Seismic Retrofit of County Bridge No. 51C-002 on San Marcos Road Second Supervisorial District

Board of Supervisors Hearing – October 4, 2011

Public Hearing on Award of the Project

Seismic Retrofit of County Bridge No. 51C-002 on San Marcos Road Second Supervisorial District

Bid Protest and Award Procedures

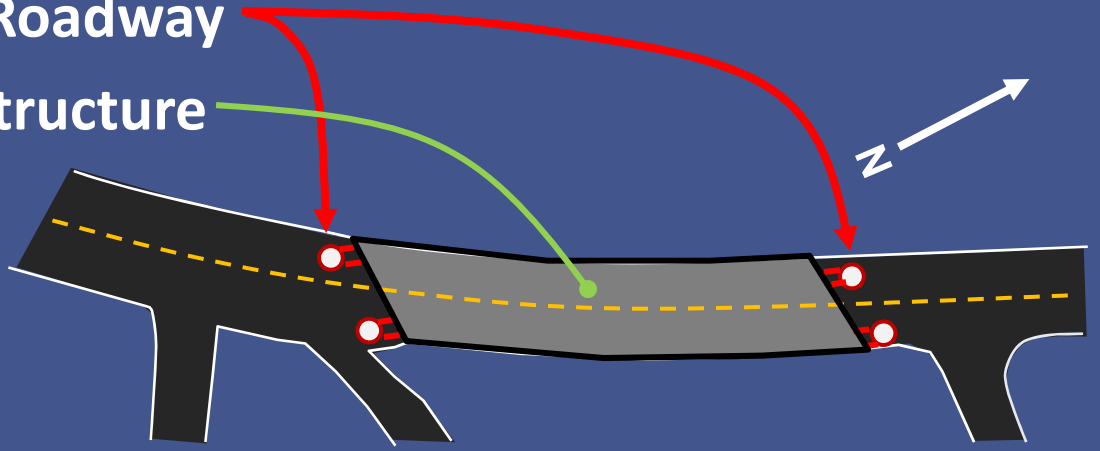
Today's Process

Seismic Retrofit of County Bridge No. 51C-002 on San Marcos Road Second Supervisorial District

Project and Bid Information

SCOPE: Seismic Retrofit

- Construct Piles in Roadway
- Reinforce Bridge Structure



BIDS:

- Six bids opened August 18, 2011
- Apparent Low Bidder – Brough Construction Inc. $737,911
- Second Low Bidder – Souza Construction Inc. $789,474
- Bidders encouraged to use Underutilized Disadvantage Business Enterprise (UDBE) subcontractors for 3% of the contract work

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Underutilized Disadvantaged Business Enterprise (UDBE) goals and good faith effort (GFE)

- **Federal Highway Administration (FHWA) funded projects have goals for UDBE usage: Women, African Americans, Native Americans, Asian Pacific Americans**
- **Bidders must either meet the goal *or* make a Good Faith Effort (GFE) to meet the goal, with documentation**
- **Code of Federal Regulations 49 CFR 26 gives guidance for UDBE usage and Good Faith Effort**

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Bid Protest by Souza Construction Inc.

BID PROTEST

Souza bid protest claimed Brough did not make a good faith effort to meet project UDBE goal of 3%

BIDDER SUBMITTALS

- **Souza indicated UDBE subcontractors would perform 3.1% of contract work**
- **Brough indicated they will not meet the goal, but submitted a good faith effort as allowed by the bid documents**

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Good Faith Effort (GFE)

49 CFR 26

Determining Whether a Good Faith Effort Was Made:

- **Federal regulations do not define what constitutes a GFE, but provide guidance**
- **Bidders may not be compelled to meet UDBE goals, a *good faith effort (GFE)* is required if the goal is not met**
- **GFE must document the quality, quantity, and intensity of the different kinds of efforts that the bidder made to solicit UDBE participation**
- **Rules specifically prohibit ignoring *bona fide* GFE**
- **GFE may be considered sufficient, even if the goal is not met**

