

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER

P.O. BOX 168041, MS-43

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6299

FAX (916) 227-6282

TTY 711

www.dot.ca.gov

*Serious drought.  
Help save water!*

June 3, 2014

Facsimile: (707) 747-0593

Jeff Foerste, President  
American Civil Constructors West Coast, Inc.  
3701 Mallard Drive  
Benicia, CA. 94510

10-0X4404  
10-Mpa-49-2.9  
B.O. 05/07/2014

Dear Mr. Foerste:

The Department of Transportation (Caltrans) received the attached letter dated June 2, 2014 from American Civil Constructors West Coast, Inc. (ACC) requesting O'Donnell Construction, Inc. (O'Donnell) be found non-responsive. ACC's protest states that O'Donnell failed to list all DVBE Subcontractors on the Subcontractor list form. ACC requests Caltrans find O'Donnell non-responsive and proceed to award the contract to the next low and responsive bidder.

Caltrans does not respond to protests after the contract is awarded. Contract 10-0X4404 was awarded to O'Donnell on May 30, 2014.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6285.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. McMILLAN".

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

Attachment



June 2, 2014

Attn: John McMillan, Deputy Division Chief  
California Department of Transportation  
Division of Engineering Services  
Office Engineer MS 43  
1727 30<sup>th</sup> St.  
Sacramento, CA 95816  
Fax: 916-227-6282

**Contract:** 10-0X4404  
**Re:** Objection of Bid Protest Response Letter Dated 5/30/14  
**Bid Opening:** May 7, 2014

Dear Mr. McMillan,

We received your bid protest response letter dated 5/30/14, stating that Titan DVBE did not need to be listed on the Subcontractor List form submitted by O'Donnell Construction, Inc. because their total commitment amount falls under the \$10,000 Subcontractor Listing amount.  
**(Attachment A)**

Please note that this was NOT the basis of our Bid Protest. American Civil Constructor's original bid protest letter submitted on 5/15/14 referenced the Caltrans 2010 Standard Specification section No. 2-1.15B, not Section 2-1.33C as you referenced in your protest response. **(Attachment B)**

If you will please see the PrintScreen below from the Caltrans 2010 Standard Specifications, Page 20, Section 2-1.15B reads as follows: (Please see highlighted section below.)  
**(Attachment C)**

**2-1.15B Projects \$5 Million or Less**

Section 2-1.15B applies to a project with an estimated cost of \$5 million or less.

Make work available to DVBEs and select work parts consistent with available DVBE subcontractors and suppliers.

Meet the goal shown on the *Notice to Bidders*.

Complete and submit the *Certified DVBE Summary* form. List all DVBE participation on this form. For an informal-bid contract, submit the form with your bid. For a non-informal-bid contract, you may submit the form with your bid; if you do not, submit it such that it is received at the Office Engineer no later than 4:00 p.m. on the 4th business day after bid opening. If a DVBE joint venture is used, submit the joint venture agreement with the *Certified DVBE Summary* form.

List each 1st-tier DVBE subcontractor in the *Subcontractor List* form regardless of percentage of the total bid.



Per this specification, **all DVBE Subcontracts MUST be listed on the Subcontractor List form REGARDLESS of the percentage of the total bid.**

Our bid protest is not unprecedented. Please find the attached Bid Rejection Letter from Caltrans dated 3/28/13, which rejected a bid submitted by Truesdell Corporation for Contract No. 04-2E7104 on 1/30/14 because they failed to list their DVBE subcontractors on their Subcontractor list. (**Attachment D**). Please note, again, that the percentage of the bid of the DVBE listed is NOT a factor in this bid – only that they failed to list ALL DVBE Subcontractors on the Subcontractor List form.

In light of these facts, we insist that you find O'Donnell Construction, Inc.'s bid non-responsive as they did not follow the rules as outlined in the 2010 Caltrans Standard Specifications, and therefore, did not submit a responsive bid, and that you proceed to award the contract to the next low and responsive bidder.

Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Cliff Barber", written in a cursive style.

