

**FELDMAN & ASSOCIATES, INC.**

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April 20, 2015

VIA FACSIMILE

Mr. John C. McMillan  
Deputy Division Chief  
California Department of Transportation  
Division of Engineering Services  
1727 30<sup>th</sup> Street  
Sacramento, CA 95819-8041

Re: Liberty Maintenance, Inc./Caltrans - Contract No. 07-1W2404

This firm represents Liberty Maintenance, Inc., with respect to its bid for Caltrans Contract No. 07-1W2404. The purpose of this letter is to respond to the further bid protest letter submitted by CL Industrial Coatings on April 15, 2015.

CL Industrial Coatings' argument proceeds from a faulty premise. It argues, without offering proof, that two manufacturers sell PWB paint directly, and that because materials can theoretically be purchased directly, a supplier offers no commercially useful function and cannot legitimately supply the materials. If one were to accept CL Industrial's argument, then the participation credit available for materials purchased from DBE suppliers would be entirely without purpose, and all regular dealers would be relegated to an "extra participant" role.

CL Industrial Coatings' argument serves to undermine the function and purpose of Caltrans' entire DBE program. Two objectives of the program, as stated in Caltrans' DBE Frequently Asked questions, are

1. "To help remove barriers to the participation of DBEs in federally-funded contracts; to assist the development of firms that can compete successfully in the marketplace outside the DBE Program[;]" and
2. "To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients."

Given enough time, resources, and credit, today virtually any material consumed or used in a construction project could be acquired directly from a manufacturer. If the DBE program is to have any purpose whatsoever, it cannot follow that the existence of a single manufacturer

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willing to sell directly in the market invalidates the role of material supply businesses. It is the role of regular dealers like Anderson Paint Store to advise as to the relative quality and fitness of the materials available in the market, their advantages and disadvantages, to use their contacts and reputation within the industry to negotiate the most advantageous terms, and to coordinate the submittal, approval, and delivery of the necessary materials. Anderson has previously participated in Caltrans projects as a DBE regular dealer for which the general contractor received 60% credit toward the participation goal.

CL Industrial Coatings has taken the position that we should jettison the advice, experience, and services a regular dealer provides because there is a more direct alternative. Its argument proceeds without support, undermines the stated purposes of the DBE program, and ultimately runs contrary to the fundamental premise of modern commerce.

Because Anderson Paint Store is a properly qualified DBE and provides a commercially useful function, Caltrans should choose to disregard CL Industrial Coatings' further protest. Liberty Maintenance remains available should you have any questions about this letter.

Sincerely,



Kevin Hannifan  
for FELDMAN & ASSOCIATES, INC.

cc: Mark Feldman  
Client

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**Mr. John McMillan**  
**Liberty Maintenance**

**916-227-6282**  
**330-755-1847**

From: Kevin M. Hannifan

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Response to Further Protest Letter re: Caltrans Contract No. 07-1W2404 submitted by CL Industrial Coatings

MESSAGE:

ORIGINAL WILL BE SENT VIA:

MAIL  FEDERAL EXPRESS  MESSENGER  WILL NOT BE SENT

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