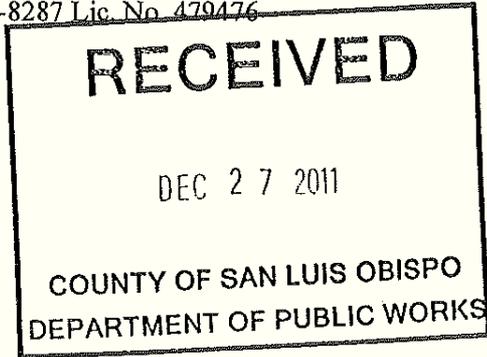




SOUZA CONSTRUCTION, INC.
 P.O. Box 3810, San Luis Obispo, CA 93403-3810
 (805) 546-8288 • Fax (805) 546-8287 Lic. No. 479476



Date: Dec 27, 2011

To: Jeff Werst

Firm: San Luis Obispo County Public Works

Phone No: 805-781-4480

Fax No:

From: Ken Johnston

Re: Bridge Widening on Price Canyon Rd near Edna, CA

Project No: 300136, 300360, & 300361

Souza Job No: _____

WE ARE TRANSMITTING:		THE FOLLOWING:		FOR:	
<input checked="" type="checkbox"/>	By Hand	<input type="checkbox"/>	Report	<input type="checkbox"/>	Signature
<input type="checkbox"/>	By Mail	<input checked="" type="checkbox"/>	Letter	<input type="checkbox"/>	Review & Approval
<input type="checkbox"/>	FAX	<input type="checkbox"/>	Memo	<input checked="" type="checkbox"/>	Your Information & Use
<input type="checkbox"/>	Under Separate Cover	<input type="checkbox"/>	Plans	<input type="checkbox"/>	As Requested
<input type="checkbox"/>	By Delivery Service	<input type="checkbox"/>	Specifications	<input type="checkbox"/>	Review & Return (with comments)
<input type="checkbox"/>	CA Delivery Service	<input type="checkbox"/>	Cost Estimate	<input type="checkbox"/>	Re-submittal
<input type="checkbox"/>	Federal Express	<input type="checkbox"/>	Submittal	<input type="checkbox"/>	
<input type="checkbox"/>		<input type="checkbox"/>	Contract	<input type="checkbox"/>	

REMARKS:

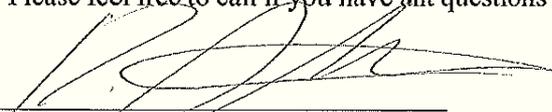
Please find attached the formal protest of contract award to Specialty Construction, Inc for the above mentioned project. We have also attached copies of prior protests that may be of interest as both protests were successful and the projects were awarded to Souza Construction, Inc the lowest responsible bidder.

With regards to this project and ensuing award I have spoken to the following people and have received overwhelming support, given the facts for the award to be granted to Souza Construction.

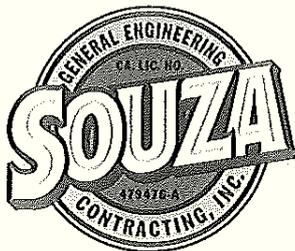
- Paul Richard, Caltrans Office of Business and Economic Development, 916-324-0453
- MaryJane Stahl, Caltrans Office of Business and Economic Development 916-324-1700
- Pat Connelly, Construction Manager District 5 Caltrans 805-549-3111
- Gene SHY, Statewide Local Assistance, Caltrans 916-651-6552

I have been in contact with, Sam Hassoun, Director of Joint Engineering Division, Associated General Contractors of California, 916-371-2422, and he has committed to support us in any legal action that may be necessary.

Please feel free to call if you have any questions or comments.



Ken Johnston



December 27, 2011

Design Engineer
County of San Luis Obispo
Department of Public Works
Room 207, County Government Center
976 Osos Street
San Luis Obispo, CA 93408

RE: Bridge Widening on Price Canyon Road near Edna, California
Contract Nos. 300136, 300360, & 300361
Federal Project Nos. HP21L-5949(126), BHL-5949(062), & BHL5949(063)

Dear Mr., Jeff Werst

Souza Construction, Inc. ("Souza") hereby protests award of this contract to Specialty Construction, Inc. ("SCI"), the low monetary bidder.

Souza, the lowest responsive bidder, bases this protest on the grounds that SCI utterly failed to meet the UDBE contract goal of three percent (3%) or to establish a "good faith effort" to meet that goal.

