

**BAY CITIES PAVING & GRADING INC.**

Bus: 1450 Civic Court, Bldg. B Suite #400, Concord, CA 94520  
(925) 687-6666  
Fax (925) 687-2122

Mall: Post Office Box 6227, Concord, CA 94524-6227

February 27, 2014

**FAXED AND MAILED**

Department of Transportation, MS 43  
Attn: John McMillan, Deputy Division Chief  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816

Project: 04-153304  
Bid Opening: 02/04/2014  
Re: Response to Protest of O.C. Jones & Sons, Inc.

Dear Mr. McMillan,

On February 20, 2014, O.C. Jones & Sons, Inc. ("OCJ") submitted a protest of Bay Cities' bid. OCJ claimed that Bay Cities failed to comply with the mandatory requirements for subcontractor listing. In Bay Cities' bid, Bay Cities included the name of "Adanta" in Column 1 on the Subcontractor List and described Adanta's work in Column 4. Subsequently, in the 24-Hour Subcontractor Listing, Bay Cities also identified the items that Adanta would perform in Column 2. Bay Cities did not provide any information in Column 3 for "Percentage of the item Subcontracted." OCJ argues that Bay Cities' bid is nonresponsive because the Contract Documents require all information for all columns to be completed for all subcontract work. The defect in OCJ's argument is that Adanta's work is not subcontract work and there was no requirement that any of Adanta's work be listed on the Subcontractor List.

Adanta is an environmental consultant and submitted a quote (Exhibit A) to Bay Cities to prepare various Reports (NOA Burial Location Report, ADL Burial Location Report) and Plans (SWPPP, Rain Event Action Plan, Lead Compliance Plan, Dust Control Plan, etc.) and to perform various testing and monitoring (Storm Water Sampling and Analysis, Noise Monitoring). The work that Adanta quoted to perform is not subcontract work but consultant work. In fact, the Department of Transportation classifies Adanta as a "C8700 Consultant, Non Engineering" on its DBE website (Exhibit B) Furthermore, Caltrans Certification Program shows Adanta's DBE NAICS Codes as 541620 and 562910. NAICS Code 541620 is for "Environmental Consulting Services" and Code 562910 is for "Remediation Services." In contrast, the codes covering contractor/subcontractor work are contained in NAICS Codes 236115-238990. OCJ Jones is well aware of Adanta's scope of work because Adanta also submitted a bid to OCJ (Exhibit C) and OCJ also listed Adanta's participation on OCJ's DBE Commitment Form (Exhibit D).

While the Subcontractor Listing laws require subcontractor work to be listed, the State of

John McMillan  
February 27, 2014  
Page 2

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California has never required that non-subcontractor work be listed on the Subcontractor List. Some disgruntled bidders have filed bid protests with Caltrans claiming that the low bidder's bid should be rejected because he did not list trucking (CDOT # 09-353304), equipment rental (CDOT # 12-0L7504) or material suppliers (CDOT # 10-3A1004) on their Subcontractor Lists. In all cases, Caltrans has rejected the protests because only subcontractors have to be listed on the Subcontractor List. In a protest similar to OCJ's current protest, Dreambuilder protested the bid of Brian J. Federico (Federico) for Contract No. 12-0H2084 because Federico had listed Bradley Tanks as a subcontractor in Column No. 1 on its Subcontractor List, identified Bradley's item of work in Column 2, and had described Bradley's work in Column 4 (Exhibit E). Just like Bay Cities' bid, Federico's bid omitted information in Column 3. Like OCJ does now, Dreambuilder argued that the omission of the percentage in Column 3 rendered the low bidder's bid as nonresponsive. In denying Dreambuilder's protest Caltrans stated that the portion of work which Bradley was listed to perform was "not a subcontractable item" and that "Federico was not required to list this portion of its work on its Subcontractor List form" (Exhibit E). Environmental consulting (like trucking, equipment rental, and material supply) is non-subcontractor work. In denying a Teichert bid protest, Caltrans stated:

"it is clear that the subcontractor listing laws located at Section 4100 et seq. of the Public Contract Code and thus the policies against bid shopping and bid peddling apply only to subcontractors, not to suppliers."

It is also clear that the Subcontractor listing laws applies to subcontractors, not environmental consultants. If all consultants were required to be licensed as contractors, then most consultants would be in violation of California licensing laws and most bids would be thrown out as nonresponsive

There is no merit to OCJ's argument that consultants are required to be listed on the Subcontractor List. OCJ's protest should be denied and the Contract awarded to Bay Cities as the lowest responsible bidder. If you have any questions about this, please contact me.