Cliff Barber  
VP/Operations Manager  
American Civil Constructors West Coast, Inc.  
Main: (707) 746-8028 x456  
Cell: (707) 310-0225

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN II, Governor

DEPARTMENT OF TRANSPORTATION  
 DIVISION OF ENGINEERING SERVICES  
 OFFICE ENGINEER  
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 TTY 711  
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Serious drought.  
 Help save water!

ATTACHMENT

"A"

05/30/2014

Facsimile: (707)747-0593

Jeff Foerste, President  
 American Civil Constructors West Coast, Inc.  
 3701 Mallard Drive  
 Benicia, CA, 94510

10-0X4404  
 10-Mpa-49-2.9  
 B.O. 05/07/2014

Dear Mr. Foerste:

The Department of Transportation (Caltrans) received the attached letter dated May 15, 2014, from American Civil Constructors West Coast, Inc. (ACC), protesting the bid submitted by O'Donnell Construction, Inc. (O'Donnell) on May 7, 2014, for Contract 10-0X4404. The protest alleges that O'Donnell submitted an inconsistent Certified Disabled Veterans Business Enterprise (DVBE) Summary form. O'Donnell listed Titan DVBE on its Certified DVBE Summary form, but failed to list them on its Subcontractor's List form. ACC requests Caltrans to find the bid submitted by O'Donnell nonresponsive.

*The 2010 Standard Specifications, Section 2-1.33C, Subcontractor List states in part "... On the Subcontractor List, list each subcontractor to perform work in an amount in excess of ½ of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cost Code § 4100 et seq.)*

In this case, ½ of 1 percent of the total bid is \$1,487.12. Titan DVBE was listed for credit as \$9,686.00. This amount is less than the listing requirement, therefore, Titan DVBE was not required to be listed on the Subcontractor List form.

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

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Manager, at (916) 227-6228.

Sincerely,

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

Attachment



May 15, 2014

ATTACHMENT  
"B"

California Department of Transportation  
Division of Engineering Services  
Office Engineer MS 43  
1727 30<sup>th</sup> St.  
Sacramento, CA 95816  
Fax: 916-227-6282

**Contract:** 10-0X4404  
**Re:** Bid Protest of Low Bidder  
**Bid Opening:** May 7, 2013

Dear Sir or Madam,

The low bidder, O'Donnell Construction, Inc., on the above referenced contract listed a DVBE subcontractor on their Certified DVBE Summary that was not listed on their Subcontractor List at the time of bid.

In the bid documents, page 7 of the Revised Standard Specifications, sixth paragraph under Section 2-1.15B clearly states:

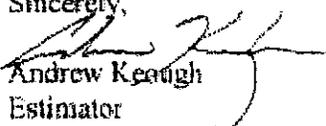
**"List each 1<sup>st</sup>-tier DVBE subcontractor on the Subcontractor List form regardless of percentage of the total bid."**

The low bidder did not list Titan DVBE on their Subcontractor List at the time of bid. The low bidder then listed Titan DVBE on their Certified DVBE Summary days later, providing flagging, in order to reach the 5% goal. Regardless of percentage, Titan DVBE must be listed on the Subcontractor List.

The credit claimed via Titan DVBE should be disallowed as they were not listed on the Subcontractor List on the day of bid, as required. The low bidder therefore did not meet the DVBE goal as shown in the *Notice to Bidders*, so their bid is non-responsive and must be rejected.

Please contact the undersigned with any questions.

Sincerely,

  
Andrew Keough

Estimator

American Civil Constructors

## SECTION 2

## BIDDING

8. Any additional data to support demonstration of good faith efforts.

The Department may consider UDBE commitments of the 2nd and 3rd bidders in determining whether the low bidder made good faith efforts to meet the UDBE goal.

## 2-1.13-2-1.14 RESERVED

## 2-1.15 DISABLED VETERAN BUSINESS ENTERPRISES

## 2-1.15A General

Section 2-1.15 applies to a non-federal-aid contract.

Take necessary and reasonable steps to ensure that DVBEs have opportunity to participate in the Contract.

Comply with Mil & Vet Code § 999 et seq.