Exhibit 15-H to the contract inquires bidders to provide UDBE potential bidders as subcontractors, suppliers and haulers with an explanation of the project and give them a reasonable opportunity to provide bid proposals.

"The bidder must solicit this interest within sufficient time to allow the DBE to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations." (CFR, Appendix A to Part 26).

This project contains a significant number of items of work that include a large number of trucking hours. All of us in the industry recognize that on mixed engineering projects, trucking provides an easy path to meet the project goals. The following items of work include a significant amount of trucking.

1. Roadway Excavation – Haul Off Trucking
2. Asphalt Concrete and Aggregate Base.
3. Import Borrow
4. Clear and Grub - Haul Off of Debris
5. Structure Demolition – Haul Off Debris

Available hours of trucking for UDBE commitment contained within our estimate is approximately 700 hours.

Souza Construction, Inc.
General Engineering Contracting
P. O. Box 3810
San Luis Obispo, CA 93403
805/546-8288
Fax 805/546-8287
3 of 11

Any prudent contractor putting together a UDBe submittal can easily use these items of work towards meeting the contract goals. The list below represents a few of the local trucking companies that can be utilized to meet the goal:

- Kritz Excavating & Trucking
- Charlene's Trucking
- STI Trucking
- Borden Trucking

SCI limited the items of work that it made available to UDBe firms and did not even seek quotes for various items of work. Souza listed Austin Enterprise for the "Joint Seal," Items 73, 74, 155, and 156, to achieve \$25,919, a significant portion of the goal. SCI's "Items Made Available to UDBe Firms" (Attachment "A"), did not make the "Joint Seal" Items 73, 74, 155, or 156 available to qualified UDBe's.

SCI received a quote from KRC Safety, a UDBe firm, to furnish and install the "Temporary Railing (Type K)", for Items 1, 38, and 177. This was another substantial amount of work in which the items of work were not made available to UDBe's to bid upon. (See Attachment "A")

The lack of "Items Made Available to UDBe Firms" prevented those UDBe firms from having the opportunity to submit a competitive price; thus reducing the number of UDBe firms SCI had to choose from. As stated in 49 CFR Appendix A to Part 26 (B):

"Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces."

Under SCI's "Rejected UDBe Firms" (Attachment "B"), SCI received four UDBe quotes and accepted one. This is a total of four (4) UDBe firms that SCI solicited and/or received quotes from. Souza received a total of eleven (11), accepted four (4) on our UDBe commitment, and listed one additional qualified UDBe subcontractor West Coast/Tipco Pile Driving JV for a total of 5. SCI rejected Super Seal and Stripe (UDBe) and accepted Toste Construction's price for a price difference of \$2,601. 49 CFR Appendix A to Part 26 D(2) states:

"However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable."

The price Difference is between Toste Construction and Super Seal and Stripe is minimal.

Souza would have been the lowest monetary and responsive bidder on this project had Souza not made the effort to meet the contract goal. Souza used UDBe companies that did not provide low bids, that were reasonable and not excessive in order to meet the goal.

Souza listed West Coast/Tipco Pile Driving JV (UDBE) as a subcontractor. However Souza exceeded the contract goal without listing West Coast/Tipco on Souza's UDBE Commitment Form, as Souza had already met and exceeded the goal. We will however, include West Coast/Tipco Pile Driving in our final UDBE utilization report which will increase our actual participation to \$188,264.00 or 5.43%, and improve San Luis Obispo County's overall participation.

49 CFR, Appendix A to Part 26 V states:

"In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal."

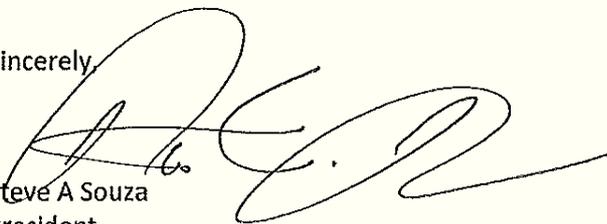
All other bidders met and exceeded the contract goal.