Sincerely,

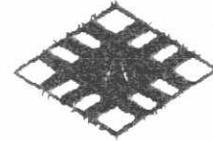


Marlo Manqueros  
Vice-President

cc: File

Exhibit A

*Adanta, Inc.*



Adanta

828 School Street  
Napa, California 94559  
Tel. (707) 709-8894  
Fax (707) 736-8368

Native American woman-owned  
California DOT-Certified DBE/SMBE  
DBE Certificate #37357

February 4, 2014

Subject: **CONTRACT NO: 04-153304 - INSTALL TOS, RAMP METERING AND RAMP WIDENING**  
**Bid Date: 4 FEB 2014**

Adanta is pleased to provide the following contract pricing for the specified work scope items detailed in the subject contract solicitation:

Item No.	Item code	Item Description	Unit of Measure	Est Qty	Bid	Amount
1	070003	LEAD COMPLIANCE PLAN (PAINT STRIPING) INCL. SAMPLING AND ANALYSIS PLAN	LS	LS	\$3,300.00	\$3,300.00
12	130200	PREPARE STORM WATER POLLUTION PREVENTION PROGRAM	LS	LS	\$1,800.00	\$1,800.00
13	130310	RAIN EVENT ACTION PLAN	EA	73	\$495.00	\$36,135.00
14	130320	STORM WATER SAMPLING AND ANALYSIS DAY	EA	46	295.00	\$13,570.00
15	130330	STORM WATER ANNUAL REPORT	EA	2	\$2,000.00	\$4,000.00
25	140003	ASBESTOS COMPLIANCE PLAN INCL. SAMPLING AND ANALYSIS PLAN	LS	LS	\$3,300.00	\$3,300.00
28	141107	NOA BURIAL LOCATION REPORT	LS	LS	\$2,950.00	\$2,950.00
29	141109	ADL BURIAL LOCATION REPORT	LS	LS	\$2,950.00	\$2,950.00
30	148005	NOISE MONITORING	LS	LS	\$9,800.00	9,800.00
31	149001	DUST CONTROL PLAN (NOA)	LS	LS	\$1,500.00	\$1,500.00
<b>Total</b>						<b>\$79,305.00</b>

Unified Certification Program

Exhibit B

[Back To Query Form](#)

**Search Returned 1 Records**

Fri Feb 07:08:18:08 PST 2014

**Query Criteria**

Firm ID: 37357

Firm Type: DBE

Firm ID	37357
Firm/DBA Name	ADANTA, INC
Address Line1	828 SCHOOL STREET
Address Line2	
City	NAPA
State	CA
Zip Code1	94559
Zip Code2	
Mailing Address Line1	828 SCHOOL STREET
Mailing Address Line2	
Mailing City	NAPA
Mailing State	CA
Mailing Zip Code1	94559
Mailing Zip Code2	
Certification Type	DBE
E-Mail	kimberlypatz@adanta-inc.com
Contact Name	KIMBERLY PATZ
Area Code	(707)
Phone Number	709-8804
Fax Area Code	(707)
Fax Phone Number	736-8388
Agency Name	DEPARTMENT OF TRANSPORTATION
Counties	01; 08; 07; 08; 09; 10; 11; 15; 17; 19; 23; 24; 26; 27; 28; 29; 30; 31; 33; 34; 38; 37; 38; 39; 40; 41; 42; 43; 44; 48; 49; 50; 58; 57; 68;
Districts	01; 02; 03; 04; 05; 06; 07; 08; 10; 11; 12;
DBE NAICS	541820; 552010;

ACDBE NAICS

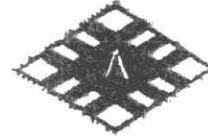
Work Codes	C8700 CONSULTANT, NON ENGINEERING;
Licenses	
Trucks	
Gender	F
Ethnicity	NATIVE AMERICAN
Firm Type	DBE

[Back To Query Form](#)

Exhibit C

*Adanta, Inc.*

828 School Street  
Napa, California 94559  
Tel. (707) 709-8894  
Fax (707) 736-8368



Adanta

Native American woman-owned  
California DOT-Certified DBE/SMBE  
DBE Certificate #37357

February 4, 2014

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30	148005	NOISE MONITORING	LS	LS	\$9,800.00	9,800.00
31	149001	DUST CONTROL PLAN (NOA)	LS	LS	\$1,500.00	\$1,500.00
<b>Total</b>						<del>\$79,285.00</del>

28,835

NO  
NO  
NO

\$79,005  
- 18,490  
-----  
\$53,515

Exhibit D

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
CALTRANS BIDDER - DBE - COMMITMENT  
DBE-DB-0102.16C (NEW DELIVER)

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the award or third low bidder, it must be submitted and considered as specified in section 3 of the specifications. Failure to submit this information will be grounds for rejecting the bid and resubmitting.

