



**CITY OF LODI  
COUNCIL COMMUNICATION**

TM

**AGENDA TITLE:** Adopt Resolution Rejecting Non-Responsive Bids, Authorizing City Manager to Execute Contract for Transit Station Facility Improvement Project with Diede Construction, Inc., of Lodi (\$127,596.50) and Appropriating Funds (\$25,000)

**MEETING DATE:** February 1, 2012

**PREPARED BY:** Public Works Director

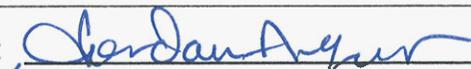
**RECOMMENDED ACTION:** Adopt resolution rejecting non-responsive bids; authorizing City Manager to execute contract for Transit Station facility improvement project with Diede Construction, Inc., of Lodi, in the amount of \$127,596.50; and appropriating funds in the amount of \$25,000.

**BACKGROUND INFORMATION:** The project includes replacing the gutters, the damaged roof structure, and composition roofing at the four passenger shelters; rerouting and connecting eight existing downspouts to new gutters at the passenger shelters; pressure washing and painting the passenger shelters, North Annex, South Annex, and main Transit Station; removing and replacing concrete expansion caulk joints at the platform surrounding all the buildings and shelters, and replacing the louvered covers at the South Annex. There is also a \$5,000 allowance to repair the South Annex clock.

Plans and specifications for this project were approved on July 6, 2011. The City received the following five bids for this project on November 30, 2011. The bid received from Triumph Construction, Inc., is non-responsive for failure to provide the required proof of qualification and listing of required subcontractors. Triumph Construction also incorrectly totaled the Schedule of Values form; the correct total is shown below. The bid received from Seven Islands Painting is non-responsive for failure to provide the required proof of qualification and listing of required subcontractors. The bid received from Bobo Construction, Inc., is non-responsive for failure to include the mandatory addenda acknowledgement.

Bidder	Location	Bid
Engineer's Estimate		\$ 150,000.00
Triumph Construction Group (non-responsive)	North Highlands	\$ 87,325.00
Seven Islands Painting (non-responsive)	Daly City	\$ 104,750.00
Bobo Construction, Inc. (non-responsive)	Elk Grove	\$ 118,997.50
Diede Construction, Inc.	Lodi	\$ 127,596.50
Color New Company	Woodland Hills	\$ 134,750.00

Angie McDaniel, of Guthrie Consulting, representing the small business community, raised a concern about the City's bid process. Ms. McDaniel contends that Federal Transportation Administration (FTA) and Federal Acquisition Regulation (FAR) regulations do not permit the City to require bidders to have completed three prior similar projects to be considered to have submitted responsive bids. FAR regulations are not applicable to this contract according to the FTA Manual entitled Third Party Contracting Guidance (FTA 4220.1F) Chapter 2 of the referenced manual notes: "The Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, does not apply to federally assisted procurements absent federal laws or regulations to the contrary. In the case of FTA programs, FAR cost principles

APPROVED:   
 Konradt Bartlam, City Manager

Part 31 apply to grants and cooperative agreements with private for profit entities." (See Page 11-8) This procurement is not a cooperative agreement or a grant to a private entity. As such, FAR cost principles do not apply. However, FTA regulations do indeed prohibit cities from instituting conditions on federally-funded projects "that unduly restrict competition." Moreover, at least one FTA Frequently-Asked-Questions bulletin suggests that job-related experience may be an excessive hindrance to competition (Exhibit A). However, other regulations suggest that contractor experience is a relevant factor (see e.g. 49 USC 5325(j)). In order to clarify the FTA requirements, staff contacted Renee Marker, staff Counsel for the FTA. Staff informed Ms. Marker that staff has traditionally used a three-similar-job requirement for all of its bid projects (locally and federally funded), either through a Request for Qualifications Analysis or through a bid responsiveness requirement. Staff informed Ms. Marker further that the requirement is consistent with a California Industrial Relations Department Approved prequalification process attached to this report as Exhibit B. Ms. Marker also asked about the number of responsive bids received. Her inquiry was focused on whether an adequate number of bidders was able to successfully bid on the project. In this case, three bidders met the experience requirements (though one failed to include an addendum). Relying on our past history with the requirement and a healthy bid field, Ms Marker indicated that she did not believe the practice unduly restricted competition or violated FTA regulations.

