

General Engineering ♦ Commercial & Residential
DIR Reg. #1000009471
Certified WBE (CPUC VON: 9LS00170)



Heavy Equipment Rental ♦ Grading & Paving
Contractor's State License #873800

June 23, 2022

County of Fresno
Department of Public Works and Planning
2220 Tulare Street, Suite 720
Fresno, CA 94510 9372-2106
Sent Via Email: designservices@fresnocountyca.gov

Project: American Avenue Shoulder Improvements. #4510/7370
Re: Bid Protest Letter

To Whom It May Concern,

We are concerned Yarbs Grading & Paving (Yarbs) made a mistake calculating their DBE participation.

On Yarbs' Exhibit 15-G Construction Contract DBE Commitment form they listed Tanney Transport (Tanney) for Buy and Haul Aggregate Base @ 60 %, and we have no concern with this item since the trucker is being utilized to provide a delivered product to the jobsite at a stated unit price where they are at risk to perform.

Yarbs' also listed on Exhibit 15-G Construction Contract DBE Commitment form to have Tanney Transport for Buy HMA @ 60%, which does not qualify at that percentage. Purchasing of material as a "broker" would receive participation for the dollar amounts for "Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies, if they are obtained from a DBE that is neither a manufacturer nor regular dealer." Based on the supplemental paperwork submitted by Yarbs, it is clear that Tanney intends to "broker" or "pass through" the purchase of Hot Mix Asphalt from a manufacturer that is not a DBE, specifically Vulcan Materials.

Below is an excerpt from Code of Federal Regulations / Title 49 / 26.55 (c) (2):

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

Below is an excerpt from Code of Federal Regulations / Title 49 / 26.55 (e) (3):

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

If Yarbs had listed Tanney as a buyer and hauler of HMA then the 60% claim would be valid. This procedure would have made Tanney responsible for procurement and delivery of the HMA at risk and not just a pass-through for DBE credit.

Thank you for your careful consideration of our concerns and we look forward to your determination in this matter.

Kind Regards,

Tony Storelli

Tony Story
Secretary