



Via Fax & U.S. Mail, Certified

Wednesday, February 05, 2014

Office Engineer
Department of Transportation
1727 30th Street
Sacramento, CA 95816

RE: Caltrans Contract No: 05-1A0904; Bid Protest re: American Pacific Construction, Rockwood General Contractor's Inc.

Souza Construction, Inc. ("Souza") hereby submits this protest of the bids that both American Pacific Construction ("American Pacific") and Rockwood General Contractor's, Inc ("Rockwood") for Caltrans Project 05-1A0904 ("project") on the basis that both American Pacific and Rockwood failed to demonstrate that they achieved the DBE participation goal set for this project and is thus nonresponsive to the solicitation.

Caltrans Standard Specifications (2010), Section 2 (Bidding), 2.1.12, DISADVANTAGED BUSINESS ENTERPRISES, addresses DBE enterprises in the context of bidding CalTrans Projects. Section 2-1.12B (1) paragraph 1 states that "Section 2-1.12B applies if a DBE goal is shown on the Notice to Bidders". Please find attached "Exhibit A" Notice to Bidders. The Notice to Bidders states that "The DBE Contract goal is 6 percent". Thus, per the requirements of §2-1.12, bidders on the project at issue must meet the stated DBE participation goal of six percent (6%). Furthermore, bidders must demonstrate such compliance through utilization of the CalTrans Bidder-DBE-Commitment Form (Des-OE-0102.10C).

American Pacific Construction submitted their DBE commitment (see exhibit "B") and demonstrated \$100,636.64 or (50.4%) total claimed participation. Please note that the submitted commitment includes zero (0) DBE subcontractor or supplier participation, and attempts to meet the DBE goal by participating as a General Contractor. Section 2-1.12B (1) general, paragraph 4, states the following: "Make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers." As a result, the DBE Participation secured by American Pacific on the project falls under 6% and does not meet the explicitly stated contract goal.

Rockwood submitted the DBE commitment (see exhibit "C") and provided 0% total claimed participation. As a result, the DBE participation secured by Rockwood on the project falls under 6% and does not meet the explicitly stated contract goal.

Please find the CalTrans Bidder -DBE-Commitment submitted by Souza (see exhibit "D"). Please note that our total claimed participation of \$12,876.80, or 6.39%, exceeds the DBE Goal of 6% and meets the project requirements in all respects. Souza went to great measure during the bidding process to solicit participation from a pipe supplier that was unaware of the project. We extensively searched for participants certified for the appropriate CUF so that we could meet the requirements of the contract. Please note that Maskell Pipe is certified for furnishing the 48" RCP pipe. In addition, Souza obtained a subcontract bid from KRC to furnish and install construction area signs even though Souza owns the signs and could have installed them at considerable savings. We recognize the importance of achieving the Contract Goal, and would continue to find additional ways to meet the goals until they were met.

As the above discussion demonstrates, both American Pacific Construction, and Rockwood, have failed to meet the clearly stated requirements for DBE participation on the project. As such, both bids are nonresponsive. See, Taylor Bus Service, Inc. v. San Diego Bd. Of Education, 195 Cal.App.3d 1331,1341 (1987) ("A bid is responsive if it promises to do what the bidding instructions demand"). It is elementary in the present situation that any bidder allowed to evade the DBE participation goal, a requirement provided by law, secures unto themselves an undeniable competitive advantage over other bidders. As such, these deviations from the project specifications in both bids cannot be deemed inconsequential, and their bids must be rejected as nonresponsive.

Sincerely:



Steve A. Souza, President
Souza Construction, Inc

Exhibit "A"

NOTICE TO BIDDERS

Bids open Tuesday, January 7, 2014

Dated November 25, 2013

General work description: Replace culvert

The Department will receive sealed bids for CONSTRUCTION ON STATE HIGHWAY IN SAN LUIS OBISPO COUNTY NEAR SANTA MARGARITA AT 0.9 MILE WEST OF SHELL CREEK ROAD.

District-County-Route-Post Mile: 05-SLO-58-20.1

Contract No. 05-1A0904

The Contractor must have either a Class A license or one of the following Class C licenses: C-42.