Souza and the other bidders' success in achieving the 3% UDBE goal is compelling proof that SCI did not make a good faith effort as defined in 49 CFR, Appendix A to Part 26. Section V states that *"In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract."*

A competitive bid contract for public works requires that the successful bidder be the lowest monetary bidder whose bid is also *responsive* to the contract requirements. A bid cannot be considered responsive unless the bidder can demonstrate that he met the "good faith effort" requirements set forth of the Code of Federal Regulations cited above. SCI clearly failed to do so, and cannot legally be awarded the contract as the "lowest monetary bidder whose bid is responsive to the invitation to bid."

Thank you for consideration of our request, which we believe are full and complete statements specifying the grounds for protest (Public Contract Code 10345 (a)(3)).

Sincerely,


Steve A Souza
President
Souza Construction Inc.

Attachment "A"



Documentation of Good Faith Efforts
County of San Luis Obispo Contract #s 300136, 300360, 300361
Federal Project #s. HP21L-5949(126), BHL-5949(062), BHL-5949(063)
Bridge Widening on Price Canyon Rd near Edna, Ca

Items Made Available to UDBE Firms

Specialty Construction, Inc.
 Items Made Available to UDBE Firms
 County of San Luis Obispo Contract #s 300136, 300360, 300361
 Federal Project #s HP21L-5949(126), BHL-5949(062), BHL-5949(063)
 Bridge Widening on Price Canyon Rd near Edna, CA

C. The items of work which the bidder made available to UDBE firms, including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate UDBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate UDBE participation was made available to UDBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage of Contract
MECHANICALLY STABILIZED EARTH WALL	Y	Yes	\$ 827,550.00	24.01%
EROSION CONTROL	N	Yes	\$ 27,644.00	0.80%
ASPHALT PAVING	N	Yes	\$ 69,100.00	2.00%
ASPHALT DIKE PLACEMENT	N	Yes	\$ 6,479.00	0.19%
METAL BEAM GUARD RAIL	N	Yes	\$ 34,080.00	0.99%
STRIPING	N	Yes	\$ 6,230.00	0.18%
CABLE RAILING	N	Yes	\$ 12,570.00	0.36%
SWPPP	N	Yes	\$ 10,600.00	0.31%
CONSTRUCTION AREA SIGNS	N	Yes	\$ 7,400.00	0.21%
TRAFFIC CONTROL	Y	Yes	\$ 34,500.00	1.00%
LEAD COMPLIANCE PLAN	N	Yes	\$ 1,810.00	0.05%
ASPHALTIC EMULSION	N	Yes	\$ 23,333.00	0.68%
DRIVE PILES	N	Yes	\$ 140,400.00	4.07%
PRECAST CONCRETE GIRDER	N	Yes	\$ 155,000.00	4.50%
BAR REINFORCING STEEL	N	Yes	\$ 179,925.00	5.22%
FENCING	N	Yes	\$ 3,930.00	0.11%
CONCRETE BARRIER	N	Yes	\$ 73,688.00	2.14%
BRIDGE REMOVAL	N	Yes	\$ 137,000.00	3.97%
72" CAST-IN-DRILLED-HOLE CONCRETE PILING	N	Yes	\$ 256,000.00	7.43%
SHOTCRETE	Y	Yes	\$ 5,200.00	0.15%
TUBULAR HANDRAILING	N	Yes	\$ 28,640.00	0.83%
Total			\$ 2,041,079.00	59.21%

Attachment "B"



Documentation of Good Faith Efforts
County of San Luis Obispo Contract #s 300136, 300360, 300361
Federal Project #s. HP21L-5949(126), BHL-5949(062), BHL-5949(063)
Bridge Widening on Price Canyon Rd near Edna, Ca

Rejected UDBE Firms
Copies of quotes received from firms involved

Specialty Construction, Inc.
Rejected UDBE Firms
County of San Luis Obispo Contract #s 300136, 300360, 300361
Federal Project #s HP21L-5949(126), BHL5949(062), BHL-5949(063)
Bridge Widening on Price Canyon Rd near Edna, CA

D. The names, addresses and phone numbers of rejected UDBE firms, the reasons for the bidder's rejection of the UDBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each UDBE if the selected firm is not a UDBE: Names, addresses and phone numbers of rejected UDBEs and the reasons for the bidder's rejection of the UDBEs:

Names, addresses and phone numbers of firms selected for the work above:

