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A LIMITED LIABILITY PARTNERSHIP THAT INCLUDES PROFESSIONAL CORPORATION

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November 19, 2013

Mr. John McMillan  
Deputy Division Chief  
Division of Engineering  
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Sacramento, CA 95816-8041  
Phone: (916) 227-6299  
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**Via:** Facsimile and E-mail

**Re:** Contract No. 12-0F96E4 - Construction on State Highway in Orange County from 0.4 mile north of Camino De Estrella Overcrossing to 0.2 mile south of San Juan Creek Road Undercrossing

**Subject:** Flatiron West, Inc.'s Bid Protest of the Shimmick Construction Company, Inc.'s Non-Responsive Bid for Contract #12-0F96E4

Dear Mr. McMillan:

Flatiron hereby protests Shimmick's bid for Contract No. 12-0F96E4.

Shimmick failed to provide complete information in Columns 1 through 4 within the time specified on the Department's Subcontractor List form OES-OE-0102.2 (REV 3/2011) ("Subcontractor List"). Shimmick did not give a description of work for their listed subcontractor R.J. Noble on the Subcontractor List on the day bids were opened. Shimmick changed R.J. Noble's subcontracted work description on the subsequent Subcontractor List submitted within 24 hours of bid opening.

Flatiron requests that the Department find Shimmick's bid non-responsive because they failed to follow the instructions on the Subcontractor List and violated Public Contract Code Section 4104(b).

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The Department's Subcontractor List has instructions and 4 columns to be filled out by the contractor; Columns 1 and 4 at bid time and 2 and 3 either with the bid or within 24 hours of the bid opening:

- Instructions: The bidder must identify each subcontractor performing work in an amount in excess of  $\frac{1}{2}$  of 1 percent of the total bid or \$10,000, whichever is greater (Pub cont Code § 4100 et seq.). 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.
- Column 1: Business Name and Location (Public Contract Code 4104(a)(1))
- Column 2: Bid Item Nos. (Public Contract Code 4104(a)(2)(A))
- Column 3: Percentage of Bid Item Subcontracted (Public Contract Code 4104(a)(2)(A))
- Column 4: Description of Subcontracted Work (Public Contract Code 4104(b))

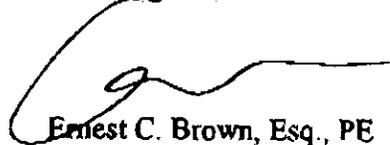
Shimmick failed to complete Column 4 for listed subcontractor R.J. Noble's work on the day of bid. Instead of describing R.J. Noble's work, Shimmick wrote "Item 136-143" which is not a work description.

The Subcontractor list clearly states that Column 2 is reserved for "Bid Item Numbers" and Column 4 is reserved for "Description of Subcontracted Work". Column 4 is consistent with Public Contract Code Section 4104(b). Therefore, Shimmick failed to follow the Subcontractor List instructions and violated the Public Contract Code.

Furthermore, Shimmick changed R.J. Noble's description of work in column 4 to "AC Dike / Asphalt Paving" on their second Subcontractor List submitted within 24 hours of the bid opening. Shimmick's bid-day subcontractor form improperly described R.J. Noble's work as "Item 136-143".

Flatiron requests that the Department deem Shimmick's bid non-responsive and award the contract to Flatiron who was the low, responsible, and responsive bidder.

Best Regards,



Ernest C. Brown, Esq., PE  
Partner  
Smith Currie & Hancock LLP

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**Ex**

**To:** John McMillan  
Deputy Division Chief  
Division of Engineering

**From:** Kristy Panchal

**Fax:** (916) 227-6282

**Pages:** 3 (including cover sheet)

**Phone:** (800) 832-6946

**Date:** November 19, 2013

**Re:** Contract No. 12-0F96E4

**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

Regards,

Kristy Panchal

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