

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 2/28/2012	(3) CONTACT/PHONE Jeff Werst, Design Engineer (805) 781-4480	
(4) SUBJECT Submittal of bid opening report for the for Bridge Widening on Price Canyon Road near Edna, California, Contract Nos. 300126, 300360, 300361, Federal Project Nos. HP21L-5949(126), BHL-5949(092) & BHL-5949(063) and authorize a Budget Adjustment, by a 4/5 th s vote, in the Amount of \$50,679.			
(5) RECOMMENDED ACTION In accordance with applicable State Law, it is our recommendation that your Honorable Board: 1. Find that the bid submitted by Specialty Construction, Inc. is nonresponsive due to failure to meet the UDBE contract goal of 3% and its failure to demonstrate an adequate good faith effort to meet said UDBE participation goal; and 2. Adopt the "Evaluation of Good Faith Effort of Specialty Construction, Inc." memorandum dated January 19, 2012 (Attachment "A") and the "Good Faith Effort Reconsideration Committee Determination" memorandum dated February 15, 2012 (Attachment "C") as the Board's written decision in support of the finding in paragraph 1 above; and 3. Reject the bid submitted by Specialty Construction, Inc. on the grounds of non-responsiveness; and 4. Award the subject contract to Souza Construction, Inc., the lowest responsive, responsible bidder, with a bid of \$3,460,890.53; and 5. Authorize the Public Works Director or his designee to approve change orders for a contingency amount up to \$346,089, plus an additional amount of \$250,000 for traffic control and supplemental work, for a final total construction amount of \$4,056,979.53; and 6. Authorize a budget adjustment, by a 4/5 th s vote, in the amount of \$50,679 for a total project budget of \$7,568,060.			
(6) FUNDING SOURCE(S) Roads Fund, FHWA-HBP, RSHA	(7) CURRENT YEAR FINANCIAL IMPACT TOTAL = \$7,568,060.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. _____) <input checked="" type="checkbox"/> Board Business (Time Est. <u>45 min</u>)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A		(12) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: 1112082 <input checked="" type="checkbox"/> 4/5th's Vote Required <input type="checkbox"/> N/A	
(13) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) 19001117		(14) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
(15) LOCATION MAP Attached	(16) BUSINESS IMPACT STATEMENT? No	(17) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date 11/15/11	
(18) ADMINISTRATIVE OFFICE REVIEW			
(19) SUPERVISOR DISTRICT(S) District 3 -			

Reference: 12FEB28-BB-1

County of San Luis Obispo



TO: Board of Supervisors
FROM: Public Works
Jeff Werst, Design Engineer
VIA: Dave Flynn, Deputy Director of Public Works
DATE: 2/28/2012

SUBJECT: Submittal of bid opening report for the for Bridge Widening on Price Canyon Road near Edna, California, Contract Nos. 300126, 300360, 300361, Federal Project Nos. HP21L-5949(126), BHL-5949(092) & BHL-5949(063) and authorize a budget adjustment, by a 4/5th's vote, in the amount of \$50,679.

RECOMMENDATION

In accordance with applicable State Law, it is our recommendation that your Honorable Board:

1. Find that the bid submitted by Specialty Construction, Inc. is nonresponsive due to failure to meet the UDBE contract goal of 3% and its failure to demonstrate an adequate good faith effort to meet said UDBE participation goal; and
2. Adopt the "Evaluation of Good Faith Effort of Specialty Construction, Inc." memorandum dated January 19, 2012 (Attachment "A") and the "Good Faith Effort Reconsideration Committee Determination" memorandum dated February 15, 2012 (Attachment "C") as the Board's written decision in support of the finding in paragraph 1 above; and
3. Reject the bid submitted by Specialty Construction, Inc. on the grounds of non-responsiveness; and
4. Award the subject contract to Souza Construction, Inc., the lowest responsive, responsible bidder, with a bid of \$3,460,890.53; and
5. Authorize the Public Works Director or his designee to approve change orders for a contingency amount up to \$346,089, plus an additional amount of \$250,000 for traffic control and supplemental work, for a final total construction amount of \$4,056,979.53; and
6. Authorize a budget adjustment, by a 4/5th's vote, in the amount of \$50,679 for a total project budget of \$7,568,060.