Rejected UDBE Firm Name/Address/Phone	Reason for Rejection	Selected Firm Name/Address/Phone	Price Difference
A.C. Dike Co. 2788 Venture Dr. Lincoln, CA 95648 Ph: (916) 652-0159	Not Competitive	Asphalt Dike Construction, Inc. dba APCO P.O. Box 790 Goshen, CA 93227-0790 Ph: (559) 651-7900	\$5,024.10
Super Seal & Stripe P.O. Box 755 Fillmore, CA 93016-0755 Ph: (805) 524-7345	Not Competitive	Toste Construction, Inc. 2651 Green Place Arroyo Grande, CA 93420 Ph: (805) 473-0884	\$2,601.00
KRC Safety Co., Inc. 6085 West Hurley Ave. Visalia, CA 93292 Ph: (559) 732-0394	Not Competitive	Statewide Traffic Safety & Sings 130 Grobrie Ct Fairfield, CA 94533 Ph: (707) 864-9952 (Items: 32, 34, 39, 40, 111, 113, 118, 119, 172)	\$18,001.00
		Specialty Construction, Inc. (SELF PERFORMED) 645 Clarion Ct. San Luis Obispo, CA 93401 Ph: (805) 543-1708 (Items: 1, 33, 37, 38, 112, 116, 117)	\$65,721.65

* * * Communication Result Report (Dec. 27. 2011 3:37PM) * * *

1) Souza Construction, Inc.
2) 18055468287

Date/Time: Dec. 27. 2011 3:34PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
4083 Memory TX	5431712	P. 10	OK	

Reason for error
 E. 1) Hang up or line fail
 E. 2) Busy
 E. 3) No answer
 E. 4) No facsimile connection
 E. 5) Exceeded max. E-mail size



SOUZA CONSTRUCTION, INC.
 P.O. Box 3810, San Luis Obispo, CA 93403-3810
 (805) 546-8288 • Fax (805) 546-8287 Lic. No. 479476

Date: Dec 27, 2011
 To: *SPECIALTY CONSTRUCTION*
 Firm:
 Phone No:
 Fax No: *905-542-1712*
 From: Kea Johnston
 Re: Bridge Widening on Price Canyon Rd
 Contract No: _____ Souza Job No: _____

WE ARE TRANSMITTING:	THE FOLLOWING:	FOR:
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<input type="checkbox"/> By Mail	<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Review & Approval
<input checked="" type="checkbox"/> FAX	<input type="checkbox"/> Memo	<input checked="" type="checkbox"/> Your Information & Use
<input type="checkbox"/> Under Separate Cover	<input type="checkbox"/> Plans	<input type="checkbox"/> As Requested
<input type="checkbox"/> By Delivery Service	<input type="checkbox"/> Specifications	<input type="checkbox"/> Review & Return (with comments)
<input type="checkbox"/> CA Delivery Service	<input type="checkbox"/> Cost Estimate	<input type="checkbox"/> Re-submittal
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Submittal	
	<input type="checkbox"/> Contract	

REMARKS:

[Signature]
 Kea Johnston

* * * Communication Result Report (Dec. 27. 2011 3:51PM) * * *

1) Souza Construction, Inc.
2) 18055468287

Date/Time: Dec. 27. 2011 3:49PM

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Reason for error
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 E. 2) Busy
 E. 3) No answer
 E. 4) No facsimile connection
 E. 5) Exceeded max. E-mail size



SOUZA CONSTRUCTION, INC.
 P.O. Box 3810, San Luis Obispo, CA 93403-3810
 (805) 546-8288 • Fax (805) 546-8287 Lic. No. 479476

Date: Dec 27, 2011
 To: *Whittaker Construction*
 Firm:
 Phone No:
 Fax No: *805-226-4021*
 From: Ken Johnston
 Re: Bridge Widening on Price Canyon Rd
 Contract No: _____ Souza Job No: _____

WE ARE TRANSMITTING:	THE FOLLOWING:	FOR:
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<input type="checkbox"/> By Mail	<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Review & Approval
<input checked="" type="checkbox"/> FAX	<input type="checkbox"/> Memo	<input checked="" type="checkbox"/> Your Information & Use
<input type="checkbox"/> Under Separate Cover	<input type="checkbox"/> Plans	<input type="checkbox"/> As Requested
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<input type="checkbox"/> CA Delivery Service	<input type="checkbox"/> Cost Estimate	<input type="checkbox"/> Re-submittal
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Submittal	
	<input type="checkbox"/> Contract	

REMARKS:

Ken Johnston