



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Public Works
Department No.: 054
For Agenda Of: October 4, 2011
Placement: Departmental
Estimated Tme: 30 minutes
Continued Item: Yes
If Yes, date from: September 20, 2011
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director Scott McGolpin, Director of Public Works, 568-3010
Contact Info: Chris Sneddon, Interim Deputy Director, Transportation, 568-3064
SUBJECT: **Seismic Retrofit of the San Marcos Road Bridge No. 51C-002 at Maria Ygnacia Creek, Second Supervisorial District, Federal Project No. BRLSZD-5951(090), County Project No. 862275**

County Counsel Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: County Executive Office

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- A. Approve the plans and specifications for the Seismic Retrofit of San Marcos Road Bridge No. 51C-002 at Maria Ygnacia Creek in the Second Supervisorial District, County Project No. 862275;
- B. Consider the bid protest of Souza Construction, Inc. (Souza), and the response of Brough Construction, Inc. (Brough) and follow the recommendation of Staff and the CEO's office and:
 1. Find that the good faith Underutilized Disadvantaged Business Enterprise (UDBE) efforts of Brough met the requirements of the bid documents; and
 2. Find the bid protest of Souza to be without merit; and
 3. Award the construction contract in the amount of \$737,911.50 to the lowest responsible bidder, Brough Construction, Inc. (a Tri-County Vendor), 634 Prinz Road, Arroyo Grande, California 93420, subject to the provision of documents and certifications, as set forth in the plans and specifications applicable to the project, and as required under California Law; and
 4. Approve a contingency fund of \$49,395.58 for the Seismic Retrofit of San Marcos Road Bridge No. 51C-002 at Maria Ygnacia Creek in the Second Supervisorial District, County Project No. 862275;

OR, the alternative:

- C. Consider the bid protest of Souza Construction, Inc. (Souza), and the response of Brough Construction, Inc. (Brough) and:
 - 1. Find that Brough's bid is non-responsive based on a lack of good faith UDBE efforts, and
 - 2. Uphold the protest of Souza, and
 - 3. Award the construction contract in the amount of \$789,473.54 to the lowest responsible bidder, Souza Engineering Contracting, (a Tri-County Vendor), P.O. Box 3810, San Luis Obispo, CA 93403, subject to the provision of documents and certifications, as set forth in the plans and specifications applicable to the project, and as required under California Law, and
 - 4. Approve a contingency fund of \$51,973.68 for the Seismic Retrofit of San Marcos Road Bridge No. 51C-002 at Maria Ygnacia Creek in the Second Supervisorial District, County Project No. 862275; and
- D. Approve and authorize the Chair to execute the construction contract upon return of the Contractor's executed contract documents, and the review and approval of County Counsel, Auditor-Controller, and Risk Management or their authorized representatives; and
- E. Find that the proposed action is for the maintenance and minor alteration of an existing public structure, involving negligible, or no expansion of use beyond that which presently exists, and that the proposed action is therefore exempt from CEQA pursuant to 14 CCR 15301, and approve the filing of a Notice of Exemption on that basis.

Summary Text:

On Thursday, August 18, 2011, six (6) bids were opened for the Seismic Retrofit of the San Marcos Road Bridge No. 51C-002 at Maria Ygnacia Creek, Second Supervisorial District, County Project No. 862275. Brough Construction, Inc. submitted the lowest responsive bid in the amount of \$737,911.50, which was 13% over the Engineer's Estimate. Souza Construction, Inc submitted the second low bid of \$789,473.54. The bids ranged from the low bid of \$737,911.50 to the high bid of \$998,435.30; the Engineer's Estimate was \$653,068.00. The lowest bid and second lowest bid were within 6.5% of each other.

Analysis of bids indicates that unit costs are higher than for comparable work in less challenging construction areas. San Marcos Road has adjacent homes and driveways, underground utilities, large overhead trees, utility wires, and street lights, making it a challenging working environment. In addition, significant traffic control, sound control, public notification, information signs, and schedule requirements that affect cost and work are required on this project to accommodate the needs of adjacent businesses and residents. Staff believes that the lowest bid received is reasonable for the work to be performed.

This project was bid in accordance with the Public Contract Code, which requires the award go to the lowest responsible bidder. Souza Construction, Inc. (Souza), the second low bidder submitted a bid protest dated September 1, 2011. Their protest contends that Brough Construction (Brough) did not demonstrate a good faith effort to achieve Underutilized Disadvantaged Business Enterprise (UDBE) goal of 3% for the project. UDBE firms are those owned by women, African American, Asian Pacific American, and Native American. These goals are used on projects funded through the Federal Highway Administration, which includes Highway Bridge Program (HBP) projects like the San Marcos Bridge

51C-002 project. Use of the goals is covered by 49CFR Appendix A, part 26. These are goals and not requirements. Regulations state that a contractor should make a demonstrated effort to meet the goals, and may be disqualified if they do not demonstrate such effort, but that *good faith efforts may be considered sufficient, even if the goal is not met.*

Brough provided the following information concerning its good faith efforts:

Brough advertised on two on-line UDBE bid services, The Weekly Bid Flash and Construction Star, from August 10 through August 18, the date of bid opening. Both services state that they are “listed by the State of California Department of Small Business and DVBE services as a trade and focus publication,” and are intended specifically to solicit sub-bids from California-certified UDBE’s.