DISCUSSION

In accordance with direction from your board, bids for the subject contract were opened on December 15, 2011.

Three bids were received. They are as follows:

	<u>Bid Amount</u>	<u>UDBE Participation</u>
Engineer's Estimate	\$3,988,682.00	3% goal
Specialty Construction, Inc.	\$3,447,094.55	2.32%
Souza Construction, Inc.	\$3,460,890.53	3.12%
Whitaker Construction Group, Inc.	\$4,075,278.35	5.12%

General Discussion

The Underutilized Disadvantaged Business Enterprises (UDBE) Contract Goal for this project was 3%. Bidders were required by the bid documents to meet this goal or to show a good faith effort to meet the goal by using UDBE subcontractors, material suppliers, or trucking companies such that 3% of their total bid amount was going towards UDBEs. Whether or not the UDBE Contract Goal was met by the Bidders, the Bidders were also required to provide documentation that adequate Good Faith Efforts (GFE) were made to meet the goal. While two of the three bidders achieved the UDBE participation goal, the lowest bidder, Specialty Construction, Inc. (SCI) did not meet the goal, and consideration of the responsiveness of their bid therefore depended on staff evaluation of the adequacy of their GFE, which staff subsequently determined to be inadequate (Attachments "D", "E" and "F").

In addition to the evaluation performed by staff, a formal written protest was submitted by the second low bidder, Souza Construction, Inc., alleging that SCI failed to "establish a good faith effort" to meet the contract UDBE goal. A copy of the protest letter is included with this Board letter as Attachment "G". Public Works Department staff provided written notice to SCI stating the Department's intent to recommend that the County Board of Supervisors find SCI's bid non-responsive for failure to (1) meet the UDBE contract goal of 3% and (2) demonstrate a good faith effort to meet the UDBE participation goal for this project. The notice included a memorandum providing a detailed evaluation of SCI's GFE, and provided an opportunity for SCI to seek a reconsideration of the Department's determination and intended recommendation to the Board. SCI responded to Souza's protest (Attachment "H"). SCI subsequently appeared before a reconsideration panel to respond to the Department's determination. The reconsideration panel ultimately upheld the original determination by the Department, as described in the memorandum dated February 15, 2012, which is included with this Board letter. It is therefore staff's recommendation that SCI's bid be rejected as non-responsive, and that the contract be awarded to the next lowest bidder, Souza Construction, Inc.

GFE Evaluation and Bid Responsiveness

As indicated in Section 2-1.04 of the Contract Special Provisions, this project is subject to Title 49 Code of Federal Regulations Part 26 (49 CFR 26), and the Regulations in their entirety were incorporated by reference into the bidding documents. The federal regulations, as administered by Caltrans Local Assistance, include requirements to encourage participation by Underutilized Disadvantaged Business Enterprises (UDBE). As indicated in the Notice to Bidders, the County of

San Luis Obispo set the UDBE contract goal at 3%. To be an Underutilized Disadvantaged Business Enterprise, a firm must meet the definition of a disadvantaged business enterprise and the majority of the ownership of the firm must be held by a member or members of the following groups: Black Americans, Native Americans, Asian-Pacific Americans or women. In compliance with the federal regulations, and as described in Section 2-1.04 of the Contract Special Provision, bidders were required to meet the stipulated UDBE contract goal or to demonstrate that, prior to bidding, good faith efforts were made to meet the goal. Failure to meet the goal or submit adequate evidence of a good faith effort would result in the bid being considered nonresponsive. Applicable pages from the Notice to Bidders, Bid Proposal and Special Provisions sections of the Project Documents, as advertised, are included with this letter as Attachment "R".

