

*Build the Best. **Be the Best.***



Flatiron West Inc.
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June 5, 2014

By Email and Facsimile and Certified Mail

Mr. John McMillan, Deputy Division Chief
State of California Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
Sacramento, CA 95816-8041

**Re: Contract 11-406704
Construction on State Highway in San Diego County Near Oceanside from Cockleburrr
Overcrossing to the San Diego County Line
Response to Security Paving Company, Inc.'s Response to Flatiron West, Inc.'s Protest**

Dear Mr. McMillan,

This responds to Security Paving's May 22, 2014 letter, in which Security asks Caltrans to waive the defects in its bid for the above-referenced project. Most of the letter rehashes issues we previously addressed in our letter dated May 16, 2014. We will not similarly rehash our responses to those issues. This letter is limited to the assertions by Security Paving regarding the policy/practice of Caltrans to reject bids like Security's.

Caltrans Policy And Practice

Security disputes the notion that Caltrans' policy/practice is to disqualify bids in which the bidder revises its subcontractor scopes in its post-bid subcontractor listing (we provided several examples of Caltrans implementing this policy in our May 16, 2014 letter). Tellingly, Security did not provide a single example of Caltrans waiving such a deficiency. This is because Caltrans follows the law—post-bid subcontractor scope revisions may not be waived under California law for the reasons stated in our May 16, 2014 letter (i.e., the revision can affect price and/or give the bidder an advantage or benefit not allowed to other bidders).

Enclosed is another example of Caltrans following the public bidding law—a bid rejection letter from Caltrans dated December 14, 2012, in which Caltrans rejected an apparent low bid based on a similar subcontractor scope revision post-bid (Contract No. 12-0C5704).

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Conclusion

Security's May 22, 2014 letter only confirms its post-bid alteration of subcontractor scope. That is a defect which may not be waived and a defect which Caltrans does not waive. As such, we respectfully request Caltrans reject Security's bid as nonresponsive and award Flatiron the project as the lowest responsive bidder. If you have any questions please feel free to contact the undersigned at 760-594-1593 or jturner@flatironcorp.com.

Thank you.

Jeffrey A. Turner
Vice President
Flatiron West, Inc.

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
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*Flex your power!
 Be energy efficient!*

December 14, 2012

Facsimile: (626) 960-3887

George Chumo, President
 Chumo Construction, Inc.
 14425 Joanbridge Street
 Baldwin Park, CA 91706

12-0C5704
 12-Ora-91-0.9/5.4
 B.O. 11/29/12

Dear Mr. Chumo:

Chumo Construction, Inc., (Chumo Construction) submitted a bid for contract 12-0C5704 on November 29, 2012. By this letter, the Department of Transportation (Caltrans) notifies Chumo Construction that its bid is nonresponsive because it failed to properly submit the Subcontractor List.

The Subcontractor List form states in part, "...Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid." No other revisions to the form are permitted.

Since Ace Fence was originally subcontracted to perform Metal Beam Guard Railing, but Fence was added to the revised bid list received on November 30, 2012, Caltrans finds your bid is nonresponsive. Caltrans will proceed to award the contract to the lowest responsible bidder provided all requirements are met.

Your attention is directed to Section 3-1.04 of the Standard Specifications. The Department is not obligated to offer an extension of the award period for a non-responsive bid. Should you wish to offer to extend your bid while resolving a non-responsive finding, you must send your request to the Office Engineer no later than 4:00 pm two business days prior to the expiration of your bid.

If you have any questions, please contact David Neumann, Contract Awards Senior, at (916) 227-6285.

Sincerely,

John C. McMILLAN

JOHN C. McMILLAN

Deputy Division Chief

Office Engineer

Division of Engineering Services

Attachment