



Chumo Construction Inc. *Engineering Contractor*

14425 JOANBRIDGE STREET • BALDWIN PARK, CALIFORNIA 91706-1747 • (626) 960-9502 • FAX (626) 960-3887

November 10, 2014

John C. McMillan
Deputy Division Chief
Office Engineer,
P.O. Box 168041, MS-43
Sacramento, Ca. 95816-8041

Dear Mr McMillan

We begin with observing that the Caltrans bid documents require the bidder to identify the "Percent of Bid Item Subcontracted". This requires the bidder to set forth the portion of the work in a particular bid item that will be performed by the subcontractor. The percentage of the "total contract bid" is significantly different; it is not the percentage that Caltrans requires be listed regarding subcontractors. Indeed, the reason Tricon's bid was rejected regarding Contract No. 02-0E3604 is because it listed the percentage of the "total contract bid" for its items rather than the percentage of the work to be performed on the item. The proper analysis considers the only portion of the work to be performed on a bid item without regard to the total contract bid amount of the prime contractor on that item.

"Failure to Adequately List True Percentage of Subcontracted Work for Bid Item #7"

Chumo accurately listed the percentage of Bid Item #7 that will be performed by Flatiron. Flatiron's quotation is for performance of Bid Item 7 complete. It will perform 100% of that bid item. Chumo listed 100% on its Subcontractor List. Thus Chumo complied precisely with the requirement.

Conversely, Highland listed Flatiron in the same defective manner as did Tricon. Highland listed Flatiron as performing 95% of the bid item. Highland's "total contract bid" for Bid Item #7 is \$395,750.00. 95% of \$395,750.00 is \$375,553.00, the amount of the Flatiron quotation. It is impossible to determine what actual percentage of the specific line items Highland's subcontractors will perform as all of the listed percentages are obviously taken from the "total contract bid" for those items rather than the portion of work for those items.

Indeed, if you review Chumo's Subcontractor List, it is apparent that it distinguished between those items being performed 100% by a particular subcontractor and those items which would be only partially performed. Highland, on the other hand, has no subcontractor listed as performing 100% of the work for any Bid Item even though it presumably received the same quotations as did Chumo for commonly listed subcontractors (see Ace Fence and Rouch Rebar listings).

Chumo accurately listed Flatiron as performing 100% of the work required under Bid Item #7.

Highland both misstates the law and provides misleading "examples" to support its unfounded allegations.

It first references *Valley Crest Landscape, Inc. v. City Council of the City of Davis* (1996) 41 Cal.App.4th 1432 as support for its contention that a mistake with regards to the percentage of work to be performed by a subcontractor prohibits a public entity from accepting the bid. The case says no such thing.

In *Valley Crest*, the city bidding specifications required that the listed percentage of subcontractor work in the bid total less than 50 percent. The low bidder listed subcontractor work as 83 percent of its bid; when the city objected, the low bidder stated that the 83 percent figure was incorrect, and revised it to 44.65 percent. Because this situation would have given *Valley Crest* the opportunity to withdraw its bid without forfeiting its bid bond under Public Contract Code section 5103, the City refused and awarded the contract to the second bidder. The appellate ruled for the City in a holding confirming that waiver of a bid irregularity should be allowed if it would not give that bidder an unfair advantage by allowing the bidder to withdraw its bid without forfeiting bond.

Even if Caltrans considers the issue regarding Item 52 to be an irregularity, Caltrans should waive it as *Valley Crest* provides. Any adjustment in the total portion of work subcontracted, whether it be by percentage of the Bid Item or in actual total contract bid dollars will not change whether Chumo satisfied that requirement. Chumo satisfies it with or without any adjustment. Thus, Caltrans should accept Chumo's bid as the lowest responsive and responsible bid.

Highland's desperation to create authority for its position is even more clearly demonstrated by its examples of "similar irregularities".

The first example is correspondence to Tricon from Caltrans regarding Contract No. 02-E3604 in which Tricon identified the subcontractor percentages using the "total contract bid" percentages instead of the portion of each specific bid item. This is precisely the method Highland itself used on the current bid. This is **not** the method Chumo used. Instead, **Chumo used the method required by Caltrans**. This letter undermines Highland's arguments rather than supporting them.

The second example is no better. The Caltrans letter to Dreambuilder regarding Contract No. 08-0P2804 deals with a situation where "the given bid item numbers do not correspond to the description of work to be performed" by the subcontractor. There is nothing in Chumo's bid that would give rise to any such conclusion. Bid Item #7 is described in the bid documents as "Temporary Signal System". Chumo described it as "Electric". Highland described it as "Electrical". While it is well known

that Caltrans can and will reject bids if it deems it appropriate to do so, this "example" is entirely irrelevant.

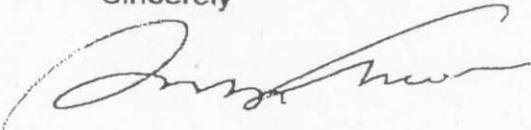
"Failure to Adequately List True Percentage of Subcontracted Work for Bid Item #43".

Chumo Construction would not presume to have any knowledge of any conversation that Highland may or may not have had with any potential subcontractors. Chumo accurately listed its intention to have Condon-Johnson perform 100% of Bid Item #43. Chumo contacted Condon-Johnson, they will be performing 100% of Bid Item 43, including final painting. Thus, Caltrans should accept Chumo's bid as the lowest responsive and responsible bid.

Finally, Highland misunderstands how Chumo can subcontract 100% of Bid Item #43 to Condon-Johnson when Condon-Johnson does not have the required certification. Condon-Johnson will sub-subcontract the part of the work that requires certification to Techno West, Inc. Chumo is not required to list second tier subcontractors. Its designation of 100% to Condon-Johnson is accurate.

Highland is not a responsive bidder. As such, its protest should be rejected out of hand. However, as set out above, the protest has no merit in any event. Chumo is the lowest responsive and responsible bidder to whom the project should be awarded.

Sincerely



George Chumo
President, Chumo Construction Inc.

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FACSIMILE TRANSMISSION

DATE: November 12, 2014

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Number of pages
(Including cover sheet)

FAX NO.: 916-227-6282

TO: Department of Transportation

ATTN: John C. McMillan, Deputy Division Chief

FROM: George Chumo

RE: Contract No. 07-3X8204
07-LA-39-21.7,22.0
B.O. 10/16/14

MESSAGE:

Please see the attached letter with regard to the bid protest dated November 6, 2014.

If you have any questions, please contact me at 626-960-9502.