Public Works Department staff has determined that the bid of Specialty Construction, Inc. is non-responsive due to the failure to meet the UDBE contract goal of 3% or to demonstrate an adequate good faith effort to meet the UDBE participation goal for this project. The County's evaluation of the good faith effort was based on the "Guidance Concerning Good Faith Efforts" contained in 49 CFR Part 26, Appendix A. While this CFR guidance document cautions agencies against requiring a bidder to meet a contract participation goal, it requires us to make a fair and reasonable judgment of whether the bidder was actively and aggressively trying to meet the goal, considering the quality, quantity and intensity of the efforts the bidder made prior to bidding. After reviewing the good faith effort submittal of SCI, staff determined that SCI failed to select portions of the work to be made available to UDBE firms consistent with the available UDBE subcontractors and suppliers, failed to solicit all UDBE firms who have the capability to perform the items of work it claimed to make available to UDBE firms, and failed to take contract goals into consideration when negotiating with UDBE firms. In addition, when taking into account the performance of the other bidders to meet the goal, staff determined that, with additional reasonable efforts, SCI could have met the goal. The reasons for staff's determination of the inadequacy of the good faith effort of SCI are more fully discussed in the "Evaluation of Good Faith Effort" memorandum which is attached to this letter as Attachment "A". Subsequent to making this determination, our Department provided written notice to SCI stating our intent to recommend to your Board that SCI's bid be rejected as non-responsive, and that the contract be awarded to the next lowest bidder, Souza Construction, Inc. A copy of this notice is included with this letter as Attachment "B". The written notice also provided an opportunity for SCI to request administrative reconsideration of the Department's determination regarding the good faith effort evaluation, in conformance with 49 CFR Part 26.53.

Reconsideration of GFE Evaluation

After receiving the notice letter and GFE evaluation memorandum, SCI notified the Department that they wished to have administrative reconsideration of the Department's determination, and SCI provided documentation responding to the Department's GFE evaluation. A copy of SCI's reconsideration request letter and subsequent documentation and response letter are included with this Board letter as Attachments "I" and "J", respectively.

A reconsideration meeting was held on February 7, 2012 to allow Specialty Construction, Inc. (SCI) to respond to the preliminary finding by the Public Works Design Division that SCI did not meet the 3% UDBE contract goal and did not make a good faith effort to meet the goal. The Reconsideration Committee considered the information provided by County staff (Attachment "L") and by SCI, including its written rebuttal dated January 27, 2012, as well as oral presentations made by SCI at the meeting and additional documents provided by SCI after the meeting (Attachments "M", "N", "O", "P" and "Q"). Information provided by the second low bidder, Souza, was also considered (Attachment "K"). The Reconsideration Committee made the finding that "in its judgment, weighing the quality,

quantity and intensity of the efforts made by the low bidder, that SCI did not demonstrate good faith efforts to meet the 3% UDBE contract goal,” thus upholding the original determination by staff. A complete discussion of the Reconsideration Panel’s findings is included in a memorandum which is attached to this Board letter as Attachment “C”.

Project Background Information

The Department of Public Works has developed this project to widen a portion of the easterly limit of Price Canyon Road between State Highway 227 and Ormonde Road. The project objective is to improve safety and operations as well as create a Class II bike lane. The current project for award is to widen the structures over west Corral de Piedra Creek and the Union Pacific Railroad and improve the roadway approaches to provide eight foot shoulders. This is the first of two phases of construction to construct bike lanes on Price Canyon Road from State Highway 227 to Ormonde Road.

Phase 2 is currently being designed and has \$5.4 million in State Transportation Improvement Program (STIP) funding programmed for construction in FY 14/15.

OTHER AGENCY INVOLVEMENT/IMPACT

This project is funded by the Federal Highway Administration’s (FHWA) Highway Bridge Program, as administered by Caltrans Local Assistance. This funding requires the County to advertise, award, and administer the construction contract in accordance with the Local Assistance Procedures Manual and FHWA program requirements. The UDBE Contract Goal and GFE effort requirements are consistent with terms of the Disadvantaged Business Enterprise (DBE) Implementation Agreement with Caltrans that was presented to your Board and subsequently approved on May 19, 2009. The current Race/Gender Conscious DBE Program subsequently took effect on June 2, 2009, and as described in the agreement, in order to receive FHWA funding for a project, the County must establish UDBE contract participation goals for the project.

Caltrans has authorized construction funding for this project and will act, on behalf of the Federal Highway Administration, as the lead federal agency. The Army Corps of Engineers, the National Marine Fisheries Service and the United States Fish and Wildlife Service have all advised on the project and issued their appropriate permits. Union Pacific Railroad has provided plan review as it relates to their right-of-way and has worked in cooperation with the County for the completion of this project. And the various utility companies (AT&T, PG&E, and The Gas Co.) have provided appropriate input and prepared for their relocations where necessary. The community of Edna was invited early on to review and comment on the proposed project.