CONTRACT NO: 04-153304

BID AMOUNT: \$ 11,668,222

BID OPENING DATE: 2/4/14

BIDDER NAME: O.C. Jones & Sons, Inc.

DBE GOAL FROM CONTRACT: 12%

DBE FRAME CONTRACTOR CERTIFICATION:

BID ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED	FOR CALTRANS USE ONLY	NAME OF DBE <small>(Must be certified or in the state bid or approved - include Caltrans or Division of DBE address and phone number) (Indicate if you are a joint venture)</small>	DOLLAR AMOUNT DBE
1	Lead Compliance Plan		Adante, Inc. 628 School Street Napa, CA 94559 707-709-8894 Cert #37357	\$3,300.00
12-15	Storm Water Plan & Storm Water Monitoring			\$48,203.00
25	Asbestos Compliance Plan			\$3,300.00
31	Dust Control Plan			\$1,500.00

IMPORTANT: Identify all DBE firms being obtained for a bid, regardless of the nature of the firm. The DBE Subcontractors and their respective amounts of work listed above must be certified, where applicable, with the names and fees of work by the "Subcontractor" list submitted with your bid. Copies of the DBE question are included.

- DBE price estimates must either be certified on number and indicate all work to be performed by DBE's including work performed by its own firms.
- If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished.
- Be a certified 8, 12 or 24 month firm to determine the credit allowed for DBE firm.

Submit to:

MSC 40  
OFFICE ENGINEER  
DEPARTMENT OF TRANSPORTATION  
1727 BOUTH STREET  
SACRAMENTO, CA 95816-7005

Total Certified Participation

\$ 56,309.00

cont on next page

Cont on next page

Signature of Bidder

2/6/14

Date

510-809-3435

(Area Code) Tel. No.

Don Palmer

Person to Contact

(Please Type or Print)

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 856-8410 or TDD (916) 856-8510 or write: Records and Forms Management, 1120 H Street, N.E.-8th, Sacramento, CA 95814.

STATE OF CALIFORNIA - CALIFORNIA TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER  
1727 30<sup>th</sup> STREET, MS-43  
SACRAMENTO, CA 95816-8041  
PHONE (916) 227-6299  
FAX (916) 227-6282  
www.dot.ca.gov/hq/esac/oe



Plus your power!  
Be energy efficient!

Exhibit E  
Pg 1 of 3

September 18, 2013

Facsimile: (714) 646-3698

Anjana Singh, Secretary  
Dreambuilder  
1324 E. Lawson Lane  
Placentia, CA 92870

10-0S9504  
10-Mer-99-13.1/R36.7  
B.O. 08/21/2013

Dear Ms. Singh:

The Department of Transportation (Caltrans) received the attached letter dated August 31, 2013 from Dreambuilder, protesting the bid submitted by Brian J. Federico (Federico). The protest alleges that Fedco failed to complete column 3 on the Subcontractor List form submitted on August 21, 2013. In addition, Federico submitted a late 24-hour Subcontractor List form. Dreambuilder is requesting that Caltrans find the bid submitted by Federico nonresponsive.

Caltrans conducted a review of the bid documents as well as the protest and determined that Bradley Tanks, Inc. (Bradley) was not listed to perform Bid Item 12 Roadway Excavation (Type Z-2) (Aerially Deposited Lead) in totality. Instead, Bradley was listed to perform only the Trucking and Dumping of Aerially Deposited Lead portion of Bid Item 12, which is not a subcontractable item. Therefore, Federico was not required to list this portion of work on its Subcontractor List form. As a result, Caltrans finds that Federico's bid is responsive.

Based on the above, Caltrans finds Dreambuilder's protest lacks merit and will proceed to award the contract to the lowest responsible bidder provided that all requirements are met.

If you have any questions, please contact Nicole Butler, Contract Awards Analyst, at (916) 227-6292.

