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July 2, 2015

VIA FACSIMILE AND CERTIFIED MAIL

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**Re: Construction on State Highway in San Diego County in and Near San Diego at Route 11/125/905 Separation, Contract 11-288814
Response to Protest of OHL USA and Coffman Specialties, Inc.**

Dear Mr. McMillan:

Flatiron West, Inc. ("Flatiron") is the low bidder on the above-referenced project. This responds to the protest of Flatiron's bid by third bidder OHL USA ("OHL") dated June 22, 2015 and by second bidder Coffman Specialties, Inc. ("Coffman") dated June 24, 2015. The protests of both the second and third bidders are without merit and should be rejected by Caltrans. Summarily, Flatiron's bid complies with the subcontractor listing requirements in the Public Contract Code and Caltrans' bidding requirements. To the extent Caltrans concludes the allegations by the second and third bidders constitute bid deviations, Caltrans can and should waive such deviations.

1. Basis For Protests By Second and Third Bidders: Flatiron's June 11, 2015 Notice To Caltrans

Neither OHL nor Coffman were the first to bring the issues detailed below to Caltrans' attention. The day of the bid, Flatiron openly and candidly notified Caltrans of minor and inadvertent errors in its subcontractor listings, citing the duty placed on bidders by Public Contract Code section 4107.5. (Letter dated June 11, 2015, copy at Tab 1.) OHL and Coffman filed protests of Flatiron's bid 11 and 13 days later, respectively, and only after Flatiron's letter was posted as part of the Post-Bid Files on Caltrans' website.

We understand Public Contract Code section 4107.5 to state bidders should notify owners of inadvertent clerical errors in their bids. Flatiron wanted to follow that rule and did so by submitting its letter on the day of the bid to notify Caltrans.

OHL and Coffman seek to capitalize on Flatiron's good-faith decision to follow the rules and candidly communicate with Caltrans. Flatiron respectfully requests that its bid and the protests of OHL and Coffman be evaluated in that context.

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2. Listing Of Coral Construction Company

OHL seeks award of the project from third position based on an alleged defect in Flatiron's listing for Coral Construction Company ("Coral"). In Subcontractor Field No. 31, Flatiron listed Coral for bid items 36, 101, 102, 103 and 104:

List this sub? Yes	
31) Business Name Coral Construction Company	
Location City Wilsonville State OR	
California Contractor License Number 275199	
CA Department of Industrial Relations' Registration Number 100004246	
Portion of Work Subcontracted:	
Item #	Description
36 100	
101 94	Furnish Sign Structure
102 93	Install Sign Structure
103 94	Install Sign Panel
104 94	Furnish Limited Panel Sign

There is no dispute that the above listing of Coral complied with the bidding instructions. OHL nonetheless asks Caltrans to reject Flatiron's low bid because Flatiron also inadvertently listed Coral in Subcontractor Field No. 13, and that listing lacked the percentage and description detail set forth above. Flatiron caught the extra listing post-bid and promptly notified Caltrans of the inadvertent extra listing, via the letter at Tab 1.

Caltrans should not consider OHL's request to deem Flatiron non-responsive due to the Coral listing since Flatiron raised the issue itself per Public Contract Code section 4107.5. If Caltrans perceived the extra listing of Coral to be a bid defect, it can and should waive the defect under the Valley Crest case cited by OHL. According to that case, California law allows Caltrans to waive any type of bid defect that does not affect the bidder's price or give the bidder a competitive advantage. There is simply no reasonable argument for the notion that Flatiron had a leg-up on its competition because it listed the same subcontractor for the same bid items twice.

OHL also seeks award of the Project from third position based on Flatiron listing an incorrect license number for Coral. Per Public Contract Code 4104, an inadvertent error in listing the California contractor license number provided is not grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected contractor's license number is submitted to the public entity by the prime contractor within 24 hours after the bid opening and provided the corrected contractor's license number corresponds to the submitted name and location for that subcontractor. Flatiron notified Caltrans of the correct contractor's license number within 24 hours after the bid opening. (Tab 1.) As such, the listing of Coral is not a basis for protest.

