responds to Diversified Resources, Inc.’s (“DRI”) and Cook Construction Engineering Partnership (“Cook”) responses to BTI’s protests of the awards to Cook and DRI of the contracts for the Reforestation Site Preparation for 600 acres & Mastication Thinning for 250 acres for Forest Improvement Project (“Reforestation Project”) and Needham Hazardous Fuels Reduction Program (“Needham Project”) by Glenn County Resources Conservation District (“Glenn County RCD” or “Owner”). BTI notes that it is still awaiting the balance of the documents requested by BTI’s Public Records Act Request and reserves the right to respond further once the balance of the Owner’s responsive documents have been produced.

First, BTI takes exception to the characterization by counsel for DRI and Cook that BTI’s protests constitute “scurrilous attacks.” It is Cook and BTI who are attempting to mislead the Owner by characterizing Cook’s failure to be properly licensed as an “inconsequential deviation” and by deliberately misleading the Owner with respect to the as bid costs for both projects.

With respect to Cook’s improper license, said failure is not an inconsequential deviation since a C-61/D-49 license is indisputably legally required and Cook is not only not currently licensed but, even if its general partnership were somehow still active, it is not proper since it is in the wrong classification. As referenced in BTI’s initial bid protest, Cook is not properly licensed to perform the Project work for two separate reasons. Specifically, Cook holds a Class A General Engineering license which, as already explained, is not appropriate for the work in question. Indeed, CalFire itself has confirmed that “[i]f your timber harvesting is not a timber operation subject to the Forest Practice Act, a **C-61/D-49 Tree Service specialty license issued by the California Contractors State License Board (CSLB) would be required for tree**

**removal or pruning if the value of the work equals or exceeds \$500** or if trees 15 feet or taller are removed.” (Emphasis added.) (See the enclosed printout from CalFire.)

Cook’s response does not address the illegality of performing the work in question with a Class A license but no C-61/D-49. It also asserts that “[s]ince his father’s death, Ken Cook has taken steps to update the partnership’s license with the Contractors State License Board to associate his individual license with the business.” This assertion ignores the fact that the entity that bid to perform the work in question was Cook Construction General Engineering, a partnership. There is no way for Ken Cook to associate his individual license with that business and keep the partnership license “alive” since the partnership is void by operation of law since one of the partners is deceased. This failure is also not inconsequential since performing the work without the appropriate license would be illegal and section 5 of the RFP states “Proposer **and all proposer sub-contractor(s)** shall possess all permits, licenses, and professional credentials necessary to perform services as specified under this RFP.” (Emphasis added.)

With respect to the CARB certifications, BTI and Cook assert that “Bordges, by contrast, failed to comply with the requirement that it provide CARB certifications for ‘all listed subcontractors.’ Needham RFP 14; Forest Improvement RFP 15. And it didn’t even bother to include a complete certification in its Forest Improvement bid. This was sufficient for the District to deem Bordges’ bids nonresponsive. Needham RFP 14; Forest Improvement RFP 15.” This is false. The only subcontractor to be used by BTI is Grow West for rotor aviation application, which is not subject to CARB requirements.

With respect to BTI’s assertion that DRI’s timeline is impossible to achieve, BTI’s response asserts that this is a “blatant misrepresentation” but does not provide any actual facts as to how it could, in fact, achieve its proposed timeline. DRI’s timeline would require that DRI complete 26.9 acres per day with just four pieces of equipment, something that would be physically impossible for the equipment proposed to be used.

With respect to the pricing of BTI and DRI, DRI’s response deliberately misconstrues BTI’s as-bid numbers. DRI’s response asserts that BTI’s bid was more expensive but in doing so it added *both* proposed herbicide treatments together when those were listed as *alternate* options. BTI’s total pricing is properly calculated as follows:

\$2,427,500 - Mechanical treatment costs  
\$77,537 – 3% for Payment Bond  
\$77,537 – 3% for Performance Bond  
\$157,080 - rotor wing herbicide  
\$2,739,654.80 Total Bordges Bid price with Rotor Wing

Using the rotor wing herbicide option, BTI’s bid price is \$146,992.52 less than DRI.

