

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER, MS 43

1727 30<sup>th</sup> STREET

P. O. BOX 168041

SACRAMENTO, CA 95816-8041

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*Flex your power!  
Be energy efficient!*

March 28, 2013

Facsimile: (858) 453-6034

Daniel Brukiewicz, President  
Santa Margarita Construction Corp.  
P.O. Box 357  
Templeton, CA 93465

04-2E7504  
04-SM-84,101,380-Var  
B.O. 1/29/2013

Dear Mr. Brukiewicz:

The Department of Transportation (Caltrans) received the attached letter dated February 8, 2013, from Santa Margarita Construction Corp. (Santa Margarita), protesting Newton Construction & Management, Inc. (Newton Construction) Certified Disabled Veteran Business Enterprise (DVBE) Summary form. The protest states that Newton Construction's bid did not provide adequate DVBE participation to meet the goal. Santa Margarita requests that Caltrans find Newton Construction nonresponsive and award the contract to the lowest responsible bidder.

The Office of Business and Economic Opportunity, Contract Evaluation Unit (CEU) evaluated the protest submitted by Santa Margarita, and upon further review of Newton Construction's DVBE Summary form, CEU found that Newton Construction overstated the amount of participation for Western Structure by claiming 6 percent. The correct amount to be claimed for bid items 12 and 13 is \$828.39 and \$2,781.03, totaling \$3609.42. Since, \$3609.42 is only .04 percent of the goal; Newton Construction does not meet the DVBE goal for this contract.

Based on the above finding, Caltrans finds Santa Margarita's protest has merit and will proceed to award the contract to the lowest responsible bidder.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Manager, at (916) 227-6228.

Sincerely,

A handwritten signature in black ink that reads "John C. McMILLAN".

JOHN C. McMILLAN

Deputy Division Chief

Office Engineer

Division of Engineering Services

Attachment



**Santa Margarita  
Construction Corp.**

February 8, 2013

John McMillan, Deputy Division Chief  
Mulissa Smith, Contract Branch Chief  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> Street  
P.O. Box 168041  
Sacramento, CA 95816-8041

Re: Contract No. 04-2E7504  
Protest of Bid

Mr. McMillan:

Santa Margarita Construction Corp. (SMCC) hereby protests the bid received the the California Department of Transportation (Department) on January 29, 2013 of Newton Construction & Management, Inc (Newton).

**Newton's Certified DVBE Summary Materially Amends Newton's Subcontractor List**

The apparent low bidder, Newton, submitted with its bid proposal a Certified DVBE Summary and Subcontractor List [Exhibit A, B].

Per Newton's Subcontractor List, Newton utilized Western Structures of Riverside, California to perform 6-percent of bid items 12 – Prepare Concrete Bridge Deck Surface and 13 – Treat Bridge Deck, defined solely by Newton as “Deck Surfacing” via its Description.

Per Newton's Subcontractor List, Newton is subcontracting exactly \$3,609.42 to Western Structures. This is established within Newton's Subcontractor List and is not subject to change without applicable penalty per Public Contract Code § 4100 et seq.

Contrary to Newton's Subcontractor List is Newton's Certified DVBE Summary. Newton's Certified DVBE Summary states Western Structures is performing \$57,000.00 in “Deck Surfacing” for bid items 12 – Prepare Concrete Bridge Deck Surface and 13 – Treat Bridge Deck in which Newton is claiming Western Structure's DVBE participation.

Newton's utilization of \$57,000.00 in “Deck Surfacing” services by Western Structures for DVBE participation is in direct conflict with Newton's Subcontractor List in which Newton states Western Structures will be performing \$3,609.42 in “Deck Surfacing” services within the bid items corresponding between Newton's Certified DVBE Summary and Subcontractor List.

Please note the determination of the Department regarding the following contracts and corresponding bidders: 06-0C1304, American Paving; 06-0C1304, Emmett's Excavation; 12-0K5304, Highland Construction; 07-4T3504, JTS Construction; 07-4T3504, Re Com Development; 12-0C5704, SEMA Construction; 12-0C5704, Powell Constructors; et cetera.

**Santa Margarita Construction Corp.**

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CSLB 613387

Brukiewicz Infrastructure International



February 8, 2013

It has been upheld that the Department's consideration in regard to Column 3: Percentage of Bid Item Subcontracted within the Subcontractor List found in each bid packet is consistent. These percentages to be subcontracted are not to be increased or decreased after commencement with the work.

Once a contract is awarded, the contractor must submit for approval to the Resident Engineer a Subcontracting Request. The Subcontracting Request must correspond with the contractor's Subcontractor List. Newton's Subcontractor List states Western Structures will be performing 6-percent of bid items 12 – Prepare Concrete Bridge Deck Surface and 13 – Treat Bridge Deck, or \$3,609.42 of "Deck Resurfacing".

