

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER, MS 43

1727 30th STREET

P. O. BOX 168041

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6300

FAX (916) 227-6282

TTY 711

*Flex your power!
Be energy efficient!*

March 7, 2013

Facsimile: (805) 543-2521

Robert E. Burke, Vice President/General Manager

R. Burke Corporation

P.O. Box 957

San Luis Obispo, CA 93406

05-0C3304

05-SLO-46-4.1

B.O. 11/12/12

Dear Mr. Burke:

The Department of Transportation (Caltrans) received the attached letter dated December 5, 2012, from R. Burke Corporation (R. Burke) protesting Arthurs Contracting, Inc. (Arthurs Contracting), Souza Construction, Inc. (Souza Construction), and Case Pacific Company (Case Pacific) on the basis that they failed to list a Subcontractor that holds the SSPC-QP 1 Certification.

Attached you will find a response provided by Souza Construction on December 12, 2012, addressing your protest as it pertains to the required SSPC-QP Certification.

Furthermore, Caltrans has reviewed this protest and determined that the Special Provisions did not require the Subcontractor to be identified, but did require the Contractor to submit the required SSPC-QP Certification(s) at time of bid. Therefore, Caltrans finds that R. Burke's protest is without merit, and had no bearing on the award of this contract.

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

Sincerely,

A handwritten signature in black ink, appearing to read "John C. McMILLAN", with a stylized flourish.

JOHN C. McMILLAN

Deputy Division Chief

Office Engineer

Division of Engineering Services

Attachment



December 12, 2012

Via Fax & U.S. Mail, Certified

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

RE: CalTrans Contract No: 05-0C3304; Response to Bid Protests of Case Pacific & R. Burke

Souza Construction, Inc. ("Souza") hereby responds to the bid protests filed by Case Pacific Company ("Case") on December 5, 2012, and R. Burke Corporation ("Burke"), also on December 5, 2012. Due to the vague and ambiguous nature of Case and Burke's precise objections, care will be taken in this correspondence to address the matter of SSPC QP certification submissions in their entirety.

In the Notice to Bidders and Special Provisions for this project, there is a listing of "Special Notices" found on the third page of the document (though the page itself is unnumbered). There is only one "Special Notice" stated, and it provides in full: "See section 2-1.135 for SSPC QP certification requirements." See, Exhibit A. In the CalTrans Standard Specifications (2010), Section 2 (Bidding), § 2-1.35, it states: "Submit the SSPC QP certification required under 59-2.01D(1) with your bid. Failure to submit the certification results in a nonresponsive bid." This language is replaced and nullified by the directions of the Revised Standard Specifications, which provide, in pertinent part: "**Replace the paragraph in section 2-1.35 with: *Submit proof of each required SSPC QP certification with your bid or fax it to (916) 227-6282 no later than 4:00 p.m. on the 2nd business day after bid opening. Failure to do so results in a nonresponsive bid.***" (Emphasis added). See, Exhibit B

Additionally, it should be noted that the CalTrans Standard Specifications (2010), Section 2 (Bidding), § 2-1.33A (3rd paragraph) states that "[e]xcept for the percentage of bid item subcontracted, do not fax submittals." This Standard Specification is replaced and nullified by the Revised Standard Specifications, which, in addition to deleting § 2-1.33A, ¶ 2 in its entirety, state: "**Replace the 3rd paragraph of section 2-1.33A with: *Except for each subcontracted bid item number and corresponding percentage and proof of each required SSPC QP certification, do not fax submittals.***" (Emphasis added). There would seem to be no purpose in deleting § 2-1.33A, ¶ 2, and changing § 2-1.33A, ¶ 3 in the manner changed, if it were not to accommodate

Souza Construction, Inc.
General Engineering Contracting
P. O. Box 3810
San Luis Obispo, CA 93403
805/546-8288
Fax 805/546-8287

the fact that the SSPC QP certifications were expressly permitted to be submitted via fax before 4:00 p.m. on the second business day after bid opening.