Staff recommends rejecting the non-responsive bids and awarding the contract to Diede Construction, Inc. Staff also recommends appropriating \$25,000 in addition to funds allocated in the FY 2011/12 budget to cover City staff time, project-related costs and contingencies.

**FISCAL IMPACT:** The project will reduce the maintenance costs at the facility.

**FUNDING AVAILABLE:** This project will utilize \$131,000 in Transportation Development Act (TDA) funds (125179) allocated in the FY 2011/12 budget.

Requested Appropriation: TDA Funds (125179): \$25,000



Jordan Ayers  
Deputy City Manager/Internal Services Director

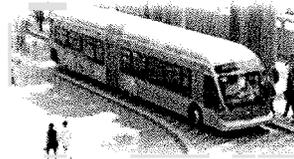


F. Wally Sandelin  
Public Works Director

Prepared by Gary Wiman, Construction Manager  
FWS/GW/pmf

Attachments

cc: Construction Project Manager Wiman  
Transportation Manager Fernandez  
Management Analyst Areida-Yadav  
Diede Construction, Inc.  
Triumph Construction, Inc.  
Seven Islands Painting  
Bobo Construction, Inc.



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## Determining Contractor Responsibility

**Q** What are the components of a responsibility determination?

**A** 49 U.S.C. 5325(j) provides

"AWARDS TO RESPONSIBLE CONTRACTORS —

- 1 IN GENERAL — Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement
- 2 CRITERIA — Before making an award to a contractor under paragraph (1), a recipient shall consider—
  - A the integrity of the contractor,
  - B the contractor's compliance with public policy,
  - C the contractor's past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(l)(2); and
  - D the contractor's financial and technical resources "

To designate a prospective contractor "responsible" as required by 49 U.S.C. Section 5325, FTA expects the recipient, at a minimum, to determine and ensure that the prospective contractor satisfies the following criteria described herein. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor

- 1 Integrity and Ethics. Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A),
- 2 Debarment and Suspension. Is neither debarred nor suspended from Federal programs under DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4,
- 3 Affirmative Action and DBE. Is in compliance with the Common Grant Rules' affirmative action and FTA's Disadvantaged Business Enterprise requirements,
- 4 Public Policy. Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B),
- 5 Administrative and Technical Capacity. Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D),
- 6 Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations,
- 7 Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D),
- 8 Production Capability. Has, or can obtain, the necessary production, construction, and technical equipment and facilities,
- 9 Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments, and
- 10 Performance Record. Is able to provide a:
  - a. Current Performance. Satisfactory current performance record, and
  - b. Past Performance. Satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
    1. Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
    2. Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient's solicitation, and
    3. Any Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently



has been seriously deficient in contract performance is presumed to be nonresponsible, unless the recipient determines that the circumstances were properly beyond the bidder or offeror's control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. FTA expects the recipient to consider the number of the bidder or offeror's contracts involved and the extent of deficient performance in each contract when making this determination.

Before entering into a full funding contract for a fixed guideway project, the recipient must now consider the prospective contractor's past performance in estimating costs and ridership as reported in the Contractor Performance Assessment Reports, as required by 49 U.S.C. Section 5325(j)(2)(C).

Certain procurements may require special standards of responsibility requiring contractors to have specialized expertise or facilities in order to perform the contract adequately. These special standards of responsibility must be set forth in the solicitation. Failure to meet the special standards will disqualify a bidder from consideration for award. An example of a special responsibility standard would be the special quality assurance requirement concerning measuring and testing facilities and manufacturing controls which must be met by prospective bus manufacturers. (Revised: September 9, 2009)

**Q.** What is the Dollar Threshold for making a written Determination of Contractor Responsibility? Does it apply to Purchase orders? How detailed must it be? Must it be in writing regardless of the threshold?

**A.** The Federal Transit Administration does not require its grantees to make a written determination of contractor responsibility for small purchases (those under \$100,000).

