

Gerald C. Weaver of Counsel

LAW
OFFICE J. Tavener Holland

February 18, 2016
Via Facsimile & U.S. Mail

State of California Department of Transportation
Office Engineer, MS 43
1727 30th Street
P.O. Box 168041
Sacramento, CA 95816

Facsimile Number: (916) 227-6282

Attn: John McMillan, Deputy Division Chief

RE: Response to Granite Construction Company Bid Protest
Contract No. 05-0T6304
05-SB-101-45.6/46.4
Bid Opening Date: February 3, 2016

Dear Mr. McMillan:

I have reviewed the protest filed by Granite Construction ("Granite") and believe their claims lack merit. Souza Construction, Inc. ("Souza") used Kritz Excavating and Trucking, Inc. ("Kritz"), a recognized trucking DBE, to export excavated material from the jobsite using their end dump trucking rate. Kritz owns a total of eighteen (18) trucks of various types. The layout of the dump site is such that it will necessitate a variety of truck types—a variety that Kritz can and does provide. The finer material is most likely transported in bottom dumps, while the rockier material will be hauled in end dumps. There is no way to know precisely what percent of material will be required to be hauled in end dumps versus bottom dumps until Souza begins excavation. The boring logs made available in the bid documents indicate that ripping will be required in the lower portion of the cut, thus requiring the use of end dumps in this area.

Pursuant to 49 CFR 26.55(d), Kritz has several options regarding how it meets the DBE trucking needs of the project. Souza would be infringing upon, and interfering with, Kritz's commercially useful function if Souza were to get involved with Kritz's procurement of trucks in accordance with that section of the CFRs.

Moreover, as the enclosed letter from Kritz demonstrates, there are more than ample end load trucks available to meet the needs of this particular project. Kritz has, among other things, the option to lease every end dump truck listed on the attached page for full DBS credit pursuant to 29 CFR 26.55(d)(6).

Gerald C. Weaver, of Counsel

ATTORNEYS J. Tavener Holland

Finally, Souza made a Good Faith Effort ("GFE") to meet the 13% DBE goal for the project. Souza understood during the bidding process the extent of the trucking on this project and were guaranteed to meet the goal with that alone. Souza received many DBE quotes that were not particularly competitive in terms of price, and since Souza had so dramatically exceeded the contract goal (by 8.5%), Souza did not have to show good faith by using subcontractors with higher bids. Souza was able to provide a more competitive bid than Granite while nonetheless meeting the contract goal. Not only did Souza far exceed the contract goal, it also made a bona fide Good Faith Effort in addition.

Summary discussion regarding Souza's attempt to meet the DBE goal or achieve a GFE:

Even if all of the material could be hauled in bottom dumps, the \$5/hr. lower rate would represent a \$64,815 reduction in DBE trucking, which would represent \$1,331,156 of DBE participation, or 20.5% of the contract price.

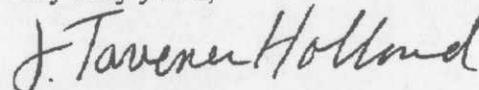
In reality, a combination of truck types will be required to be determined after beginning the excavation and determining the character of the material. For bidding purposes, Souza used the worst case scenario; to wit, all of the excavation being hauled in end dumps.

See attached letter from Kritz showing a partial list of End Dump Trucks available for lease, to be driven by Kritz employees, to meet any potential trucking needs of the project. Kritz has been in business for over 30 years, and we are unaware of any circumstance where they were unable to perform the DBE trucking needs of the project.

The bid protest of Granite utterly lacks merit and disregards that actual fact and applicable law. As such, we Souza respectfully requests that Granite's bid protest be disregarded. Please do not hesitate to contact the undersigned should you have any questions or concerns.

Thank you in advance for your assistance on this matter.

Very truly yours,



J. Tavener Holland

Attorney for Souza Construction, Inc.

JTH/sjh

Encls.

cc: Gerald C. Weaver, Esq (via email)

Client (via email)

KRITZ EXCAVATING & TRUCKING, INC

415 VOLPI YSABEL ROAD, PASO ROBLES CA 93446

OFFICE: 805-239-2686 FAX: 805-239-2772

RE: 05-0T6304 GAVIOTA

KRITZ EXCAVATING & TRUCKING, INC would be able to lease the following End Dump trucks, using our own drivers, for the Gaviota Job. This list includes but is not limited to trucks that could be leased.

A-Jay Exacating- 1

Aguiar Transport- 1

Cary Trucking- 1

Cole Farms- 5

Crye- 3

Ferravanti-1

Joey Eames Trucking-5

Lyon Trucking- 2

PPC- 6

Switzer- 3

Viborg- 1

There are multiple options to provide DBE End Dump trucking. We will comply with 49 CFR 26.55 in providing trucks for the DBE credit committed by Souza Construction.

Sincerely,

Diane Kritz
President

Gerald C. Weaver, of Counsel

LAW
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J. Tavener Holland**FACSIMILIE**

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