Thus, as the forgoing discussion illustrates, the range of acceptable procedure for the SSPC QP certification submission was to either submit the certifications with the bid, or to fax them to the specified fax number within a period of time not to exceed 4:00 p.m. on the second business day following bid opening. This conclusion is bolstered by the fact that Caltrans' internal informational guides on SSPC QP certifications (entitled "Advanced Notice to Contractors/Subcontractors: Caltrans' SSPC QP Requirement Notice") states the precise same requirements: "On jobs requiring Certification(s), proof of certification of the Contractor/subcontractor under the SSPC QP Certification Program is required to be submitted with your bid. If you do not submit the certification with your bid, submit it so that it is received by the Office Engineer NO LATER THAN 4:00 PM ON THE 2ND BUSINESS DAY AFTER BID OPENING. If you do not submit the certification within the specified time, the Department will find your bid nonresponsive." (Emphasis in original). *See*, Exhibit C. The Bid document, on the final page (pg. 15) after the words "END CERTIFICATIONS" states the following: "SSPC QP CERTIFICATION PREAMWARD QUALIFICATION[:] Submit proof of each required certification *as specified*. Failure to do so results in a nonresponsive bid." (Emphasis added). *See*, Exhibit D. The *specified* procedure for submitting such certifications as may be necessary is the procedure described above; *i.e.*, submission with the bid or by 4:00 p.m. on the 2nd business day following bid opening.

Souza submitted its SSPC QP 3 certification for R&B Protective Coatings, Inc., Souza's chosen and properly listed subcontractor for Bid Item 44 (Clean and Paint Steel Soldier Piling) on November 28, 2012 at 2:50 p.m., *see*, Exhibit E, well within the window for submittal provided for by the bidding documents as discussed above.

Any further contentions of Case and/or Burke would appear to be based upon the fact that Souza submitted only the certification for SSPC QP 3. The fundamental flaw in the arguments presented by Case and Burke are that certifications for SSPC QP 1 and SSPC QP 2 were required pursuant to the bidding documents.

Burke notes that pursuant to the Special Provisions, § 59-2.01C(2), bidders were to submit proof of SSPC-QP program certification, for: SSPC-QP 1; SSPC-QP 2, Category A; and SSPC-QP 3, Enclosed shop facility or AISC Sophisticated Paint Endorsement Quality Program, P1-Enclosed. What Burke omits to mention is the Special Provisions further modification of §§ 59-2.01D(1) and 59-9.01. Thus, accounting for these modifications, § 59-2.01D(1) (Quality Control and Assurance; General) should read as follows:

You must hold following the SSPC certifications in good standing throughout the Contract to perform the following painting activities:

1. For cleaning and painting structural steel in the field, SSPC-QP 1

2. For removing hazardous coatings from structural steel, SSPC-QP 2
3. For cleaning and painting structural steel in a permanent painting facility, SSPC-QP 3 or AISC SPE, Certification P-1 Enclosed

Instead of certification complying with SSPC-QP 1, you may submit documentation with the painting quality work plan showing compliance with the requirements in section 3 of SSPC-QP 1.

Instead of certification complying with SSPC-QP 2, you may submit documentation with the painting quality work plan showing compliance with the requirements in sections 4.2 through 4.4 of SSPC-QP 2, Category A.

Instead of certification complying with SSPC-QP 3, you may submit documentation with the painting quality work plan showing compliance with the requirements in section 3 of SSPC-QP 3, Enclosed Shop Facility.

Please note that pursuant to Caltrans Standard Specifications (2010), Section 59 (Painting), § 59-2.01C(3) (Painting Quality Work Plan), a painting quality work plan is not submitted until after the contractor attends a prepainting meeting; *i.e.*, after award of the contract.

After modification by the Special Provisions, § 5-9.01 (Painting Steel Soldier Piles; General) should read as follows:

Section 59-9 includes specifications for preparing and painting steel soldier piles.

Where shown, prepare and paint steel soldier piles under the specifications for new structural steel in section 59-2.

Instead of certification complying with SSPC-QP 1, you may submit documentation showing compliance with section 3 of SSPC-QP 1.

Instead of certification complying with SSPC-QP 3, you may submit documentation showing compliance with section 3 of SSPC-QP 3, Enclosed Shop.