In reviewing the FAR Subpart 9.1, it would seem that a determination of contractor responsibility is required for "purchases" as well as "awards" - 9.103 (b). It is not clear, however, that FAR requires a written determination for small purchases. 9.103 (b) does require an "affirmative determination" of responsibility. FAR Subpart 13.101 deals with procedures for small purchases and envisions a scenario when a CO determines a contractor to be nonresponsible, in which case the CO is to comply with Subpart 19.6 with respect to Certificates of Competency before rejecting a quotation. Once again, however, this does not clearly require a written determination of responsibility for small purchases, only the CO's decision as to responsibility or nonresponsibility. We would conclude from these FAR references that the FAR does envision the CO making a responsibility determination but the FAR leaves a great deal of discretion in how the decision is made and to what extent it is documented. (Reviewed: September 9, 2009)

\* The FAR is available on the Internet at: <http://www.arnet.gov/far/>

**Q.** Can project-related experience be a condition of contract award? Can project-related experience be an evaluation factor? We are requiring vendors to submit examples of at least three contracts of comparable size and type as part of their proposals. We feel that previous experience is a necessary factor of project award. A Contractor states that the minimum experience requirement indicated above is in conflict with FTA guidance that prohibits grantees from requiring "unnecessary experiences" in all procurement transactions.

**A.** Project-related experience should be a factor related to the capability of the offeror to perform the contract; i.e., a factor for determining the offeror's responsibility, not responsiveness. As a responsibility issue, past experience may be discussed with the company after proposals are submitted. For further guidance on determining contractor responsibility, see the Best Practices Procurement Manual (BPPM), Section 5.1 - "Responsibility of Contractor."

We would think that requiring three previous projects of the same size as the present procurement would be an excessive experience requirement. And to insist on this as a condition of bidding would seem unreasonable. Our opinion would be that to require one project of similar size, successfully completed, with perhaps several more of smaller size would be sufficient to demonstrate that the offeror has the capability to perform your contract. In any case, we would advise you to be flexible about the number of past projects completed and their size. It may be virtually impossible, for example, for a supplier to have completed three projects of the size you are now procuring (Reviewed: September 9, 2009)

\* Section 5.1 of the BPPM is available on the Internet.

**Q.** Is there a requirement that a request for financial statements be made of all proposing contractors (to be used to help determine financial responsibility) and be included in the RFP, or can they be requested prior to award from the selected contractor only? This is for a T&M master contract where prices are being considered as part of the evaluation criteria.

**A.** The topic of Contractor Responsibility is covered in the Best Practices Procurement Manual, Section 5.1 - Responsibility of Contractor. Any issue related to the determination of responsibility may be discussed with the apparent low bidder or winning offeror prior to award. Thus you may ask for financial statements from the apparent winning contractor after proposals have been evaluated. You need not request this information from all offerors in the RFP. The types of information that may prove useful in the responsibility determination are discussed in the BPPM section 5.1.3 - Obtaining Information for Determination of Responsibility. All of this information may be obtained after proposals are evaluated and need not be included in the RFP. (Reviewed: September 9, 2009)

**Q.**

1) In a recipient's determination of responsibility or capacity to deliver, may a recipient require a dealer's license (versus an in-state dealer's license) as proof that a bona fide relationship exists between a dealer and a specific manufacturer?

2) In a recipient's determination of responsibility or capacity to deliver, may a recipient consider the fact that state enforcement actions (as permitted in 4220.1F, ch. VI.2.a.4.2) may prevent delivery? 4220.1F stipulates that awards may only be made to responsible contractors, specifically, that awards may be made only to contractors who are capable of successfully performing under the terms of a proposed contract, generally known as "delivery."

VI 2 a (4)(g) says recipients may not specify geographic preferences and may not limit bus purchases to in-state dealers, but provides an exception in VI 2 a 4 2 that state licensing laws may be enforced. Licensing enforcement actions include fines and issuance of cease and desist orders that would prevent a delivery.

A

1. It is reasonable in connection with a responsibility determination, for a grantee to request proof of a dealer's eligibility to distribute a particular manufacturer's products.
2. A grantee may consider that a state's enforcement actions may prevent delivery, however, state enforcement actions cannot unduly hinder or burden interstate commerce. In other words, a state may not impose requirements on out-of-state vehicles that are not similarly imposed on in-state vehicles. If the potential of state enforcement or licensing actions affect a grantee's ability to comply with the Common Grant Rule's ban on geographic preferences, the grantee should immediately contact the appropriate FTA Regional Office (**Posted: March 2009**)

Report Problems

Federal Transit Administration  
 1200 New Jersey Avenue, SE  
 Washington DC 20590  
 202-366-4000



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**Questions concerning recent construction projects completed:**  
(one question, plus 11 interview questions)

The following question to be scored only where a **public** agency is undertaking a pre-qualification procedure valid for a single project only.

