

**FELDMAN & ASSOCIATES, INC.**

ATTORNEYS AT LAW

11030 SANTA MONICA BOULEVARD  
SUITE 109  
LOS ANGELES, CALIFORNIA 90025

(310) 312-5401

FACSIMILE (310) 312-5409

June 23, 2015

VIA FACSIMILE

Mr. John C. McMillan  
Deputy Division Chief  
California Department of Transportation  
Division of Engineering Services  
1727 30<sup>th</sup> Street  
Sacramento, CA 95819-8041

Re: Liberty Maintenance, Inc./Caltrans - Contract No. 03-3F3404

This firm represents Liberty Maintenance, Inc., with respect to its bid for Caltrans Contract No. 03-3F3404. The purpose of this letter is to protest Caltrans' rescission of its nonresponsive bid finding with respect to FD Thomas.

In its letter dated May 20, 2015, FD Thomas provided new information concerning its bid and DBE submittal, which apparently motivated and informed Caltrans' decision to reconsider its nonresponsive finding. In other instances Caltrans has taken the position that such determinations must be based solely on the documents a bidder originally submits, and that new information cannot be used as the basis for Caltrans' decisions regarding DBE participation credit. To ensure a fair and transparent bidding process, it is essential that the policies and procedures Caltrans applies during its DBE evaluations be consistent among all projects and bidders. Accordingly, FD Thomas' May 20<sup>th</sup> letter of explanation and additional information, including annotated DBE submittal forms, should not have been considered in any way by Caltrans.

The information that appears on the face of FD Thomas' DBE submittal does not support Caltrans' inference that ST Rhoades Construction will be acting as a second-tier subcontractor to Bettancourt Brothers and Peterson Industrial Scaffolding. If only the original DBE submittal is considered, FD Thomas' bid must be found nonresponsive.

FD Thomas' DBE submittal included a total of five pages from ST Rhoades Construction. One was in the form of a proposal, and four were annotated price sheets. None of those five pages reference Bettancourt or Peterson. All are addressed to "General Contractors,"

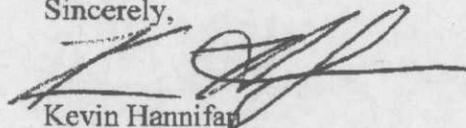
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which in this instance is FD Thomas. The fax timestamp that appears at the bottom of the pricing pages indicates that a single page was faxed on March 17<sup>th</sup> at 12:03 p.m. It is plainly apparent from the documents that the ST Rhoades pricing sheets that FD Thomas submitted are identical copies of a single original pricing sheet. Moreover, the pricing sheets have clearly been annotated by one individual, as the handwriting is all the same, which indicates that an FD Thomas employee marked up the pricing sheets after receiving the fax from ST Rhoades. There is no information in any of the documents that indicates work will be performed for anyone other than the "general contractor."

The DBE Commitment Form specifically requires all bidders to submit "written confirmation from each DBE stating that it will be participating in the contract to perform the specific work shown for the specific amount agreed to." FD Thomas included only one proposal sheet from ST Rhoades for temporary K railing. It did not submit a proposal or written confirmation from ST Rhoades concerning the work that will allegedly be performed for Bettancourt and Peterson. Consequently, FD Thomas' original DBE submittal provides no basis for the conclusion that ST Rhoades will perform work as a second-tier subcontractor, and is patently deficient due to its lack of written confirmations.

Since FD Thomas failed to provide written confirmations, its DBE submittal is deficient, participation credit cannot be awarded for ST Rhoades' work in bid items 10 and 22, and FD Thomas' bid must be found non-responsive.

Sincerely,



Kevin Hannifan  
for FELDMAN & ASSOCIATES, INC.

cc: Mark Feldman  
Client

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FACSIMILE (310) 312-5409

June 23, 2015

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FACSIMILE TRANSMITTAL

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Time: 10:39 a.m.

File No: \_\_\_\_\_

File Name: Liberty Maintenance/Caltrans

Sent To:

Telecopy Number:

**Mr. John McMillan**  
**Liberty Maintenance**

**916-227-6282**  
**330-755-1847**

From: Kevin M. Hannifan

Total Pages (Including this Cover Page): 3

DESCRIPTION OF DOCUMENT(S) TRANSMITTED:

Further Protest Letter re: Caltrans Contract No. 03-3F3404

MESSAGE:

ORIGINAL WILL BE SENT VIA:

MAIL  FEDERAL EXPRESS  MESSENGER  WILL NOT BE SENT

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