Brough obtained the names and contact information of certified DBE’s from Cal-Trans and from the California Unified Certification Program. Brough emailed a bid solicitation to eleven UDBE’s on August 10, including Charlene’s. In all, Brough contacted twenty-two UDBE’s by email and fax. Twenty-one of those contacted, including Charlene’s and Super Seal, did not provide sub-bids to Brough.

Souza’s subcontractor list originally listed a non-UDBE for striping services. This subcontractor was crossed off and Super Seal was listed underneath as the striping contractor. Striping is a relatively large dollar amount item. Without Super Seal’s listing, Souza would not have met the 3% UDBE goal. Brough maintains that it should not be disqualified based solely on the fact that Souza obtained an apparent last-minute sub-bid from Super Seal, and Brough did not.

Brough submitted documentation as required by the project specifications, including Exhibit 15-H UDBE Information – Good Faith Efforts. This form is complete and indicates the good faith efforts Brough made to solicit bids and follow up, in an attempt to meet the UDBE using usual and customary practices. Brough solicited bids through advertising in commonly accepted media, and directly solicited bids from twenty- two subcontractors. Brough followed up on initial solicitations through email or phone calls. Public Works Staff contacted Super Seal and Stripe, a representative subcontractor, and they confirmed what Brough stated in their bid protest response letter dated September 9, 2011. Super Seal and Stripe confirmed that Brough did contact them, and that they did not provide a bid. In accordance with the regulations cited above, specifically “*good faith efforts may be considered sufficient, even if the goal is not met,*” Public Works recommends awarding this contract to Brough Construction Inc.



San Marcos Road Bridge No. 51C-002, looking South

Background:

This project is located on San Marcos Road approximately 0.6 miles north of Cathedral Oaks Road. It consists of seismically retrofitting Bridge No. 51C-002 by reinforcing the supporting bents and girders, adding new steel elements to the existing steel cross braces, adding bolts and cable restrainers, and installing cast-in-drilled-hole piles. It is anticipated that all work will be confined to the existing structure and roadway footprint. The project is scheduled to begin in October and continue through January, 2012.

Traffic control measures are the result of public outreach and engineering refinement to balance the travel needs of the community with the need to provide safe work areas and operations to improve the long-term safety of the bridge. During most of the construction, traffic will be controlled by flaggers with 15-minute delays and either one-way reversing traffic, or two travel lanes with reduced lane width, depending on the phase of construction. The road will be temporarily closed for about 20 shifts during critical construction activities such as pile construction. During road closures, traffic will be detoured onto Cathedral Oaks Road and Highway 154. The road closures will be necessary to provide adequate space for heavy equipment, materials, and work activities on this narrow road. These closures will be between the hours of 9 AM and 6 PM, Monday through Thursday, and 9 AM and 4 PM on Fridays. No closures will be allowed on weekends, or for more than two consecutive days at one abutment. The road will be reopened to two travel lanes, at the end of each day.

On June 22, 2010, your Board approved the filing of a CEQA Exemption, pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301 (c), pertaining to minor public or private alterations in the condition of land, water, and/or vegetation. Caltrans approved this project with a Natural Environment Study-Minimal Impacts, no impacts identified. This retrofit project was reviewed in coordination with the California Department of Fish and Game and permitted with an Amendment of Lake or Streambed Alteration Agreement No.1600-24-0210-R5 (General Maintenance), as shown on the plans and in the specifications.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
Federal (HBP)	\$ 697,002.96		\$ 697,002.96
State (Prop 1B Seismic)	\$90,304.12		\$ 90,304.12
Total *	\$ 787,307.08		\$ 787,307.08

* Total cost assumes award to the recommended apparent low bidder (recommendation B). If the board follows recommendation C instead, this amount would be adjusted to a total amount of \$841,447.22, with \$744,933.22 funded by HBP and \$96,514.00 by Prop 1B. These amounts are budgeted.

Narrative:

The total contract cost, including contingencies, is \$787,307.08. Of this total, \$697,002.96 (88.53%) is funded by the Highway Bridge Program (HBP) and \$ 90,304.12 (11.47%) is funded by the State Proposition 1B- Seismic program (Prop 1B). Project funds are budgeted in Dept. 054, Fund 0017, Org. 0600, Program 2810, Account 7510.

Staffing Impacts:

Legal Positions:

None

FTEs:

None

Special Instructions:

Please forward a certified, stamped Minute Order approving these recommendations to:
Public Works Department, Transportation Division, Attn: Gena Valentine Felix. x3064

Attachments:

- Bid protest letter from Souza Construction, Inc. dated September 1, 2011
- Bid protest response letter from Brough Construction, Inc. dated September 9, 2011
- Draft copy of the Contract for Seismic Retrofit of San Marcos Road Bridge No. 51C-002 at Maria Ygnacia Creek in the Second Supervisorial District, County Project No. 862275, Federal Project No. BRLSZD-5951(090)
- CEQA Notice of Exemption

Authored By:

Chris Sneddon, Transportation Division Interim Deputy Director, 568-3064

CC:

Project Files

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