- 1. Contractor shall provide information about its six most recently completed **public works projects** and its three largest completed private projects within the last three years.<sup>10</sup> Names and references must be current and verifiable. Use separate sheets of **paper** that contain all of the **following** information:

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Owner: \_\_\_\_\_

Owner Contact (name and current phone number):

\_\_\_\_\_  
\_\_\_\_\_

Architect or Engineer: \_\_\_\_\_

Architect or Engineer Contact (name and current phone number):

\_\_\_\_\_  
\_\_\_\_\_

Construction Manager (name and current phone number):

\_\_\_\_\_  
\_\_\_\_\_

Description **of Project**, Scope of Work Performed:

\_\_\_\_\_  
\_\_\_\_\_

Total Value of Construction (including change orders): \_\_\_\_\_

**Original** Scheduled Completion Date: \_\_\_\_\_

T i e Extensions Granted (number **of** days): \_\_\_\_\_

Actual Date of Completion: \_\_\_\_\_

\* \* \* \* \*

<sup>10</sup> If you wish, you may, using the same format, also provide information about other projects that you have completed that are similar to the project(s) for which you expect to bid.

*CONTRACT*

CITY OF LODI, CALIFORNIA

THIS CONTRACT made by and between the CITY OF LODI, State of California, herein referred to as the "City," and DIEDE CONSTRUCTION, INC., herein referred to as the "Contractor."

WITNESSETH:

That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

The complete Contract consists of the following documents which are incorporated herein by this reference, to-wit:

PART A: Request for Design/Build Proposal

PART B: Bid Proposal Pricing Forms

PART C: Special Conditions

PART D: Federal Requirements

Specifications/Bridging Documents

Federal Minimum Wage Rates

Drawings:

Site Plan and Exhibits

Addenda

All of the above documents, sometimes hereinafter referred to as the "Contract Documents," are intended to cooperate so that any work called for in one and not mentioned in the other is to be executed the same as if mentioned in all said documents.

ARTICLE I - That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City and under the condition expressed in the two bonds bearing even date with these presents and hereunto annexed, the Contractor agrees with the City, at Contractor's cost and expense, to do all the work, furnish all labor and furnish all the materials except such as are mentioned in the specifications to be furnished by the City, necessary to construct and complete in a good workmanlike and substantial manner and to the satisfaction of the City the proposed improvements as shown and described in the Contract Documents which are hereby made a part of the Contract.

ARTICLE II - The City hereby promises and agrees with the Contractor to employ, and does hereby employ, the Contractor to provide all materials and services not supplied by the City and to do the work according to the terms and conditions for the price herein, and hereby contracts to pay the same as set forth in Clauses 65 and 66 Special Conditions, in the manner and upon the conditions above set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE III - The Contractor agrees to conform to the provisions of Chapter 1, Part 7, Division 2 of the Labor Code. The Contractor and any Subcontractor will pay the general prevailing wage rate and other employer payments for health and welfare, pension, vacation, travel time, and subsistence pay, apprenticeship or other training programs. The responsibility for compliance with these Labor Code requirements is on the prime contractor.

ARTICLE IV - And the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage arising out of the nature of the work aforesaid or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the Plans and Contract Documents and the requirements of the Engineer under theni, to-wit:

*TOTAL CONTRACT AMOUNT Guaranteed* \$127,596.50\*  
*Maximum Price*

"Exhibit A is the Schedule of Values from the Contractor dated November 30,2011.

ARTICLE V - By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

ARTICLE VI - It is further expressly agreed by and between the parties hereto that, should there be any conflict between the terms of this instrument and the Bid Proposal of the Contractor, then *this instrument* shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE VII - The City is to furnish the necessary rights-of-way and easements for the work as specified under the Special Provisions. All labor or materials not mentioned specifically as being done by the City will be supplied by the Contractor to accomplish the work as outlined in the documents.

ARTICLE VIII - The Contractor agrees to commence work pursuant to this contract and to diligently prosecute to **completion in accordance with the following schedule:**

Total Project: 45 calendar days

When signing this contract, the Contractor agrees that the times of completion for this contract are reasonable, that failure to meet the milestones completion shall result in the assessment of liquidated damages charges to the Contractor, and that the Contractor agrees to pay the City liquidated damages of **\$1,000.00 per day for each day the work is not totally completed** beyond the times specified in the preceding paragraph. Contractor agrees that this amount may be deducted from the amount due the Contractor under the contract.