Sincerely,

JOHN C. McMILLAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

Attachment

Received  
Sep. 2. 2013 9:41AM

Sep 2 2013 10:43am

No. 2232 P. 1

Exhibit E  
Pg 2 of 3

**Dreambuilder**

1361 E. Garten Dr, Placencia, Ca 92870  
Ph (714) 646-3697, fax (714) 646-3698

Civil Engineering Construction

Department of Transportation  
Office Engineer MS 43  
1727 30<sup>th</sup> Street, Sacramento, Ca 95816  
Ph: 916-227-6280 Fax: 916-227-6282  
Attn: John C MacMILLAN

Date: 8/31/2013

Sub: Bid protest for Caltrans Contract # 10-089504  
Bid open on 8/21/2013 @ 2:00PM in Sacramento, Ca  
Reference: Caltrans bid proposal for Contract # 10-089504

Dear Mr. John,

We are submitting formal bid protest for this project. We were 2<sup>nd</sup> bidder on this project. Fedco is lowest bidder on this project.

As per bid book of this contract states:

"The bidder must identify each subcontractor performing work in an amount in excess of 1/4 of 1 percent of total bid or \$10,000, whichever is greater (PubCom Code 4100 et seq.). Complete columns 1 & 4 and submit with the bid.

Complete columns 2 & 3 and submit with bid or fax to 916-227-6282 within 24 hrs after bid opening. Failure to provide complete information in columns 1 through 4 within the specified time will result in a nonresponsive bid." No other revisions to the form are permitted after 24hrs of bid opening.

- 1. At the time of bid Fedco had submitted their Subcontractor List with filled col # 1 & 4, but they did not completed column # 3 for bid item # 12, as per bid book instruction they failed to submit completed form for Col # 3 for item # 12 ( Within 24 Hrs of bid opening time). They had submitted their revision on 8/23/2013 at 3:55PM ( as per Caltrans date stamp), and dead line time of submittal was 8/22/2013 at 2:00PM

But no revision or incomplete submittal for col # 2 & 3 is permitted for column # 1 to 4 after 24hrs of bid opening. If any revision is made bid should be considered as non responsive bid. Since Fedco did revision in subcontractor list in column # 3 for item # 12 after 24hrs of bid opening, therefore their bid has to declared non responsive bid and contract should be awarded to Dreambuilder.

Thank you.

Sincerely,



Alex Singh  
Project Coordinator.

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←

Sep. 2. 2013 9:41AM Received

Exhibit E Sep 2 2013 10:43am Page 3 of 3

No. 2232 P. 4

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
SUBCONTRACTOR LIST  
DMS-05-01022 (REV 3/7011)

Bidder Name: BRIAN FERRIER DBA FEDCO

The bidder must identify each subcontractor performing work in an amount in excess of 1% of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-8282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item No.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
KRC SAFETY CO P.O. BOX 6356 VISALIA, CA 93290	2	85%	CONSTRUCTION AREA SIGNS PARTIAL
	3	85%	PARTIAL TRAFFIC CONTROL SYSTEM
	4	85%	PARTIAL CHANGEABLE MESSAGE SIGN PARTIAL
ESWPPP CONSULTANTS 902 CORTINA COURT WALNUT CREEK, CA 94598	1	85%	LEAD COMPLIANCE PLAN PARTIAL
	6	85%	PREPARE WATER POLLUTION CONTROL PROGRAM PARTIAL
BRADLEY TANKS, INC 462 HARTZ AVE BUILDING C DANVILLE, CA 94526	12		PARTIAL TRUCKING & DUMPING OF AERIALLY DEPOSITED LEAD
MURPHY INDUSTRIAL CONTING'S 2704 LUNDY AVENUE SIGNAL HILL, CA 90755-1811	15	85%	PARTIAL/PAINT CONCRETE SURFACES
	16	85%	PARTIAL/ANTI GRASSY COATING
ALL STEEL FENCE P.O. BOX 1309 LATHROP CA. 95335	18	85%	CHANDLER FENCING (TY P/B) PARTIAL

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4/2/13

# facsimile TRANSMITTAL

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**to:** John McMillan/ Deputy Division Chief, Caltrans  
**fax #:** (916) 227-6282  
**re:** CDOT Contract 04-153304, Response to Bid Protest, Bid Date: 02/04/14  
**date:** February 27, 2014  
**pages:** 10, including cover sheet.

### CONFIDENTIALITY NOTICE

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From the desk of...

**Marlo Manqueros**  
Vice-President  
Bay Cities Paving & Grading, Inc.  
P.O. Box 6227  
Concord, CA 94524-6227

(925) 446-6001  
Fax: (925) 687-2122