

**YBANAG REALTY & DEVELOPMENT CORPORATION**  
dba D'YBANAG CONSTRUCTION COMPANY

December 10, 2014

Mr. Earl Seaberg, 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: Project No. 08-0M2004 08-Riv 371 47.7/72.9 Anza, California  
Bid Opening Date: 12/04/2014  
Bid Protest

Dear Mr. Seaberg,

D'Ybanag Construction Company(DYCC) was the low monetary bidder on the above referenced project. The bid was submitted in accordance with Public Contract Code 2000-2004 which provides the award of the contract to the lowest responsible bidder.

We had been informed by your office that there is a defect in our Bid Bond. DYCC provided the Bid Bond required for this project which was received by the Department on November 5, 2014. The Office Engineer's receipt without protest has validated the Bid Bond after 3-days, i.e. November 10, 2014, in accordance with TILA/Lemon Law. The fact that you allow us to extend the award period of several projects, without returning our Bid Bonds signify that you are trading these Bonds in the market. It is also a fact that the Office Engineer allowed us to bid seven projects validating the acceptability of these Bid Bonds. This Government Services Administration(GSA) Bond is used by the Office of Management and Budget(OMB) on Federal Aid Projects in compliance with the **Paperwork Reduction Act of 1980** (Pub. L. No. 96-511, 94 Stat. 2812, codified at 44 U.S.C. § 3501-3521) is a United States federal law enacted in 1980 designed to reduce the total amount of paperwork burden the federal government imposes on private businesses and citizens. The Act imposes procedural requirements on agencies that wish to collect information from the public. It also established the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB), and authorized this new agency to oversee federal agencies' collection of information from the public and to establish information policies.

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.

D'Ybanag Construction Company(DYCC) submitted the DBE Commitment on December 05, 2014, meeting the DBE Goal of 11.8%(9% is required).

The Public Contract Code §2000-2004 always provide the Administrative Agency the award of Contract to the Lowest Responsible Bidder. For the awarding body to act in "Good Faith" it must provide the low-bidder an entitlement to a hearing by the Government Services Administration and Federal Highway Administration as holders of the Highway Trust Funds.

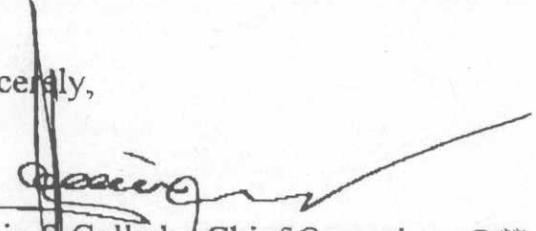
DYCC's bid is lower by \$308,353.50 (-5.4%) from the second bidder and lower by \$528,275.00(-8.9%) from the Engineer's Estimate. It is in the best interest of the Public Trust Funds to award the contract to the legitimate Low Bidder

D'Ybanag Construction Company and its listed DBE Subcontractors. The Public Contract Code prohibits the gifting of Public Funds to the Agency's favorite Contractors, thus results displacing Low-Bidder listed DBE Subcontractor's. In case of dispute between compliance with the Special Provisions and Public Contract Code, the Public Contract Code always prevail. An irregularity in the Special Provisions is a "waivable defect" authorized to be cured by the Agency, but the latter needs a congressional approval to change the law or congressional approval to waive the provisions of the Code.

As we are moving to the clean monetary system, our position as a Low-Bidder is hereby re-stated and will seek a "Writ of Mandate" to review the contract. A Common Law Grand Jury is hereby invoked in accordance with Article 7 of the 1776 Constitution wherein a monetary dispute of over \$20 must be decided by a jury of our peers.

Please extend the award period as deem necessary to resolve this matter.

Sincerely,

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

Attachments: Bid Bond Information  
DBE Commitment w/ DBE Subcontractors

cc: Atty. MOREL CALLUENG, Corporate Counsel  
File

cc: Department of General Services  
Federal Highway Administration