The DBE Contract goal is 6 percent.

Federal-aid project no.:

ACSTP-P058(116)E

Bids must be on a unit price basis.

Complete the work, excluding plant establishment work, within 35 working days.

Complete the work, including plant establishment work, within 285 working days.

Complete the plant establishment work within 250 working days.

The estimated cost of the project is \$240,000.

No prebid meeting is scheduled for this project.

The Department will receive bids until 2:00 p.m. on the bid open date at 1727 30th Street, Bidders' Exchange, MS 26, Sacramento, CA 95816. Bids received after this time will not be accepted. Department staff will direct the bidders to the bid opening.

The Department will open and publicly read the bids at the above location immediately after the specified closing time.

District office addresses are provided in the *Standard Specifications*.

Present bidders' inquiries to the Department and view the Department's responses at:

http://www.dot.ca.gov/hq/esc/oe/inquiry/bid_inquiries.php

Questions about alleged patent ambiguity of the plans, specifications, or estimate must be asked before bid opening. After bid opening, the Department does not consider these questions as bid protests.

Submit your bid with bidder's security equal to at least 10 percent of the bid.

Prevailing wages are required on this Contract. The Director of the California Department of Industrial Relations determines the general prevailing wage rates. Obtain the wage rates at the DIR Web site, <http://www.dir.ca.gov>, or from the Department's Labor Compliance Office of the district in which the work is located.

The federal minimum wage rates for this Contract as determined by the United States Secretary of Labor are available at <http://www.dot.ca.gov/hq/esc/oe/federal-wages>.

If the minimum wage rates as determined by the United States Secretary of Labor differs from the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for

Exhibit "B"

2nd Low
was in bid book

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
CALTRANS BIDDER - DBE - COMMITMENT
DEB-OE-0102.10C (NEW 06/2012)

Second Bidder

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in section 2 of the specifications. Failure to submit the required DBE information will be grounds for finding the bid nonresponsive.

CONTRACT NO: 05-1A0904

BID AMOUNT: \$ 199,669.80

BID OPENING DATE: 1-7-2014

BIDDER'S NAME: AMERICA PACIFIC CONSTRUCTION

DBE GOAL FROM CONTRACT, %: 6%

DBE PRIME CONTRACTOR CERTIFICATION#: 39072

BID ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED ²	FOR CALTRANS USE ONLY	NAME OF DBE (Must be certified on the data bids are opened - include Caltrans certification #, DBE address and phone number (Indicate 2nd and lower tier subcontractors))	DOLLAR AMOUNT DBE ³
	As listed in attached calculation		America Pacific Construction Certification # 39072 Ph-559-577-9999	\$100,636.64
Total Claimed Participation				\$100,636.64
				50.4%

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Name of the First Tier DBE Subcontractor and their respective item(s) of work listed above must be consistent, where applicable, with the name and item of work in the "Subcontractor List" submitted with your bid. Copies of the DBE quotes are required.

- DBE prime contractors must enter their certification number and indicate all work to be performed by DBEs including work performed by its own forces.
- If 100% of items not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished.
- See section 2-1.12 of the specifications to determine the credit allowed for DBE firms.

Submit to:

MBC AS
OFFICE ENGINEER
DEPARTMENT OF TRANSPORTATION
1727 30TH STREET
SACRAMENTO, CA 95818-7008

Arijana Singh
Signature of Bidder

1-6-14 559-577-9999
Date (Area Code) Tel. No.

ASHISH SEHGAL
Person to Contact (Please Type or Print)

ADA Notice For individuals with sensory disabilities, this document is available in alternate format. For information call (916) 654-6410 or TDD (916) 664-3880 or Video Records and Forms Management, 1120 N Street, MS-99, Sacramento, CA 95814.

