



Lic. #743775

November 13, 2014

John McMillian  
Department of Transportation  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816-8041

Re: Contract Number 07-3X8204  
Bid Opening Date: October 16, 2014  
Bid Protest (R1) – Chumo Construction, Inc.

Dear Mr. McMillian:

Reference is made to Chumo's letter dated November 10, 2014 in response to our bid protest.

In Chumo's futile attempt to support their defective Subcontractor Listing for Item #7, they completely ignore the fact that Flatiron's quote is for \$355,653.00 for Item #7 and \$20,000.00 for Item #52 for a grand total cost of \$375,653.00. Chumo's bid price for Item #7 is \$360,563.00 and Chumo's Subcontractor Listing does not include Flatiron's costs for Item #52. As such, the Subcontractor Listing is inaccurate. By looking at Flatiron's price for Item #7 (\$355,653.00) and Chumo's price for the same item (\$360,563.00), it is obvious that Flatiron is not performing 100% of the said item.

More importantly, is the fact that Flatiron's cost for Bid Item #52 is completely disregarded and Chumo provides no explanation. The Subletting Act requires that work in excess of one-half percent of the prime's bid or \$10,000.00 (whichever is greater) is required to be accurately identified and listed. Caltrans has no choice but to find Chumo nonresponsive for the inaccuracies in their Subcontractor Listing.

One could also presume that Caltrans may be giving Chumo an unfair advantage if the said contract is awarded. What would prevent Chumo from trying to force Flatiron to enter into a subcontract to perform the work for the lesser price since Chumo's bid for the specified work is unbalanced?

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Chumo also attempts to divert Caltrans' attention away from the facts of this issue by alleging that HighLand's (HCI's) subcontracted work percentage cannot be identified. However, just the opposite is true. HCI would be happy to provide Caltrans with the subcontractor quotes to verify the true accuracy of our listing. Chumo is correct that HCI does not have any subcontractor performing 100 percent of any bid item. Chumo obviously cannot be aware that HCI must provide our own forces to assist the subcontracted work and those costs are included in each of the specified bid items, hence the reason for "partial" in our Listing.

HCI provided Caltrans with case law and examples of various ambiguities, which resulted in nonresponsive findings by Caltrans. Ultimately, Caltrans is well versed in the substantiating case law and is a leading authority of supported nonresponsive findings. Caltrans can either elect to rely on the findings that HCI interpreted or Caltrans may rely on their legal analysis. Attacking the authority is just another ineffective attempt by Chumo to divert attention away from the fact that Chumo's Subcontractor Listing is nonresponsive.

Also, Chumo tries, in vain, to support the inaccurate listing of Condon-Johnson for 100 % of Item #43, by stating it was Chumo's "intent" (key words) to have Condon-Johnson complete 100% of Bid Item #43. That "intent" was probably true until HCI pointed out that Condon-Johnson excluded the field painting from their quote. Chumo struggles to explain that the shop painting portion (zinc undercoat) will now be performed by a 2<sup>nd</sup> tier subcontractor "Techno-West" and is not required to be listed. Chumo then alludes to conversing with Condon-Johnson and has now "confirmed" that the field painting work, which was specifically excluded at bid time, will indeed be performed by Condon-Johnson.

There are two serious problems with Chumo's flawed logic. The first, Condon-Johnson's price for the zinc undercoat portion of Bid Item #43, which they are not certified to perform, is \$11,250.00. Ironically, this is the exact dollar amount of Chumo's Bid Item #43. Apparently, the costs for the field painting for Bid Item #43 have been completely excluded from Chumo's bid. The second problem with Chumo's desperate explanation is that Rupert Construction, a Certified DBE, submitted a price, which was included in Chumo's Good Faith Effort, for the same portion of Item #43 for \$7,417.20. It was Rupert who provided the certification for 'Techno-West' as a 2<sup>nd</sup> tier. Caltrans would need to ask why would Chumo elect to terminate the lower cost of a certified DBE subcontractor and instead select to contract with Condon-Johnson (non-DBE) at a higher price of at least 52%?

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Finally, Condon-Johnson is not certified to perform the field painting work as they do not have the required QP-1 certification as specified in the contract. Please see Caltrans 2010 Standard Specifications, Section 55-2.01D, which states in part, *you must hold the following SSPC certifications in good standing throughout the contract to perform the following painting activities:*

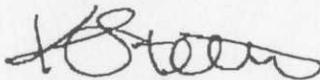
1. *For cleaning and painting structural steel in the field SSPC-QP 1.*
2. *For removing hazardous coatings from structural steel SSPC-QP 2.*
3. *For cleaning and painting structural steel in a permanent painting facility, SSPC-QP 3 or AISC SPE Certification P-1 Enclosed.*

As previously provided to Caltrans in HCI's original protest, Condon-Johnson does not possess any certification for painting structural steel by either The Society of Protective Coatings (SSPC) or from the American Institute of Steel Construction (AISC). Perhaps not being certified to perform the required field painting work is the precise reason that Condon-Johnson excluded it from their price at the time of bid?

Once again, either Chumo trying to circumvent the Subletting Act, bid shopping after the fact or their submitted bid prices are totally unbalanced. Either of these ambiguities causes a grave concern and do not represent the true percentage of work that is being subcontracted. As such, Caltrans must find Chumo nonresponsive and proceed to award the contract to the next apparent lowest bidder.

If you have any further questions, please do not hesitate to contact our office. Thank you.

Respectfully,



Kristi Stelle  
VP of Operations

KS:er  
VIA: FAX & GSO



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FACSIMILE TRANSMITTAL SHEET

|                     |                                     |
|---------------------|-------------------------------------|
| TO:                 | FROM:                               |
| Caltrans            | Erin Richardson                     |
| COMPANY:            | DATE:                               |
| Caltrans            | 11/14/2014                          |
| FAX NUMBER:         | TOTAL NO. OF PAGES INCLUDING COVER: |
| (916) 227-6282      | 4                                   |
| PHONE NUMBER:       | SENDER'S REFERENCE NUMBER:          |
|                     | Bid Date: 10/16/2014                |
| RE:                 | YOUR REFERENCE NUMBER:              |
| Contract #07-3X8204 |                                     |

URGENT   
 FOR REVIEW   
 PLEASE COMMENT   
 PLEASE REPLY   
 PLEASE RECYCLE

NOTES/COMMENTS:

Hello,

Attached, please find additional information to support our bid protest of Chumo Construction, Inc.

If you have any questions, please feel free to call our office.

Thank You,  
Erin Richardson

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