As the above language illustrates, Burke and Case's arguments fail to account for the entirety of the specifications, which permit Souza to submit documentation *with the painting quality work plan* showing compliance with the requirements in section 3 of SSPC-QP 1 and sections 4.2 through 4.4 of SSPC-QP 2, Category A, *in lieu of submitting an SSPC-QP 1 or SSPC-QP 2 certification*. As for the SSPC-QP 3 certification, Souza timely submitted the required documentation. *See*, Exhibit E. It should be noted that this is generally consistent with Caltrans informational sheet "Advance Notice to Contractors/Subcontractors[:] Caltrans' SSPC QP Requirement Notice." *See*, Exhibit C.

Burke and Case's protests are wholly without merit. They fail to take into account the entirety of the bidding specifications. Furthermore, as Souza's correspondence filed herewith protesting the bids of both Arthurs Contracting, Inc., and Case Pacific Company show, each is nonresponsive to the bid for failure to comply with the stated DVBE participation goal and are otherwise

nonresponsive for failing to properly list subcontractors/suppliers. As such, Souza is the lowest responsive, responsible bidder, and *Souza must be awarded the contract as a matter of law.*

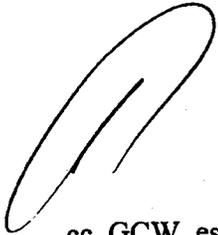
Sincerely,

A handwritten signature in black ink, appearing to read 'Steve A. Souza', with a long horizontal line extending to the right.

Steve A. Souza

President

Souza Construction, Inc.

A large, stylized handwritten mark or signature, possibly initials, consisting of a large loop and a vertical line.

cc. GCW, esq.

cc. TJH, esq.

Exhibit A"

SPECIAL NOTICES

- See section 2-1.35 for SSPC QP certification requirements.

Exhibit C

CALIFORNIA DEPARTMENT OF
TRANSPORTATION

Caltrans > Division of Engineering Services > Structure Construction > Advance Notice to Contractors/Subcontractors

Advance Notice to Contractors/Subcontractors**CALTRANS' SSPC QP REQUIREMENT NOTICE****NOTICE TO CONTRACTORS/SUBCONTRACTORS
REQUIREMENTS FOR CONTRACTORS
TO BE SSPC QP1, QP2 AND QP3 CERTIFIED**

Any contractor or subcontractor engaged in:

surface preparation and coating of structural steel, hazardous paint removal, collection, or containment or, shop painting of structural steel

shall meet the following requirements:

If only surface preparation and coating application are required by the contract, and the total area of steel to be painted is greater than 30,000 square feet, then SSPC-QP 1 Certification will be required.

If the total area of steel to be painted is less than or equal to 30,000 square feet, then SSPC-QP 1 Certification will not be required, however, the work must be performed in accordance with the requirements in Section 3, "General Qualification Requirements," of the Society for Protective Coatings Qualification Procedure No. 1. New and existing paint contractors/subcontractors can use the projects in this classification to obtain their SSPC-QP 1 Certification.

If hazardous paint removal is a part of the contract, and the total steel area of paint removal exceeds 500 square feet, then SSPC-QP 2 Certification (Category A) will be required. If the total steel area of paint removal is less than or equal to 500 square feet, then SSPC-QP 2 Certification (Category A) will not be required, however, the work must be performed in accordance with the requirements in Sections 4.2 through 4.4.6 of the Society for Protective Coatings Qualification Procedure No. 2 (Category A).

If shop painting of structural steel is a part of the contract, and the total area of steel to be shop painted exceeds 500 square feet, then AISC-420-10/SSPC-QP 3 Certification (Enclosed Shop) will be required. If the total area of steel to be shop painted is less than or equal to 500 square feet, then SSPC-QP 3 Certification will not be required, however, the work must be performed in accordance with the requirements in Sections 5-18 of the AISC: American Institute of Steel Construction and SSPC: The Society for Protective Coatings Certification Standard for Shop Application of Complex Protective Coating Systems.