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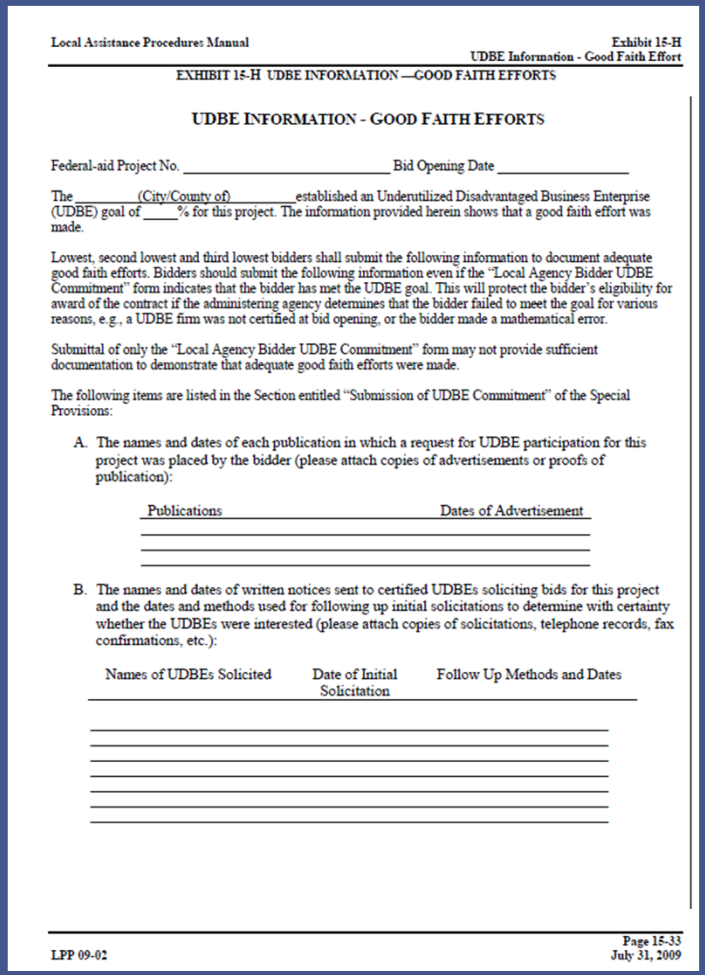
Good Faith Effort (GFE) Guidance - Caltrans Exhibit 15-H:

A) Name and date of publication requesting UDBE Participation
B) Names and dates of written notices sent to UDBEs
C) Items of work made available to UDBE firms
D) Names addresses and phone numbers of rejected UDBE firms and reason for rejection
E) Efforts made to assist UDBE in obtaining bonding, lines of credit or insurance, and technical assistance/information
F) Efforts made to assist interested UDBE in obtaining equipment, supplies, materials or related assistance or services
G) Names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using UDBE firms
H) Additional data to support a demonstration of good faith efforts



Local Assistance Procedures Manual — Exhibit 15-H
UDBE Information - Good Faith Effort

EXHIBIT 15-H UDBE INFORMATION —GOOD FAITH EFFORTS

UDBE INFORMATION - GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date _____

The _____(City/County of)_____established an Underutilized Disadvantaged Business Enterprise (UDBE) goal of ____% for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the "Local Agency Bidder UDBE Commitment" form indicates that the bidder has met the UDBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a UDBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the "Local Agency Bidder UDBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled "Submission of UDBE Commitment" of the Special Provisions:

A. The names and dates of each publication in which a request for UDBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement

B. The names and dates of written notices sent to certified UDBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the UDBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of UDBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

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Brough Protest Response

- **Brough submitted completed GFE forms in bid package**
- **Brough submitted a response letter to the bid protest stating they:**
  - **solicited UDBE bids through advertising in commonly accepted media**
  - **directly solicited bids from twenty- two UDBE subcontractors**
  - **followed up on initial solicitations through email or phone calls**
  - **solicited a bid from the primary UDBE subcontractor used by Souza to meet the goal and followed up with a phone call but were told by the subcontractor they would not be providing a bid**

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Good Faith Effort Comparison

UDBE bids received	Brough	Souza	Lash
The Firm	$800	$800	--
SuperSeal and Stripe *	-- *	$16,979	$18,865
Charlene's Trucking	--	$5,225	--
Total UDBE listed	$800	$23,004	$18,865
Total Bid	$737,912	$789,474	$910,671
% UDBE participation	0.1%	2.9%	2.1%

* Solicited but did not provide bid

UDBE Good Faith Effort	Brough	Souza	Lash
Turned in complete Exhibit 15-H	X	X	X
Advertised soliciting UDBE bids	August 10	August 2	August 4
Phone follow-ups	August 18	August 18	August 16-18

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Public Works recommends 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;

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Public Works recommends that the Board of Supervisors:

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.

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Thank You

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Bids	
Brough	$737,911.50
Souza	$789,473.54
Lash Construction	$910,670.60
Whitaker Construction Group, Inc.	$943,542.00
Specialty Construction, Inc.	$951,258.00
Union Engineering	$998,435.30
Engineer's Estimate	$661,417.00

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