IN WITNESS WHEREOF ,the parties to these presents have hereunto set their hands the year and date written below.

CONTRACTOR :

CITY OF LODI

\_\_\_\_\_

By:\_\_\_\_\_

Konradt Bartlam, City Manager

By:\_\_\_\_\_

Date:\_\_\_\_\_

Attest:

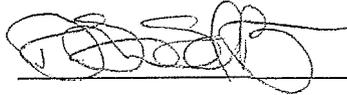
\_\_\_\_\_

Title

\_\_\_\_\_  
Randi Johl, City Clerk

( CORPORATESEAL)

Approved as to form:

\_\_\_\_\_

D. Stephen Schwabauer, City Attorney



RESOLUTION NO. 2012-06

A RESOLUTION OF THE LODI CITY COUNCIL REJECTING NON-RESPONSIVE BIDS, AWARDING CONTRACT FOR TRANSIT STATION FACILITY IMPROVEMENT PROJECT, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT, AND FURTHER APPROPRIATING FUNDS

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on November 30, 2011, at 11:00 a.m., for the Transit Station Facility Improvement Project, described in the plans and specifications therefore approved by the City Council on July 6, 2011; and

WHEREAS, said bids have been checked and tabulated and a report thereof filed with the City Manager as follows:

<b>Bidder</b>	<b>Bid</b>
Triumph Construction Group (non-responsive)	\$ 87,325.00
Seven Islands Painting (non-responsive)	\$ 104,750.00
<b>Bobo</b> Construction, Inc. (non-responsive)	\$ 118,997.50
Diede Construction, Inc.	\$ 127,596.50
Color New Company	\$ 134,750.00

WHEREAS, the bid received from Triumph Construction, Inc., is non-responsive for failure to provide the required proof of qualification and listing of required subcontractors and incorrectly totaling the Schedule of Values form, The bid received from Seven Islands Painting is non-responsive for failure to provide the required proof of qualification and listing of required subcontractors. The bid received from Bobo Construction, Inc., is non-responsive for failure to include the mandatory addenda acknowledgement; and

WHEREAS, staff recommends rejecting the non-responsive bids and awarding the contract for the Transit Station Facility Improvement Project to the lowest responsive bidder, Diede Construction, of Lodi, California, in the amount of \$127,596.50.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby reject the non-responsive bids and award the contract for the Transit Station Facility Improvement Project to the lowest responsive bidder, Diede Construction, of Lodi, California, in the amount of \$127,596.50; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the contract; and

BE IT FURTHER RESOLVED that funds in the amount of \$25,000 be appropriated from Transportation Development Act Funds for this project.

Dated: February 1, 2012

I hereby certify that Resolution No. 2012-06 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 1, 2012, by the following vote:

- AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Nakanishi, and Mayor Mounce
- NOES: COUNCIL MEMBERS – None
- ABSENT: COUNCIL MEMBERS – None
- ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL  
City Clerk

RECEIVED

GUTHRIE CONSULTING 2012 JAN 17 AM 8:39

January 13th, 2012

CITY CLERK  
CITY OF LODI2215 West Walnut Street  
Lodi, California 95242  
www.GuthrieConsulting.bizCity of Lodi  
221 West Pine Street  
Lodi, California 95240Phone: 209-365-3541  
E-mail:  
angie@guthrieconsulting.biz

Re: Transit Station Facility Improvement Project

Dear City Council,

I am a small business advocate and a citizen of Lodi. The Transit Station Facility Improvement Project must be rebid (again) for the following reasons:

### 1. Restricted Competition

This project has a past performance sheet imposing unnecessary experience requirements for bidders. It is the opinion of the FTA that to insist on 3 previous projects of the same size would be unreasonable; this is what the City is requesting and is an FTA prohibited solicitation requirement. This gives all the bidders on this project an unfair advantage over those who could have participated.

### 2. Design-Build Proposal Language

Instead of a notice for "Invitations for Bid" this project has been advertised as a Design-Build "Request for Proposal" which is a negotiated solicitation awarded to the "Best Value" for the City. As per Lodi municipal code, projects over twenty thousand dollars must use the formal contract procedure of sealed bidding awarded to the lowest responsible bidder. Additionally, this contract is being awarded for a "Guaranteed Maximum Price", another negotiated Design-Build term meaning that the City will only pay actual costs plus overhead and profit; not the full amount of the award if these costs fall below that amount.