Grant R. Orbach  
April 15, 2025  
Page 3

With respect to the Mendocino Road issue, Cook is incorrect that Bordges did not also demonstrate knowledge and experience with Mendocino National Forest roads. As detailed in BTI's proposals, BTI's employees who are part of the crew who would work on the projects in question have worked extensively in the Mendocino National Forest since 2018.

Accordingly, BTI again advises that Owner cannot award the contracts in question to either Cook or DRI. BTI reserves the right to file a Petition for Writ of Mandate in the Superior Court to contest any such award.

Sincerely,

MURPHY AUSTIN ADAMS SCHOENFELD LLP

*Lisa Nicolls*

LISA D. NICOLLS

LDN  
cc: Client



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CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

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## **Frequently Asked Questions: Contracting for Tree Removal**

### **I would like to hire someone to remove dead and dying trees from my property. What kind of contractor can I hire to do the work?**

The type of contractor that you need to hire depends on the nature of the work being performed. If you are hiring a contractor to cut or remove trees or other solid wood forest products for sale, barter, exchange, or trade, then your timber harvest is a commercial timber operation subject to the Forest Practice Act and Rules. All commercial timber operations must be conducted by a Licensed Timber Operator, or LTO. The California Department of Forestry and Fire Protection (CAL FIRE) issues licenses to LTOs. There are three classes of licenses: the (A) license entitles the Timber Operator to conduct any kind of timber operation on any timberland. A (B) license is limited to the cutting or removal of minor forest products like firewood and Christmas trees. A (C) license allows the license holder to conduct timber operations only on property owned by the (C) license holder.

If your timber harvest is not a commercial timber operation (i.e., you will not be selling, bartering, exchanging, or trading the timber or solid wood forest products), then an LTO is not required. However, if your timber harvesting is not a timber operation subject to the Forest Practice Act, a C-61/D-49 Tree Service specialty license issued by the California Contractors State License Board (CSLB) would be required for tree removal or pruning if the value of the work equals or exceeds \$500 or if trees 15 feet or taller are removed.

### **How do I know whether the harvest is a commercial timber operation or not?**

Timber harvesting conducted for commercial purposes is considered timber operations under the Forest Practice Act and Rules. Commercial purposes are defined as the cutting or removal of timber for sale, barter, exchange, or trade, or the cutting or removal of timber during the course of converting land to a use other than growing timber of a commercial species. This means that if you intend to sell, barter, trade, or exchange the timber, or if you believe you may wish to in the future, then your timber harvesting constitutes timber operations subject to the Forest Practice Act and Rules. Please note that commercial purposes are not limited to selling the timber for money. Bartering the timber for goods or services (e.g., allowing the LTO to retain the timber to offset some of the cost of the timber harvesting) also constitutes commercial purposes, and your timber harvesting is subject to the Forest Practice Act and Rules.

### **The site I will be taking my felled trees to requires that I pay a fee to dispose of the trees on the property. Does this mean that my timber harvesting is for commercial purposes?**

No. If the cutting or removal of timber or other solid wood forest products is not being performed for commercial purposes, then the harvesting is not commercial timber operations subject to the Forest Practice Act. Since you are not selling, bartering, trading, or exchanging the logs, your timber harvesting does not have a commercial purpose and is not subject to the Forest Practice Act and Rules.



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**The site I will be taking my felled trees to intends to sell the timber. Does this mean that my timber harvesting is for commercial purposes?**

No. The important factor is the intent in cutting or removing the timber or other solid wood forest products, not the intent of the person who ultimately winds up with the timber. As long as you are not receiving compensation for the timber you deliver to a log storage or other disposal site and are not converting the harvested area to a use other than growing timber, then your timber harvesting is not a commercial timber operation.