However, Newton claims Western Structures is performing \$57,000.00 of the same "Deck Resurfacing" work within the same bid items.

Due the Resident Engineer's inability to allow Newton to subcontract approximately 95-percent of bid items 12 – Prepare Concrete Bridge Deck Surface and 13 – Treat Bridge Deck to Western Structures as they are listed as performing 6-percent of this work, it will be impossible for Newton's bid to provide adequate DVBE participation on this project without the Department unlikely providing Newton such material advantage as waiving this enormous variance as a minor irregularity.

Recapitulating, Newton cannot and will not utilize \$57,000.00, or 6-percent of Newton's bid price, in DVBE services because the Department cannot accept revised subcontracting percentages post-award which differ by \$53,390.58, or 5.7-percent of Newton's bid price. This directly violates Public Contract Code § 4100 et seq., and a violation would have to occur in order for Newton to achieve adequate DVBE participation and meet the project's goal.

Consideration given to the \$53,390.58 variable in proposed DVBE participation, approximately 5.7-percent of Newton's total bid and 95-percent of Newton's claimed DVBE participation, the difference is substantial on these smaller projects. Regarding the Department's strong stance toward award of contracts to entirely responsive bidders and the consistency in deeming irregular bids non-responsive, the Department should take into account the notable intent of prime contractors to fulfill DVBE and subcontractor commitments. Should prime contractors begin to routinely list DVBE's for participation in various bid items, and simply insert a "blanket" number within the Certified DVBE Summary without truly ensuring adequate DVBE participation, the goals would become nonenforceable. It is unknown which sum of participation Newton will allow for DVBE performance, and the material advantage is held by the fact there is no provision regarding annulment of participation documentation provided by bidding contractors should the documentation differ throughout the bid book. For this reason the Certified DVBE Summary states:

*"Names of first tier DVBE subcontractors and their items of work listed must be consistent with the names and items of work in the Subcontractor List submitted with the bid."*

Clearly the items of work listed by Newton to be performed by its DVBE subcontractor are not consistent with the items of work in the Subcontractor List submitted with its bid. The Subcontractor List commits Newton to subcontracting 6-percent of bid items 12 and 13, or \$3,609.42, to Western Structures for "Deck Resurfacing", while the Certified DVBE Summary commits Newton to subcontracting 95-percent of bid items 12 and 13, or \$57,000.00, to Western Structures.

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**Santa Margarita  
Construction Corp.**

February 8, 2013

**Western Structures' (West Coast Structures, Inc.) CUF Questionable**

It should be realized Western Structures provided bids to several bidding prime contractors. Western Structures does not provide material (furnishing of material is paid under a separate bid item) and does not rent equipment, but provides a contracted service which requires a California contractor's license and must be recognized as a subcontractor for its entire portion of work within the Subcontractor List.

It is unknown to prime contractors whether or not Western Structures performs a commercially useful function as the organization has not been evaluated by the Contract Evaluation Unit. There is little information regarding this company bidding prime contractors can rely upon in determining whether or not Western Structures does in fact perform the type of work it is bidding to prime contractors, and if so, which portion of its work does it subcontract. A simple Google search of either "West Coast Structures, Inc." or it's dba, "Western Structures" does not return any results of "Deck Surfacing" contracts in commencement, awarded, or otherwise. There is no mention of Western Structures having ever performed a like contract.

It is questionable whether or not Western Structures owns the necessary shotblasting and application equipment to provide such "Deck Surfacing" work they have quoted for bid item 12 -- Prepare Concrete Bridge Deck Surface and 13 -- Treat Bridge Deck. It is unknown if Western Structures subcontracts bridge deck preparation or utilizes operated rental equipment in which their participation may be disallowed by CEU. Please determine whether Western Structures performs a CUF, or it will be otherwise assumed they do not.

**Conclusion**

Newton's bid does not provide for adequate DVBE participation to meet the goal, and such being clear, Newton's bid is non-responsive and the contract should be awarded to the lowest, responsive bidder.

Should Newton be determined responsive by the Department, please provide reasoning pertaining to the earlier segment of this protest. This common issue is deserving of explanation, is very much overdue and any response by the Department would be greatly appreciated.

Regards,

John R. Brukiewicz  
Vice President

cc: Andrzej Abramowicz  
Joseph Eisenberg  
Shlomo Edclberg  
Dan ben Canaan  
An Horowitz

3 of 3

**Santa Margarita Construction Corp.**

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**\*\* Transmit Conf. Report \*\***

P.1  
CALTRANS CONTR AWARDS Fax 916-227-6282

Mar 29 2013 11:33am

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STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

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