3. Southwest V-Ditch

Flatiron listed subcontractor Southwest V-Ditch ("Southwest") to perform all of Bid Item 50 (Ditch Excavation) and 82 percent of Bid Item 134 (Slope Paving [Rock Cobble]). (Page 23 of Flatiron's bid printout.) Rather than "slope paving," Flatiron inadvertently described Southwest's work under Bid Item 134

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as "ditch excavation" (there is no ditch excavation in Bid Item 134; but Southwest is performing ditch excavation under Bid Item 50).

As with the Coral listing, Flatiron promptly notified Caltrans of the issue in the letter at Tab 1, and confirmed the description for Southwest's work under Bid Item 134 (Slope Paving [Rock Cobble]) was "slope paving." As with the Coral listing, Caltrans should not consider the requests from both OHL and Coffman to deem Flatiron non-responsive due to the Southwest listing, as Flatiron raised the issue to Caltrans itself pursuant to Public Contract Code section 4107.5.

Also like the Coral listing, even if Caltrans considered the Southwest listing to be a bid defect, Caltrans can and should waive the issue because there is no reasonable basis to conclude the alleged defect affected Flatiron's price or otherwise resulted in a competitive advantage.

Consistent with this fact, neither OHL nor Coffman states in their protest how Flatiron's listing of Southwest—or any of the other listing issues Flatiron raised in its June 11, 2015 letter—affected Flatiron's price or gave it a competitive advantage. Rather, OHL contends only that, under the Valley Crest case, "post-bid attempts to correct mistakes, if allowed, would create an unfair advantage not available to other bidders and as such make a bid non-responsive." OHL's argument is without merit, as Caltrans has not allowed Flatiron to "correct mistakes" (in the Valley Crest case, the City allowed the bidder to submit a whole new bid form after someone else pointed out that the original form stated the bidder would subcontract out far more work than allowed by the bid documents). Flatiron requests Caltrans either find that its bid was responsive, inadvertent errors and all, or that it can and should exercise its discretion to waive the errors.

4. Morales

Flatiron received a subcontractor quote from Morales Contracting Services ("Morales") to perform green sawing of jointed plain concrete pavement. Flatiron chose Morales for the work and, in accordance with the bidding instructions, listed Morales as a subcontractor under the applicable Bid Item 82 (Jointed Plain Concrete Pavement). Flatiron estimated green sawing to constitute 3 percent of that bid item, so Flatiron listed Morales as performing 3 percent. Flatiron described Morales' scope as stated "Jointed Plain Concrete Pavement," but quickly noticed that it should have been more specific to identify the green sawing portion of the work. Flatiron's intent to have Morales perform only a small portion of work was obvious, since it listed Morales as performing only 3 percent of the work. Flatiron nonetheless promptly notified Caltrans of the issue in its June 11, 2015 letter, submitted the day of the bid.

Like the Coral and Southwest listings, Caltrans should not consider OHL and Coffman's requests to deem Flatiron non-responsive, since Flatiron raised the issue to Caltrans in accordance with Public Contract Code section 4107.5. Moreover, even if Caltrans considered the issue to be a bid defect, Caltrans can and should waive the defect since it did not affect Flatiron's price or result in a competitive advantage.

5. Bert Salas

Flatiron's listed subcontractor Bert Salas is performing Bid Item 134 (Rock Slope Protection Fabric [Class 8]) at 98%. Post-bid, Flatiron raised the issue to Caltrans and confirmed Bert Salas would perform the

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Rock Slope Protection Filter Fabric portion of the bid item. (Tab 1.) As stated in its letter, Flatiron inadvertently omitted the description of work for Bid Item 134, however, at 98% Bert Salas is clearly performing the majority of the item and Flatiron's role in that work is minimal.