**ATTACHMENT**  
"C"

## 2-1.15B Projects \$5 Million or Less

Section 2-1.15B applies to a project with an estimated cost of \$5 million or less.

Make work available to DVBEs and select work parts consistent with available DVBE subcontractors and suppliers.

Meet the goal shown on the *Notice to Bidders*.

Complete and submit the *Certified DVBE Summary* form. List all DVBE participation on this form. For an informal-bid contract, submit the form with your bid. For a non-informal-bid contract, you may submit the form with your bid; if you do not, submit it such that it is received at the Office Engineer no later than 4:00 p.m. on the 4th business day after bid opening. If a DVBE joint venture is used, submit the joint venture agreement with the *Certified DVBE Summary* form.

➔ List each 1st-tier DVBE subcontractor in the *Subcontractor List* form regardless of percentage of the total bid. ➔

## 2-1.15C Projects More Than \$5 Million

## 2-1.15C(1) General

Section 2-1.15C applies to a project with an estimated cost of more than \$5 million

The Department encourages bidders to obtain DVBE participation to ensure the Department achieves its State-mandated overall DVBE goal.

If you obtain DVBE participation:

1. Complete and submit the *Certified DVBE Summary* form. List all DVBE participation on this form.
2. List each 1st tier DVBE subcontractor in the *Subcontractor List* form regardless of percentage of the total bid.

## 2-1.15C(2) DVBE Incentive

The Department grants a DVBE incentive to each bidder who achieves a DVBE participation of 1 percent or greater (Mil & Vet Code 999.5 and Code of Regs § 1896.98 et seq.).

To receive this incentive, submit the *Certified DVBE Summary* form. For an informal-bid contract, submit the form with your bid. For a non-informal-bid contract, you may submit the form with your bid; if you do not and you are the low bidder or the 2nd or 3rd low bidder, submit it such that it is received at the Office Engineer no later than 4:00 p.m. on the 4th business day after bid opening. If a DVBE joint venture is used, submit the joint venture agreement with the *Certified DVBE Summary* form. Other bidders may be required to submit this form if bid ranking changes.

## 2-1.15C(3) Incentive Evaluation

The Department applies the small business and non-small business preference during bid verification and proceeds with the evaluation specified below for DVBE incentive.

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN, Jr., Governor

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES  
OFFICE ENGINEER, MS 43  
1727 30<sup>th</sup> STREET  
P. O. BOX 168041  
SACRAMENTO, CA 95816-8041  
PHONE (916) 227-6280  
FAX (916) 227-6282  
TTY 711

ATTACHMENT

"D"



Flex your power!  
Be energy efficient!

March 28, 2013

Facsimile: (602) 437-1821

Kurt L. Clink, President  
Truesdell Corporation of California, Inc.  
1310 W. 23rd Street  
Tempe, AZ 95282

04-2E7104  
04-SCI-82,85,87,101,152,234-VAR  
B.O. 01/30/2013

Dear Mr. Clink:

The Department of Transportation (Caltrans) received a bid submitted by Truesdell Corporation of California, Inc. (Truesdell) for Contract No. 04-2E7104 on January 30, 2013. By this letter, Caltrans notifies Truesdell that its bid is nonresponsive because of discrepancies found on the Certified Small Business Listing for the Non-Small Business Preference (Small Business) and Certified Disabled Veteran Business Enterprise (DVBE) Summary form.

On the Small Business and DVBE Summary forms, Truesdell identified bid items 1, 4, 6, 10 and 11 to be performed by Global Environmental, and bid item 3 to be performed by Titan and Highway Specialty Co., and bid item 18 to be performed by Kwik Bond Polymers. These bid items and the subcontractors are not identified on the Subcontractor List form submitted.

Your attention is directed to the Certified DVBE Summary form which states that, "Names of first tier DVBE subcontractors and their items of work listed must be consistent with the names and items of work in the Subcontractor List (Public Contract Code §4100 et. seq.), submitted with the bid."

Based on the above finding, Caltrans will proceed to award the contract to the lowest responsible bidder.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,

  
JOHN C. McMILLAN

for Deputy Division Chief  
Office Engineer  
Division of Engineering Services

Attachment