



OHL USA

7-13-15A10:11 RCVD

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July 8, 2015

Department of Transportation
Office Engineer, MS43
1727 30th Street
Sacramento, CA 95816-7005

Attn: Mr. John McMillan
Office Engineer

Re: Contract 11-288814
Bid Date 06/11/2015
Bid Protest Follow Up

Mr. McMillan,

Please reference our letter of June 22, 2015 and accept this letter as our follow up regarding our protest of bids submitted by Flatiron West, Inc. (Flatiron) and Coffman Specialties, Inc. (Coffman). Our position remains the same in that bids submitted by both Flatiron and Coffman were non-responsive and the project be awarded to OHL USA (OHL) as the lowest responsive bidder.

Coffman Specialties, Inc.

Coffman's attempt to satisfy the bid formalities by supplementing their subcontractor list the next day in lieu of the specified time of bid renders their bid non-responsive. In apparent agreement, the Department of Transportation (Caltrans) on July 3, 2015 declared Coffman's bid to be non-responsive citing **"A basic rule of competitive bidding is that bids must conform to the specifications of the contract and if a bid fails to conform to the specifications, it may not be accepted."** OHL does however maintain its position and intends our protest to remain in full force and effect should there be any change to the non-responsive determination.

Flatiron West, Inc.

OHL first became aware of the irregularities on both the Coffman and Flatiron bid on Bid Day June 11, 2015 after Caltrans published the **"Bid_Download_Report_ByBidAmount"**. On the face of the report for both Coffman and Flatiron are line entries:

"BidErrors:

Misc Error : Required fields not entered in SubContractor List screen"

Later Caltrans published Flatiron's letter claiming errors and requesting changes to the Subcontractor List and eventually published the bid books and DBE submittals. OHL reviewed and researched the available information and concluded that such patent irregularities would be summarily addressed by



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Caltrans. On June 22, 2015 OHL decided to submit our letter protesting the Flatiron and Coffman and give Caltrans ample time to review the issues.

Flatiron issued its letter of July 2, 2015 attempting to defend their position and to which we take exception. Flatiron seeks to be rewarded with a second chance on the basis they self-reported their errors. We find no merit to such a rational and find no permission in the specifications nor precedence from Caltrans.

Flatiron attempts to justify their several changes to the subcontractor list on the basis that Public Contract Code 4100 et. seq. (The Act) permits changes to inadvertent clerical errors. We do concede that under The Act section 4104 (a)(2) allows for the correction of an inadvertent clerical error in the listing of an incorrect subcontractor license number. This situation will always create the uncertainty of whether the subcontractor name is incorrect and the license number correct or the name is correct and the license number is incorrect. We defer to Caltrans' better judgement in this limited issue. We do however take the same position as Coffman that The Act is very defined and limited in the types of inadvertent clerical errors that permit changes to the subcontractor list. Those errors are limited to 1) changing a subcontractor's license number, and 2) the *"listing of a subcontractor"* (Sect 4107.5). Nowhere in The Act is the change of scope of a subcontractor permitted.

In addition to the lack of statutory support, a post bid change in the scope of work for a subcontractor is the technical equivalent to changes to Columns 2 and 3 on the paper bid 24 hour subcontractor list form for which Caltrans has a solid history of a non-responsive determination for such attempted actions. Bidders were not eligible to rescind their request, their bids were deemed non-responsive.

The bid documents specifically state in pertinent part that the Subcontractor List form submittal deadline is the "Time of bid" and further defines the list to include "Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent". Flatiron listed Bert Salas for Item 134 at 98% yet failed to list a description of the work. Again, we find no statutory support, specification or precedence that allows post bid changes and additions of descriptions of the work.

Finally, Flatiron insist that even though such changes are not permitted, that these defects are just minor irregularities that Caltrans can waive since it did not affect Flatiron's price or result in a competitive advantage. We strongly disagree! OHL and assumedly our competitors expend tremendous time and resources to compile bids for Caltrans. The expectation is that the process is fair, predictable and with integrity. Part of the bid is the respect for the bid formalities and the predictability that conforming to these formalities will result in a responsive bid. Any contractor that discounts and dismisses these formalities and is allowed to get a second chance to correct its errors has an incredible competitive advantage over those who follow and respect these rules. Flatiron has no less than 5 errors on their bid form and to permit post bid corrections would establish such a precedence that the predictability and integrity of the process would now be in question. To reiterate the point stated above made by Caltrans in their finding Coffman's bid non-responsive; ***"A basic rule of competitive bidding is***



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that bids must conform to the specifications of the contract and if a bid fails to conform to the specifications, it may not be accepted."

Our position remains unchanged and for the reasons stated above, OHL USA should be declared the lowest responsible and responsive bidder and should be awarded this contract.

Please feel free to contact me if you have questions or need further information at (949) 242-4432.

Sincerely,
OHL USA Inc.

Ahmad Bagheri
Executive Vice President

CC: File