On jobs requiring Certification(s), proof of certification of the Contractor/subcontractor under the SSPC QP Certification Program is required to be submitted with your bid. If you do not submit the certification with your bid, submit it so that it is received by the Office Engineer NO LATER THAN 4:00 PM ON THE 2nd BUSINESS DAY AFTER BID OPENING.

If you do not submit the certification within the specified time, the Department will find your bid nonresponsive.

Contractors/subcontractors must maintain their SSPC QP certifications specified in the contract in good standing throughout the duration of the contract.

The QP 1 Certification Program is based on SSPC-QP 1, Standard Procedure for Evaluating the Qualifications of Industrial/Marine Painting Contractors. The QP 2 Certification Program is based on SSPC-QP 2, Standard for Evaluating Painting Contractors (Removal of Hazardous Coatings from Industrial/Marine Steel Structures). The QP 3 Certification Program is based on AISC-420-10/SSPC-QP 3, Certification Standard for Shop Application of Complex Protective Coating Systems. Additional information about the Painting Contractor Certification Program (PCCP) can be obtained from SSPC's website at www.sspc.org or contact Shawn W. Nedley from SSPC at 412-288-6029 or 877-281-7772, ext. 2210 or e-mail nedley@sspc.org.

Questions pertaining to this notice should be directed to John C. Rogers, CALTRANS, Division Of Maintenance, Structure Maintenance and Investigations. He can be reached at (916) 227-8627, fax (916) 227-8357 or e-mail John_C_Rogers@dot.ca.gov

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Exhibit "D"

NATIONAL LABOR RELATIONS BOARD

Under Pub Cont Code § 10232, the contractor, swears under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two year period because of the contractor's failure to comply with an order of a federal court which orders the contractor to comply with an order of the National Labor Relations Board.

ANTITRUST LAW

Under Pub Con Code § 10285.1, the Bidder declares under penalty of perjury under the laws of the State of California that the Bidder has has not been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Pub Cont Code § 1101, with any public entity, as defined in Pub Cont Code § 1100, including the Regents of the University of California or the Trustees of the California State University. The term "Bidder" includes any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

If the Bidder has been convicted of an offense within the past 3 years, provide the conviction details including the date and ultimate resolution of each conviction in the space below.

BIDDER RESPONSIBILITY QUESTIONNAIRE

Failure to truthfully answer the following questions will result in a finding that the bid is nonresponsive. The Bidder must complete, under penalty of perjury, the following questionnaire:

1. Within the past 10 years, has the Bidder been found to be a nonresponsive bidder by any public entity, including federal, State, local, or regional entities?
 Yes No
2. Within the past 10 years, have any of the Bidder's officers or employees with a proprietary interest in the Bidder been determined to be a nonresponsive bidder by a public entity, including federal, State, local or regional entities?
 Yes No
3. Is there any officer or employee of the Bidder who now has or has had any proprietary interest in another company that bid or bids on public works projects whose company has been determined to be a nonresponsive bidder by any public entity, including federal, State, local, or regional entities?
 Yes No
4. If the answer to any of the 3 preceding questions is yes, disclose all pertinent details of the determination of nonresponsibility, including:
 - 4.1. Date of each nonresponsibility determination
 - 4.2. Name of each public agency issuing the nonresponsibility determination and a contact person at that agency who would have information about the determination
 - 4.3. Contract number for each nonresponsibility determination

END CERTIFICATIONS

SSPC QP CERTIFICATION PREAMWARD QUALIFICATION

Submit proof of each required SSPC QP certification as specified. Failure to do so results in a nonresponsive bid.