1/6/14

Unified Certification Program

[Back To Query Form](#)

Search Returned 1 Records

Mon Jan 06 19:18:27 PST 2014

Query Criteria

Firm/DBA Name: AMERICA PACIFIC CONSTRUCTION
City: BREAA
Firm Type: DBE

Firm ID	39072
Firm/DBA Name	AMERICA PACIFIC CONSTRUCTION
Address Line1	201 LAUREL AVE. #13
Address Line2	
City	BREAA
State	CA
Zip Code1	92821
Zip Code2	
Mailing Address Line1	
Mailing Address Line2	
Mailing City	
Mailing State	
Mailing Zip Code1	
Mailing Zip Code2	
Certification Type	DBE
E-Mail	apconstruction09@gmail.com
Contact Name	ASHISH SEGHAL
Area Code	(559)
Phone Number	577-9999
Fax Area Code	(714)
Fax Phone Number	384-3988
Agency Name	DEPARTMENT OF TRANSPORTATION
Counties	13; 18; 30; 33; 36; 37;
Districts	07; 08; 11; 12;
DBE NAICS	237310; 238910;

ACDBE NAICS

Work Codes	C1901 ROADWAY EXCAVATION; C1820 STRUCTURE EXCAVATION; C3901 ASPHALT CONCRETE; C3910 PAVING ASPHALT (ASPHALT CONCRETE);
Licenses	A General Engineering Contractor;
Trucks	
Gender	M
Ethnicity	ASIAN SUBCONTINENT
Firm Type	DBE

[Back To Query Form](#)

DBE PRIME CONTRACTOR: AMERICA PACIFIC CONSTRUCTION

DBE CERTIFICATION # 39072

Replace Culvert

06-SLO-58-20.1 * Date Advertised 11/25/2013

Bids Opening in Sacramento * Bids Open 01/07/2014

BID AMOUNT \$ 199,669.80

In San Luis Obispo County Near Santa Margarita At 0.9 Mile West Of Shell Creek Road
285 Working Days * 8% DBE Requirement * Cost per set: Bidders: \$E-ad, Non-bidders: \$E-ad

Item No.	Item Code	Item Description	Unit of	Estimated	BID UNIT	BID AMOUNT	DBE goal % claimed	DBE claimed amount
			Measure	Quantity				
1	120090	CONSTRUCTION AREA SIGNS	LS	1	\$ 2,000.00	\$ 2,000.00	100%	\$ 2,000.00
2	120100	TRAFFIC CONTROL SYSTEM	LS	1	\$ 14,000.00	\$ 14,000.00	100%	\$ 14,000.00
4	130100	JOB SITE MANAGEMENT	LS	1	\$ 520.00	\$ 520.00	100%	\$ 520.00
6	130640	TEMPORARY FIBER ROLL	LF	200	\$ 3.70	\$ 740.00	100%	\$ 740.00
7	130900	TEMPORARY CONCRETE WASHOUT	LS	1	\$ 530.00	\$ 530.00	100%	\$ 530.00
8	141000	TEMPORARY FENCE (TYPE BSA)	LF	1,040	\$ 2.65	\$ 2,756.00	100%	\$ 2,756.00
9	150204	ABANDON CULVERT (LF)	LF	92	\$ 74.00	\$ 6,808.00	100%	\$ 6,808.00
10	151531	RECONSTRUCT FENCE	LF	180	\$ 32.00	\$ 5,760.00	100%	\$ 5,760.00
11	155232	SAND BACKFILL	CY	25	\$ 140.00	\$ 3,500.00	100%	\$ 3,500.00
12	200002	ROADSIDE CLEARING	LS	1	\$ 5,300.00	\$ 5,300.00	100%	\$ 5,300.00
29 (F)	510502	MINOR CONCRETE (MINOR STRUCTURE)	CY	5.9	\$ 1,880.00	\$ 11,092.00	100%	\$ 11,092.00
30 (F)	721015	ROCK SLOPE PROTECTION (LIGHT, METHOD B) (CY)	CY	50	\$ 260.00	\$ 13,000.00	100%	\$ 13,000.00
31	729013	ROCK SLOPE PROTECTION FABRIC (CLASS B)	SQYD	97	\$ 1.20	\$ 116.40	100%	\$ 116.40
32	26710	48" RCP PIPE JACKING (ROADWAY EXCAVATION FOR DBE CLAIMED PORTION ONLY)	LF	89	\$ 1,104.00	\$ 98,256.00	29%	\$ 28,494.24
33	800101	TEMPORARY FENCE (TYPE BW)	LF	430	\$ 14.00	\$ 6,020.00	100%	\$ 6,020.00
		TOTAL DBE CLAIMED AMOUNT						\$ 100,636.64
		% DBE CLAIMED THIS PROJECT						50.4%

