



YBANAG REALTY & DEVELOPMENT CORPORATION
dba D'YBANAG CONSTRUCTION COMPANY

December 29, 2014

Mr. John C. McMillan, Deputy Division Chief
Office Engineer, Division of Engineering Services
State of California Department of Transportation
P.O. Box 168041, MS-43
Sacramento, California 95816-8041

Re: CADOT Project No. 07-274804 07-LA 18 0.2/0.2, Llano, California
Federal Aid Project ACNHP-P018(047)E
Bid Opening Date: 10/30/2014
Bid Protest

Dear Mr. McMillan,

Reference is made to your letter dated December 22, 2014 wherein the Department allegedly found that D'Ybanag Construction Company's (DYCC) bid was non-responsive per Revised Standard Provisions (RSP) Section 2-1.33 -Bid Document Completion and Submittal; and RSP Section 2-1.34 -Bidder's Security.

DYCC contends that it submitted the DBE Commitment at the time of the Bid on October 30, 2014 per RSP Section 2-1.33 and had complied with the requirements of the Revised Special Provisions. This section provides that footnote "*If not submitted at the time of the bid...*" the DBE Commitment form be submitted no later than 4 p.m. on the 4th business day after bid opening". See **Exhibit "A"**. DYCC submitted the DBE Commitment at the time of the bid, and therefore any submittals are just compliance to the administrative requirements.

DYCC also contends that it submitted the Bid Bond using a form containing the same information per RSP Section 2-1.34, and had complied with the requirements of the Revised Special Provisions. See **Exhibit "B"**. The Bid Bonds were endorsed to be Negotiable Instrument equals to Cash Bonds, which when tendered to the California or United States Treasury will pay the penalty of 10% and up to the 100% as indicated in the Bid Bond, Payment Bond and Performance Bond. In accordance with the Maxim of Law, these Bonds remains in full force and effect as the Department has not rebutted thru affidavit the "Affidavit of Individual Surety"

that it is backed by United States Treasury Bonds equal to at least \$1 Billion in assets. Returning the Cash Bonds do not relieve the Department of the responsibilities to award the contract to the legitimate Low-Bidder D'Ybanag Construction Company, as the Trust Law and Lemon Law (45days +3days) are already in full-force and effect.

"A bid is responsive if it promises to do what the bidding instructions demand. (DH Williams Const. Inc. v. Clovis Unified School Dist (2007) 146 Cal. App 4th 757,764, citing Taylor Bus. Service v. San Diego Bd of Educ (1987) 195 Cal.App.3d 1331.) DYCC promised to do everything the instructions provide and is completely responsive.

1. DYCC fully responded to comply with the additional administrative requirements of providing copies of the DBE bids when requested.
2. DYCC provided the Bid Bond required for this project in proper form; and containing the same information and substance.

Also, it is our standing that a successful bidder must furnish the two (2) bonds required by the State Contract Act. One bond shall secure the payment of the claims of laborers, mechanics or material men employed on the work under the contract and the other bond shall guarantee the faithful performance of the contract.

Each of the 2 bonds shall be in a sum equal to at least one-half of the contract price, except as otherwise provided in Section 3248 of the Civil Code when the total amount payable is \$5,000,000 or more and except as otherwise provided in Section 30154 of the California Toll Bridge Authority Act. All alterations, extensions of time, extra and additional work, and other changes authorized by the General Conditions, the special provisions or any part of the contract may be made without securing the consent of the surety or sureties on the contract bonds. There is no requirement that the insurer must be in state. It merely requires that the bond must be sufficient in amount to secure the payment of the claims of laborers, mechanics or material men employed on the work under the contract and the other bond shall guarantee the faithful performance of the contract. The bond we submitted met these two (2) requirements. The most important is that the bid bond must be an enforceable one. Our bid bond is enforceable. Hence, it is not defective.

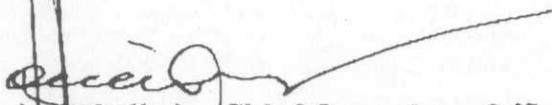
Public construction contract must be awarded to lowest bidder unless it is found that he is not responsible, i.e., not qualified to do particular work under

consideration. City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court of Los Angeles County (1972) 103 Cal.Rptr. 689, 7 Cal.3d 861, 500 P.2d 601. Word "responsible" requiring award of public construction contracts to lowest responsible bidder included attribute of trustworthiness but also had reference to quality, fitness and capacity of low bidder to satisfactorily perform the proposed work. City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court of Los Angeles County (1972) 103 Cal.Rptr. 689, 7 Cal.3d 861, 500 P.2d 601. Bid on public construction project is "responsive" if it promises to do what bidding instructions require. MCM Const., Inc. v. City & County of San Francisco (App. 1 Dist. 1998) 78 Cal.Rptr.2d 44, 66 Cal.App.4th 359.

The California Court of Appeal has remarked: "it certainly would amount to 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." (Judson Pacific-Murphy Corp. v. Durkee (1956) 144 Cal.App.2d 377 at 383.)

In summary, it is clear that the Public Contract Code, including the provisions of Title 18 and 15 U.S.C.S.; the Trust Law and Lemon Law support the award to the only legitimate Low-Bidder D'Ybanag Construction Company with its DBE Subcontractors.