**My planned timber harvest is not a commercial timber operation. Can I hire a contractor with a C-27 Landscaping Contractor license, a certified arborist, or a registered professional forester (RPF) instead of a contractor with a C-61/D-49 license?**

No. A C-27 Landscaping Contractor license would be allowed to remove trees as part of a greater landscaping project, but they are not eligible to do so in a forestry context. Certification as an arborist or registration as a professional forester does not allow for tree removal work unless the arborist or RPF also has the required contractor's license from CSLB or LTO license from CAL FIRE, as applicable.

**How do I verify that a contractor or timber operator is properly licensed?**

You may verify the licensure of a timber operator through CAL FIRE's website ([http://calfire.ca.gov/resource\\_mgt/downloads/LTO/Valid\\_LTO\\_List.pdf](http://calfire.ca.gov/resource_mgt/downloads/LTO/Valid_LTO_List.pdf)) or by contacting CAL FIRE's LTO Program by telephone at (916) 653-7211 or (916) 651-6025 or by email at [calfire.ltoprogram@fire.ca.gov](mailto:calfire.ltoprogram@fire.ca.gov). You can check the status of a licensed contractor on the CSLB's website (<https://www2.cslb.ca.gov/OnlineServices/CheckLicenseII/CheckLicense.aspx>) or by calling their help line (1-800-321-CSLB). The CSLB website also has information to assist consumers in selecting licensed contractors, which is available at <http://www.cslb.ca.gov/Consumers/>.

**What insurance do LTOs and licensed contractors carry?**

An LTO with an (A) license is required by law to maintain at least \$1 million in commercial general liability insurance. LTOs with a (B) or (C) license are not required to maintain commercial general liability insurance. A contractor licensed by the CSLB is required to maintain a \$15,000 license bond and workers compensation insurance (unless the contractor certifies that he does not have any employees) but is not required to maintain commercial general liability insurance in any amount. However, many licensed contractors maintain commercial general liability or other forms of insurance not required by law, so it is a good idea to ask the contractor about the contractor's insurance and request copies of certificates of insurance.

**How do I become an LTO or a licensed tree service contractor?**

CAL FIRE licenses LTOs. In order to get an (A) LTO license, the applicant must complete a two-day course of instruction, have 3,000 hours of relevant work experience, and must maintain the required insurance. An applicant for a (B) limited LTO license must either complete the same course of instruction or a questionnaire demonstrating knowledge of the Forest Practice Act and Rules. An applicant for a (C) LTO license, which only allows landowners to perform work on their own property, must complete the two-day course of instruction. The CSLB licenses all other licensed contractors,





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including C-61/D-49 Tree Service specialty licenses. Applicants for a contractor's license from CSLB may be required to pass an examination and will be required to maintain a license bond and workers compensation insurance, if required. Further information on becoming a licensed contractor is available on the CSLB website at

[http://www.cslb.ca.gov/Contractors/Applicants/Contractors\\_License/](http://www.cslb.ca.gov/Contractors/Applicants/Contractors_License/).

**Besides having a proper license, are there any other requirements related to timber harvesting?**

Yes. Commercial timber operations subject to the Forest Practice Act and Rules also require a timber harvesting plan or an equivalent harvest document. You can learn more about the requirements of the Forest Practice Act & Rules at

[http://www.fire.ca.gov/treetaskforce/downloads/Draft\\_Tree\\_Removal\\_Guidelines\\_3-1-16.pdf](http://www.fire.ca.gov/treetaskforce/downloads/Draft_Tree_Removal_Guidelines_3-1-16.pdf). Even if your timber harvesting is not for commercial purposes and is not subject to the Forest Practice Act and Rules, other state and local laws may apply to the tree removal. A list of state and local regulatory contacts for tree removal activities is available at

[http://www.fire.ca.gov/treetaskforce/downloads/TMTFResources/REGULATIONS WORKING GROUP Regulatory Contacts List 031916.pdf](http://www.fire.ca.gov/treetaskforce/downloads/TMTFResources/REGULATIONS_WORKING_GROUP_Regulatory_Contacts_List_031916.pdf).