

Ronald B. Pierce  
Attorney at Law

R  
B  
PIERCE  
A Professional Law Corporation

3050 East Birch Street, Second Floor  
Brea, California 92821-8248

rbpierceapl@gmail.com

949.244.9367

August 28, 2015

Copy sent by facsimile to  
858.536.3131 and 916.227.6282/  
Original by USPS

Mr. John C. McMillan  
Deputy Division Chief  
Division of Engineering Services  
Office Engineer  
1727 30<sup>th</sup> ST, MS-43  
P.O. Box 168041  
Sacramento, CA 95816-8041

RE: Project Number: 11-288814  
Bid Date: June 11, 2015

Dear Mr. McMillan:

I represent OHL USA, Inc., third low bidder on June 11, 2015 bid day and the lowest responsible bidder with a responsive bid on that date.

You have OHL's formal, June 22, 2015 bid protest to lower, non-responsive bids by Coffman Specialties, Inc. and Flatiron West, Inc. We understand that, in part based upon reasons cited by OHL in its protest, you have rejected Coffman's low bid as non-responsive by your July 3, 2015 letter. Nevertheless, you also have you announced your intention to award to Flatiron notwithstanding its non-responsive bid.

With due respect, in the strongest terms possible, as a frequent bidder on Department of Transportation ("Caltrans") project, OHL reiterates its June 22 bid protest and objects to your awarding this project to Flatiron based upon its non-responsive, June 11 bid.

In this letter, I am not going to repeat all of the details of OHL's bid protest to Flatiron's bid. As you know, generally, they relate to Flatiron's failing to provide scope of work descriptions, Flatiron providing vague and wrong scope of work descriptions when given, Flatiron failing to provide percentages of work performed by listed subcontractors at bid time, and Caltrans providing Flatiron with the opportunity, post-bid, to change its errors.

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Flatiron's equivocations create opportunity for (A) Flatiron to auction subcontract work, or different subcontract work scope combinations, post-bid, at even lower prices than first bid to Flatiron, and (B) subcontractors to approach Flatiron now, after Flatiron's June 11 bid, and offer to perform subcontract work at lower prices than submitted by subcontractors whose sub-bids were relied upon by Flatiron (and, ultimately, Caltrans).

As you know, the California Subletting and Subcontracting Fair Practices Act ("Fair Practices Act"), California Public Code section 4100 and following, applies to every California public works construction bid, including those to Caltrans. In order for Caltrans to award a contract to Flatiron for this project, Caltrans must find Flatiron's bid responsive to (1) the Fair Practices Act and (2) your request for bids. See D.H. Williams Construction, Inc. v. Clovis Unified School District (2007) 146 Cal.App.4<sup>th</sup> 757. Flatiron fails both these tests in this instance.

In California Public Contract Code section 4101, the California Legislature expressly explained that,

The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.

Thus, notwithstanding whatever Caltrans and its Division of Engineering Services thinks, the California Legislature counts violations such as Flatiron has committed to be serious and leading to evil. The California Legislature gives Caltrans, and its Division of Engineering Services, no discretion to waive such fatal defects in Flatiron's bidding to the detriment of Caltrans, the public, other contractors and subcontractors, and employees.

In Public Contract Code section 4101, the California Legislature bluntly listed some of the abuses that the Fair Practices Act was designed to avoid,

The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alternation, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.

Caltrans does not have the right to subject itself, California residents, or anyone else, to these evils.

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Mirroring Caltrans' Notice to Bidders and Standard Specifications for this project, Public Contract Code section 4104 sets the statewide, statutory standards,

Any officer, department, board, or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work of improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:

(a)(1) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

\* \* \* \*

(b) The portion of the work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

(Emphasis added)

Again, these Fair Practices Act statutes are not elective. They are mandatory for every public entity officer, department, board, and commission, and every prime contractor bidding to such entities.

Plus, Flatiron's omitted and fuzzy identifications of works scope, subcontractors, prices, and percentages are clear and material violations of your own Notice to Bidders and Special Provisions, the Revised Standard Specifications Sections 2-1.10 and 2.3.44 D, and they gave Flatiron a competitive advantage over other bidders. In short, it is not fair to forgive Flatiron from complying with the contract requirements that OHL and other contractors followed to their detriment. By excusing Flatiron only, you are giving a discriminatory preference to Flatiron.

\* \* \* \* \*

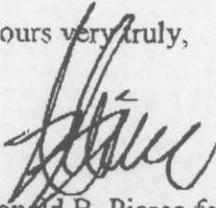
Based upon the California Public Contract Code for all California public work, and your own Notice to Bidders and Special Specifications for this specific Caltrans work, Flatiron's bid is not

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responsive and cannot be cured, subjecting Caltrans, motorists, prime contractors, subcontractors, their employees, and the State of California to many evils.

Therefore, OHL respectfully requests that Caltrans reject both Coffman's and Flatiron's bids for award, as required by law, and award the project to OHL as the lowest responsive and responsible bidder, and one who followed the law and rules for this project.

Yours very truly,



Ronald B. Pierce for  
RB PIERCE, A Professional Law Corporation

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PIERCE**

**A Professional Law Corporation**

**Facsimile Cover Sheet**

**Date:** August 28, 2015

**Number of pages sent** (including this facsimile cover sheet): 5

**To:**

NAME/COMPANY:	FAX NO:	PHONE NO:
Mr. John C. McMillan Deputy Division Chief Division of Engineering Services Department of Transportation	858.536.3131 and 916.227.6282	916.227.6299

**From:**

**R  
B  
PIERCE**  
A Professional Law Corporation  
Ronald B. Pierce, Esq.  
3050 East Birch Street, Second Floor  
Brea, CA 92821-6248  
[rbpierceaplpc@gmail.com](mailto:rbpierceaplpc@gmail.com)  
P: 949.244.9367  
F: 714.854.9754

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