Caltrans should not consider OHL and Coffman's request to deem Flatiron's bid non-responsive, since Flatiron raised the issue to Caltrans in accordance with Public Contract Code section 4107.5. Moreover, even if Caltrans considered the issue to be a bid defect, Caltrans can and should waive the defect since it did not affect Flatiron's price or result in a competitive advantage.

6. Coffman's Waiver Argument

In its protest, Coffman appears to concede that Caltrans has the discretion to waive the perceived issues in Flatiron's bid because they are immaterial. Rather, Coffman asks Caltrans to choose not to waive the errors, based on the notion that Caltrans has chosen not to waive such errors in the past. The argument is without merit.

7. Coffman's Claims About Section 4107.5

Coffman contends Public Contract Code section 4107.5 does not cover the issues stated in Flatiron's June 11, 2015 letter (Tab 1) because Flatiron did not list the wrong subcontractor and seek substitution of a different subcontractor. Flatiron concedes that it listed the subcontractors it intended to list, and there is no need for Caltrans to consider a proposed substitution. However, Flatiron does not read the statute as narrowly as Coffman. Rather, Flatiron felt directed by section 4107.5 to give Caltrans "written notice" of its "inadvertent clerical error[s] in listing of a subcontractor."

In any case, whether the statute applies in this context or not does not limit Caltrans' ability or mandate to accept Flatiron's bid, for the reasons set forth above.

8. Conclusion

Both OHL and Coffman's protests have no merit and should be rejected. Flatiron respectfully requests Caltrans waive the issues raised in its June 11, 2015 letter (Tab 1) and award to Flatiron.

If you have any questions regarding this matter please feel free to contact the undersigned at 760-916-9024.

Thank you.

Dale A. Nelson
Vice President
Flatiron West, Inc.

TAB "1"



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June 11, 2015

Department of Transportation
Mr. John McMillan
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Subject: Subcontractor List Form - Clerical Error
Construction on State Highway in San Diego County in and Near San Diego at
Route 11/125/905 Separation, Contract 11-288814

Mr. McMillan:

In accordance with Public Contract Code 4107.5, Flatiron West, Inc. ("Flatiron") requests to assert a claim of inadvertent clerical errors on the Subcontractor List Form included with our bid on June 11, 2015 for the Construction on State Highway in San Diego County in and Near San Diego at Route 11/125/905 Separation, Contract 11-288814.

The following clerical errors were listed on our Subcontractor List Form:

- Subcontractor Field #13, #31 and #32: Coral Construction Company ("Coral") was duplicated an error on the Subcontractor List Form. Coral was listed in Subcontractor Field #13 for Bid Items only without Bid Item Percentage or Description information. However, Coral was also listed in Subcontractor Field #31 and #32 with the complete Bid Item Percentage and Description information.
- Subcontractor Field #31 and #32: Coral's contractor license and DIR registration was listed incorrectly. The correct license number for Coral is 332441 and the correct DIR registration number is 1000005668.
- Subcontractor Field #15: Southwest V-Ditch was listed for Bid Item 134 with an error in the Description of work "Ditch Excavation". Ditch Excavation is Bid Item 50 which is also included in Southwest V-Ditch's Bid Items. The correct Description of work for Bid Item 134 is "Slope Paving".
- Subcontractor Field #20: Bert W. Sales Inc was listed for Bid Item 135 with a Percentage of 98%, however, the Description of work was omitted in error. The Description of work for Bid Item 135 is "RSP Filter Fabric."
- Subcontractor Field #45: Morales Contracting Services was listed for Bid Item 82 with an error in the Description of "Jointed Plain Concrete Pavement". The correct Description of work for Bid Item 82 is "Green Saw Jointed Plain Concrete Pavement".

Please let us know if you have any questions in regard to this matter.

Thank you.

Dale A. Nelson
Vice President
FLATIRON WEST, INC.