Sincerely,


Lucio S. Collado, Chief Operations Officer
D'YBANAG CONSTRUCTION COMPANY

Attachments:

- ✓ cc: Mr. Vincent Mammano, Division Administrator FHWA
- ✓ Atty. MOREL CALLUENG, Corporate Counsel
- File

Exhibit "A"

3. On forms and certifications that you submit through the electronic bidding service, you agree that each form and certification where a signature is required is deemed as having your signature. On forms that you submit after bid opening, sign the forms where a signature is required in ink.

Failure to submit the forms and information as specified results in a nonresponsive bid.

If an agent other than the authorized corporation officer or a partnership member signs the bid, file a Power of Attorney with the Department either before opening bids or with the bid. Otherwise, the bid may be nonresponsive.

02-21-14

2-1.34 BIDDER'S SECURITY

Submit one of the following forms of bidder's security equal to at least 10 percent of the bid:

1. Cash
2. Cashier's check
3. Certified check
4. Signed bidder's bond by an admitted surety insurer
5. For an electronic bid, electronic bidder's bond by an admitted surety insurer submitted using an electronic registry service approved by the Department.

Submit cash, cashier's check, certified check, or bidder's bond to the Department at the Bidders Exchange before the bid opening time.

Submit electronic bidder's bond with the electronic bid.

- * If using a bidder's bond, you may use the form in the *Bid* book. If you do not use the form in the *Bid* book, use a form containing the same information.

2-1.35-2-1.39 RESERVED

2-1.40 BID WITHDRAWAL

For a paper bid:

1. An authorized agent may withdraw a bid before the bid opening date and time by submitting a written bid withdrawal request at the location where the bid was submitted. Withdrawing a bid does not prevent you from submitting a new bid.
2. After the bid opening time, you cannot withdraw a bid.

For an electronic bid:

1. Bids are not filed with the Department until the date and time of bid opening.
2. A bidder may withdraw or revise a bid after it has been submitted to the electronic bidding service if this is done before the bid opening date and time.

2-1.41-2-1.42 RESERVED

2-1.43 BID OPENING

The Department publicly opens and reads bids at the time and place shown on the *Notice to Bidders*.

2-1.44-2-1.45 RESERVED

2-1.46 DEPARTMENT'S DECISION ON BID

The Department's decision on the bid amount is final.

The Department may reject:

1. All bids
2. A nonresponsive bid

2-1.47 BID RELIEF

The Department may grant bid relief under Pub Cont Code § 5100 et seq. Submit any request for bid relief to the Office Engineer. The Relief of Bid Request form is available at the Department's website.

Exhibit "B"

For an electronic bid, complete and submit the *Bid* book under the *Electronic Bidding Guide* at the Bidders' Exchange website.

Submit the forms and form information at the times shown in the following table:

Bid Form Submittal Schedule				
Contract type	Forms to be submitted at the time of bid	Forms to be submitted no later than 24 hours after bid opening ^a	Forms to be submitted no later than 4 p.m. on the 2nd business day after bid opening ^a	Forms to be submitted no later than 4 p.m. on the 4th business day after bid opening ^a
All contracts	<ul style="list-style-type: none"> - Bid to the Department of Transportation - Business name and location and description of portion of subcontracted work on the Subcontractor List - Opt Out of Payment Adjustments for Price Index Fluctuations^c 	<ul style="list-style-type: none"> - Bid item nos. and percentage of bid item subcontracted on the Subcontractor List^b 	--	--
Non-federal-aid contracts only	<ul style="list-style-type: none"> - California contractor license number on the Subcontractor List - California Company Preference - Request for Small Business Preference or Non-Small Business Preference^c 	--	<ul style="list-style-type: none"> - Certified Small Business Listing for the Non-Small Business Preference^c 	<ul style="list-style-type: none"> - Certified DVBE Summary^d
Federal-aid contracts only	<ul style="list-style-type: none"> - Small Business Status 	--	--	<ul style="list-style-type: none"> - Caltrans Bidder - DBE - Commitment^e - Good Faith Efforts Documentation - DBE^f

^aThe forms and information may be submitted at the time of bid.

^bIf the information is not submitted at the time of bid, fax it to (916) 227-6282. This after-bid submittal does not apply to an informal-bid contract. For an informal bid contract, submit the completed form at the time of bid.

^cApplicable only if the preference or option is chosen.

^dNot applicable to an informal-bid contract or a project with an estimated cost of more than \$5 million. For an informal bid contract, submit the completed form at the time of bid. For a project with an estimated cost of more than \$5 million, applicable only if you obtain DVBE participation or you are the apparent low bidder, 2nd low bidder, or 3rd low bidder and you choose to receive the specified incentive.

^eIf not submitted at the time of bid, applicable only to the apparent low bidder, 2nd low bidder, and 3rd low bidder.

^fApplicable only if you have not met the DBE goal.

For an electronic bid:

1. Forms to be submitted at the time of bid must be submitted as described in the *Electronic Bidding Guide* or faxed to (916) 227-6282 before the bid opening date and time.
2. Your authorized digital signature is your confirmation of and agreement to all certifications and statements contained in the *Bid* book.