### 3. Contractor's Response to Protest

A protest has been issued challenging several of the contractors' licenses. A valid response was submitted yet the recommended action was to continue with award to the protesting contractor. Would Council please review and address this issue as it will affect future City bids.

Sincerely,

  
Angie McDaniel

(Reviewed: September 9, 2009)

\* The FAR is available on the Internet at: <http://www.arnet.gov/far/>

**Q.** Can project-related experience be a condition of contract award? Can project-related experience be an evaluation factor? We are requiring vendors to submit examples of at least three contracts of comparable size and type as part of their proposals. We feel that previous experience is a necessary factor of project award. A Contractor states that the minimum experience requirement indicated above is in conflict with FTA guidance that prohibits grantees from requiring "unnecessary experiences" in all procurement transactions.

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 Report Problems

contract rights to property or services excess to the recipient's immediate needs, even though the recipient may assign its excess contract rights to others.

- (3) Brand Name or Equal. When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of a specific type of property. The recipient must identify the salient characteristics of the named brand that offerors must provide. When using a "brand name" specification, the recipient does not need to reverse-engineer a complicated part to identify precise measurements or specifications in order to describe its salient characteristics. FTA's "Best Practices Procurement Manual," (BPPM) contains additional information on preparation of specifications including examples with specific language.
- ) Prohibitions. The Common Grant Rules prohibit solicitation requirements that contain features that unduly restrict competition. FTA recipients are also prohibited by 49 U.S.C. Section 5325(h) from using FTA assistance to support an exclusionary or discriminatory specification. Some situations considered to be restrictive of competition include, but are not limited to, the following, all of which are identified in one or both Common Grant Rules:
  - (a) Excessive Qualifications. Imposing unreasonable business requirements for bidders or offerors.
  - (b) Unnecessary Experience. Imposing unnecessary experience requirements for bidders and offerors.
  - (c) Improper Prequalification. Using prequalification procedures that conflict with the prequalification standards described in subsection 1.c of this Chapter.
  - (d) Retainer Contracts. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
  - (e) Excessive Bonding. To encourage greater contractor participation in FTA assisted projects, FTA does not require the recipient to impose bonding requirements on its third party contractors other than construction bonding specified by the Common Grant Rules and this circular for construction. FTA discourages unnecessary bonding because it increases the cost of the contract and restricts competition, particularly by disadvantaging business enterprises. Bond companies exercise their discretion and assure their profits primarily by declining to undertake excessive risks. Consequently many bidders have limited "bonding capacity." Unnecessary performance bonding requirements reduce a prospective bidder's or offeror's capability to bid or offer a proposal on bonded work. Small businesses with short histories may have particular difficulty obtaining bonds as may be specified.

CITY COUNCIL

JOANNE L MOUNCE, Mayor  
ALAN NAKANISHI,  
Mayor Pro Tempore  
LARRY D. HANSEN  
BOB JOHNSON  
PHIL KATZAKIAN

# CITY OF LODI

## PUBLIC WORKS DEPARTMENT

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
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January 25, 2012

KONRADT BARTLAM  
City Manager

RANDI JOHL  
City Clerk

D. STEVEN SCHWABAUER  
City Attorney

F. WALLY SANDELIN  
Public Works Director

Diede Construction, Inc.  
P.O. Box 1007  
Woodbridge, CA 95258

Triumph Construction, Inc.  
3601 Plymouth Drive  
North Highlands, CA 95660

Seven Islands Painting  
6548 Mission Street  
Daly City, CA 94014

Bobo Construction, Inc.  
9728 Kent Street  
Elk Grove, CA 95624

SUBJECT: Adopt Resolution Rejecting Non-Responsive Bids, Authorizing City Manager to Execute Contract for Transit Station Facility Improvement Project with Diede Construction, Inc., of Lodi (\$127,596.50) and Appropriating Funds (\$25,000)

Enclosed is a copy of background information on an item on the City Council agenda of Wednesday, February 1, 2012. The meeting will be held at 7 p.m. in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council Meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Randi Johl, City Clerk, at (209) 333-6702.

If you have any questions about the item itself, please call Gary Wiman, Construction Project Manager, at (209) 333-6800, extension 2054.



for:

F. Wally Sandelin  
Public Works Director

FWS/pmf  
Enclosure  
cc: City Clerk