01-13-14 09:22 RCVD

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
GOOD FAITH EFFORTS DOCUMENTATION - DBE
DES-0E-0102.11A (NEW 08/2012)

PAGE 1 OF 3

1. List items of work the Bidder made available to DBE firms. Identify those items of work the Bidder might otherwise perform with its own forces and those items that have been broken down into a commodity feasible unit to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. The Bidder must demonstrate that sufficient work is made available to DBE firms.

Item of Work (Item #)	Bidder Normally Performs Item (Y/N)	Item Broken Down to Facilitate Participation (Y/N)	Amount (\$)	Percentage of Contract
1- CONSTRUCTION AREA SIGNS	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1,205.88	.69%
6- TEMPORARY FIBER ROLL	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	692.00	.39%
8- TEMPORARY FENCE (TYPE ESA)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	3,525.60	.20%
9- ABANDON CULVERT (UP)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1,192.32	.68%
10- RECONSTRUCT FENCE	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1,812.60	1.03%
11- SAND BACKFILL	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6,540.50	3.72%
13- PACKET FERTILIZER	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	25.92	.01%
14- PLANT (GROUP D)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	519.20	.30%
15- PLANT (GROUP A)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1,557.60	.89%
16- PLANT ESTABLISHMENT WORK	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	5,408.10	3.07%
17- WOOD MULCH	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1,525.08	.87%
18- FOLIAGE PROTECTOR	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1,622.40	.92%
19- 1" FILTER ASSEMBLY UNIT	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	189.28	.11%
20- 3/4" DRIP IRRIGATION TUBING	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	648.00	.37%
21- CAM COUPLER ASSEMBLY	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	297.45	.17%
22- 1" PLASTIC PIPE (SUPPLY 40) (SUPPLY LINE)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	64.90	.04%
23- MOVE-IN/MOVE-OUT (EROSION CONTROL)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	270.40	.15%
24- HYDROMULCH	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1,665.00	.95%
25- FIBER ROLL	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1,478.20	.84%
26- HYDRO SEED	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1,887.00	1.07%
27- COMPOST	NO	NO	5,439.00	3.09%
28- INCORPORATE MATERIALS	NO	NO	1,776.00	1.01%
32- 48" RCP PIPE JACKING	NO	NO	92,866.16	52.79%
33- TEMPORARY FENCE (TYPE DW)	YES	NO	2,911.10	1.65%

01-13-14 09:22 RC 603063

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
GOOD FAITH EFFORTS DOCUMENTATION - DBE
 OES-0E-0102.11A (NEW 06/2012)

4. List the names and dates of each publication in which a request for DBE participation for this project was placed by the bidder. Attach copies of published advertisements or proofs of publication.

Publications	Date of Advertisement
COMPLIANCE NEWS	12.17.13
DBE GOOD FAITH	12.19.13
BLUE BOOK	12.19.13

5. List the names of agencies and the dates on which they were contacted to provide assistance in contacting, recruiting and using DBE firms. When agencies were contacted in writing, provide copies of supporting documents.

Name of Agency	Date of Contact	Method of Contact	Results
CUCP	12.16.13	ONLINE	LIST
COMPLIANCE NEWS	12.17.13	ONLINE	LIST
DBE GOOD FAITH	12.19.13	ONLINE	LIST

6. List efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. Identify the DBE assisted, the information provided, and the date of contact. Provide copies of supporting documents.

LISTED ON INVITATIONS TO BID

7. List efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, materials, or related expenses or services, including supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate. Identify the DBE assisted, the assistance offered, and the date. Provide copies of supporting documents.