The San Luis Obispo Council of Governments has been instrumental in securing funding and advocating for the completion of this project, specifically the second phase, by programming STIP funds for this route.

FINANCIAL CONSIDERATIONS

This project, including two bridges and the Widening of Price Canyon Road is a multi-year project budgeted in the Roads budget at \$7,618,739. The total Project costs are estimated at \$7,568,060. Funding for the project comes from several sources including the Road Fund, Federal Bridge Funding and Federal Demonstration Funds, as well as a contribution from the PXP Exploration Company toward Bike lanes and the Regional State Highway Account (RSHA).

A budget adjustment is being requested in the amount \$50,679. This budget adjustment is necessary to reduce the estimated project costs, reduce anticipated Federal revenue and increase the match funding from Roads. Eligible costs for Federal reimbursement are expected to be less than originally estimated. The increased Roads match funding will be from unanticipated Gas Tax revenues.

Please see Exhibit "A" for an estimated cost breakdown of the project.

Construction must start invoicing by July 7, 2012 or risk loss of federal funds.

RESULTS

The immediate result of the recommended action will be the construction of this project, which will result in a safer community by providing wider shoulders, and thereby providing bike lanes and an improved inter-regional route, allowing for a safer driver experience and interaction with bicyclists.

File: Contract No. 300136, 300360, 300361

c: Accounting Officer
Resident Engineer
Construction Engineer
Specialty Construction, Inc., Contractor
Souza Construction, Inc., Contractor

Reference: 12FEB28-BB-1

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ATTACHMENTS

1. Vicinity Map
2. Exhibit A - Estimated Costs
3. A. Evaluation of Good Faith Effort of Specialty Construction, Inc. (dated 1/19/12)
4. B. County Notice of finding of Non-Responsiveness (dated 1/24/12)
5. C. Good Faith Effort Reconsideration Committee Determination (dated 2/15/12)
6. D. Specialty Construction, Inc. Bid Documents (12/15/11)
7. E. Specialty Construction, Inc. Good Faith Effort (12/20/11)
8. F. Specialty Construction, Inc. Letter "UDBE Commitment/Good Faith Efforts" (dated 12/23/11)
9. G. Souza Construction, Inc. Bid Protest (dated 12/27/11)
10. H. Specialty Construction, Inc. Response to Souza Protest (dated 12/29/11)
11. I. Specialty Construction, Inc. Letter Requesting Reconsideration (dated 1/23/12)
12. J. Specialty Construction, Inc. Reconsideration Documentation and Response Letter (dated 1/27/12)
13. K. Souza Construction, Inc. Letter Responding to Specialty Construction, Inc. Reconsideration Documentation and Response Letter (dated 2/2/12)
14. L. Table of Contents of Reference Documents Provided to the Reconsideration Committee by County Public Works Staff for the Reconsideration Meeting (Copy of the documents is included in the Clerk's File for this Board Letter)
15. L.1 Reference Documents Provided to the Reconsideration Committee by County Public Works Staff for the Reconsideration Meeting Clerk's File
16. M. Table of Contents of Reference Documents Provided to the Reconsideration Committee at the Reconsideration Meeting by Specialty Construction, Inc. (Copy of the documents is included in the Clerk File for this Board Letter)
17. M.1 Reference Documents Provided to the Reconsideration Committee at the Reconsideration Meeting by

Specialty Construction, Inc. Clerk's File

18. N. Specialty Construction, Inc. Letter to the Reconsideration Committee (dated 2/14/12)
19. O. Specialty Construction, Inc. Letter with Projects Awarded Based on Good Faith Efforts (dated 2/8/12)
20. P. Specialty Construction, Inc. Letter with CCWA Project Awarded Based on Good Faith Efforts (dated 2/10/12)
21. Q. Specialty Construction, Inc. Letter with Ventura Co Project Awarded Based on Good Faith Efforts (dated 2/10/12)
22. R. Pages from the Notice to Bidders, Bid Proposal and Special Provisions Sections of the Project Advertisement