

Attachment D

Charles L. Doerksen
Attorney at Law

June 30, 2022

Via Email

Design Services
Department of Public Works and Planning
COUNTY OF FRESNO
2220 Tulare Street, Sixth Floor
Fresno, California 93721
DesignServices@fresnocountyca.gov

Re: 22-02-C American Avenue Shoulder Improvements

Dear Sir/Madam:

I am counsel for Yarbs Grading and Paving, Inc. (“Yarbs”), the low-bidder on the above project, and I am writing to respond to the protest of Cal Valley Construction (“Cal Valley”) as communicated in its correspondence dated June 23, 2022.

Cal Valley, as I read its protest, asserts that the bid of Yarbs should be found to be nonresponsive because of its supposed failure to achieve the specified DBE goal. Cal Valley focuses on the “buying” of HMA from Tanney Transport, for which the DBE dollar amount is \$503,326, and argues that pursuant to Section 26.55(e) of Title 49 Code of Federal Regulations the cost of the materials cannot count towards the DBE goal, necessarily assuming that Tanney Transport is not a “regular dealer”.

A determination of responsiveness comes down to a simple analysis of whether or not the bidder complied with the bidding instructions, that is, whether it answered the questions that were asked. (See *Great West Contractors, Inc. v. Irvine Unified School District* (2010) 187 Cal.App.4th 1425, 1457.) Here, there is not an issue regarding whether Yarbs completed the bid forms correctly, or whether the bid on its face meets the DBE goal, and so the bid is presumptively responsive. Rather, Cal Valley apparently claims that the DBE amounts are not accurate, and in that regard, it asks the County of Fresno to accept without any evidence, that Tanney Transport is a broker or expeditor, as opposed to a “regular dealer”.

If this matter were to get into a evidence-taking stage, the evidence would show that Tanney Transport regularly purchases material such as asphalt and HMA on its own account, and sells it to contractors such as Yarbs and in so doing delivers the material with its own equipment. Cal Valley accurately states the key test is whether the DBE contractor takes on risk, and here Tanney Transport in fact takes

**Doerksen Taylor
Trial Lawyers**

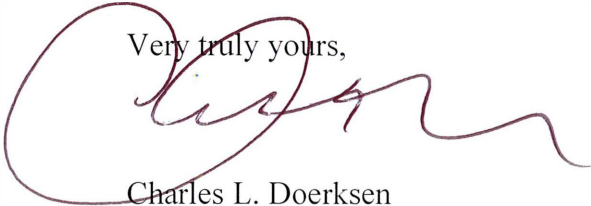
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on risk by becoming financially responsible to the supplier. Tanney Transport is not acting as a broker or expeditor, taking a commission for finding a buyer for a supplier's product.

Yarbs' bid is complete, and it is accurate. There is no basis for accepting, without any evidence, that Tanney Transport is a broker or expeditor as opposed to a "regular dealer". And, if one were to go below the surface and get into the evidence, that Tanney Transport is a "regular dealer" would become clear.

Thank you for considering this response, and please let me know if you have any questions or require further information.

Very truly yours,



Charles L. Doerksen

cc: Yarbs Grading and Paving, Inc.