Exhibit "E"



SOUZA CONSTRUCTION, INC.
P.O. Box 3810
San Luis Obispo, CA 93403-3810
Phone (805) 546-8288 • Fax (805) 546-8287
License No. 479476

TRANSMITTAL

Date:

To: State of California
Department of Transportation
MS 43, Office Engineer
1727 30th Street
Sacramento, CA 95816

Phone: (916) 654-4490
Fax: (916) 227-6282

From: Amy Blanchard
Contracts Administrator

Phone: (805) 546-8288
Fax: (805) 546-8287
Email: ablanchard@souzaconstructioninc.com

Subject: Contract No. 05-0C3304
- Construction on State Highway in San Luis Obispo County
- Near Cambria at 1.8 Miles East of Green Valley Creek Bridge
o Subcontractor List

WE ARE TRANSMITTING:	THE FOLLOWING:	FOR:
Client Pick Up	Information	Bond Preparation
By Hand Delivery	Certified DVBE Summary	Signature
Certified mail to follow	<input checked="" type="checkbox"/> Subcontractor List	Review & Approval
<input checked="" type="checkbox"/> Fax	Certificate of Compliance	<input checked="" type="checkbox"/> Submittal

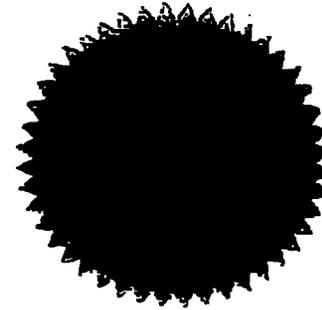
MESSAGE:

To Whom It May Concern,

- In reference to **Contract No. 05-0C3304** - **Construction on State Highway in San Luis Obispo County Near Cambria at 1.8 Miles East of Green Valley Creek Bridge** project located in **San Luis Obispo County**, enclosed please find:

R & B Protective Coating's, Inc. of Linden California, **SSPC Painting Contractor Certification Program** certificate for **Protective Coatings SSPC-QP 3**. Please attach to earlier fax submission of our **Subcontractor List**.

Please contact us if there are any questions.



R & B Protective Coatings, Inc
 of
Linden, CA

*has met or exceeded the requirements set forth in the
 SSPC Painting Contractor Certification Program for*

**APPLICATION OF
 PROTECTIVE COATINGS
 SSPC-QP 3**

Enclosed Shop



RPM

.....
 President, SSPC

.....
 March 31, 2012 – March 31, 2013
 Validation Period

.....
 Customers are advised to contact SSPC at 412-281-2331 ext. 2235 or ext. 2299 to verify authenticity of certification

Received
 Nov. 28, 2012 2:50PM Souza Construction, Inc.
 11/26/2012 17:31 20988/20729 R&B

Nov 28 2012 02:51pm

No. 1907

P. 2
 Page 03/03



Lic. No. 442762

(209) 887-2030 - Fax: 887-2029

FAX COVER

19968 E. Hwy 26
P.O. Box 652
Linden, CA. 95236

209-887-2030 - phone
209-887-2029 - fax
209-986-9895 - cell
WWW.RB-PROTECTIVECOATINGS.COM
NICK@RB-PROTECTIVECOATINGS.COM

To: Souza Construction, Inc.
Phone: 805-546-8288
Fax: 805-546-8287

From: Nick Joaquín
Date: 11/26/2012
Number of Pages: 3

RE: CT 05-0C3304

Attached is our proposal for the following scope of work:

1. **BID ITEM 49 (PARTIAL) -- CLEAN AND UNDECOAT STEEL SOLDIER PILE**
2. **PROVIDE & INSTALL STAY PLATES**
3. **PROVIDE FREIGHT TO JOBSITE FROM R&B**

Also attached is a copy of our SSPC-QP3 Certificate as required for the bidding documents.

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

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

Mar 7 2013 04:04pm

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
918055432521	Normal	07:04:02pm	1'41"	13	# O K	

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER, MS 43
1727 30th STREET
P. O. BOX 168041
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6300
FAX (916) 227-6282
TTY 711



*Flex your power!
Be energy efficient!*

March 7, 2013

Facsimile: (805) 543-2521

Robert E. Burke, Vice President/General Manager
R. Burke Corporation
P.O. Box 957
San Luis Obispo, CA 93406

05-0C3304
05-SLO-46-4.1
B.O. 11/12/12

Dear Mr. Burke:

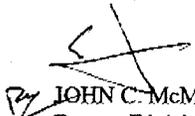
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If you have any questions, please contact Mulissa Smith, Contract Awards Branch Manager, at (916) 227-6228.

Sincerely,


JOHN C. McMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services

Attachment