LISTED ON INVITATIONS TO BID

8. Include additional data to support a demonstration of good faith efforts.

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (818) 654-8410 or TDD (615) 654-3893 or write Records and Forms Management, 1120 N Street, MS-82, Sacramento, CA 95814.

Rockwood General Contractors, Inc.
Project: Construction on Hwy 58 Near
Santa Margarita in San Luis Obispo
County

Transmittal Cover Sheet

01-13-14A09:22 RCVD

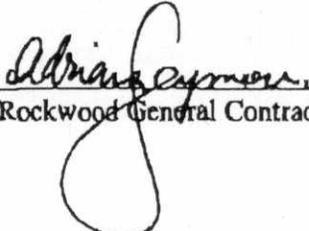
Contract #: 05-1A0904
Owner: Caltrans

Date: 01.10.14 Reference: Good Faith Effort

To: MSC 43
Office Engineer
Department of Transportation
1727 30th Street
Sacramento, CA 95818

From: Adriana Khajetoorians
Rockwood General Contractors, Inc.
P.O. Box 1529
Nipomo, CA 93444
Phone: (805) 343-7738
Fax: (805) 343-7736
License #807260 A & B

01		Good Faith Effort Documents	
02			
03			
04			
05			
06			
07			
08			
09			
10			
11			
12			
13			
14			
15			

By: 
Rockwood General Contractors, Inc.

SECTION 1

(Listed on GFE Form)

Received

Feb 5 2014 04:26pm

Feb. 5. 2014 4:18PM Souza Construction, Inc.

No. 8846 P. 14

SECTION 2

Exhibit 'D'

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
CALTRANS BIDDER - DBE - COMMITMENT
DES-05-0102.10C (NEW 08/2012)

COPY

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in section 2 of the specifications. Failure to submit the required DBE information will be grounds for finding the bid nonresponsive.

CONTRACT NO:

05-1A0904

BID AMOUNT:

\$

201,201.00

BID OPENING DATE:

JANUARY 7, 2014

BIDDER'S NAME:

Souza Engineering Contracting, Inc. DBA Souza Construction Inc.

DBE GOAL FROM CONTRACT, %:

6%

DBE PRIME CONTRACTOR CERTIFICATION:

BID ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED	FOR CALTRANS USE ONLY	NAME OF DBEs (Must be certified on the date bids are opened - include Caltrans certification #, DBE address and phone number) (Indicate 2nd and lower tier subcontractors)	DOLLAR AMOUNT DBE
1	Construction AREA STU-13		KRC PO Box 6356 VISALIA CA 93290	2000.00
32	48" RCP JAKEN PIPE		#090477 HASKELL PIPE 8604 COTTONWOOD Ave. FONTANA CA 92335 #40662	10,876.00
Total Claimed Participation				\$ 12,876.00
				6.39%

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable, with the names and items of work in the "Subcontractor List" submitted with your bid. Copies of the DBE quotes are required.

- DBE prime contractors must enter their certification number and indicate all work to be performed by DBEs including work performed by its own forces.
- If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished.
- See section 2-1.12 of the specifications to determine the credit allowed for DBE firms.

Submit to:

MSC 43
OFFICE ENGINEER
DEPARTMENT OF TRANSPORTATION
1727 30TH STREET
SACRAMENTO, CA 95818-7005

Signature of Bidder
 Date: 1/10/14
 Person to Contact: STUART SOUZA
 (Area Code) Tel. No.: 805-546-8288
 (Please Type or Print)

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.



SOUZA CONSTRUCTION, INC.
P.O. Box 3810
San Luis Obispo, Ca. 93403
(805) 546-8288 / fax (805) 546-8287
License No. 479476

FAX TRANSMITTAL

Date: February 5, 2014
To: Office Engineer
Department of Transportation
State of California
Fax: 916-227-6282
Subject: Bid Protest - Caltrans Contract No 05-1A0904

Total number of pages (including this cover sheet): 15

Please see the attached bid protest letter and exhibits A, B, C, & D.

Candy Scala for:

Steve A. Souza, President
ssouza@souzaconstructioninc.com