


COFFMAN SPECIALTIES, INC.

GENERAL AND ENGINEERING CONTRACTORS

June 24, 2015

 Sent *via* facsimile: (916) 227-6282 and
 e-mail: John.McMillan@dot.ca.gov

 John C. McMillan, Deputy Division Chief
 Office Engineer
 California Dept. of Transportation
 1727 30th Street, MS 43
 Sacramento, CA 95816

 Project: Contract No. 11-288814; Rte. 11/125/905 Separation
 Subject: Protest of Flatiron's Bid as Nonresponsive

Dear Mr. McMillan:

Coffman Specialties, Inc.'s ("Coffman") respectfully submits this letter in protest of the bid submitted by Flatiron West, Inc.'s ("Flatiron") bid for the above-referenced Contract as being nonresponsive. Flatiron's letter to the Department of Transportation ("Caltrans") dated June 11, 2015 details the inadequacies of its bid which Flatiron terms "inadvertent clerical errors."¹

In its letter, Flatiron acknowledged that its bid did not meet the requisite subcontractor listing requirements, and labelled its omissions and mistakes as "inadvertent clerical errors." Flatiron's Subcontractor List, on its face, shows a material deviation from the bid requirements, the 2010 Standard Specifications and Public Contract Code § 4104. Caltrans historically refuses to permit such errors in any bid. Hence, even if Flatiron's errors could be deemed immaterial irregularities capable of being waived by the State, for continuity in the State's bidding procedures, Caltrans has no alternative but to determine Flatiron's bid nonresponsive.

The Bidding Instructions and Statute Require Submission of "Descriptions of Work" at Bid Time

The Subletting and Subcontracting Fair Practices Act (Public Contract Code § 4100 et seq.) ("the Act") governs this bid. Section 4104 requires that bidders "shall" set forth the name, business location, and (within 24 hours after bid opening) the California contractor license number of each subcontractor who will perform work or labor or render service to the work "in an amount ... in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater." (Pub. Cont. Code § 4104(a).)

¹ This letter is sent in conjunction with Coffman's letter dated June 23, 2015 affirming Coffman's bid as responsive.



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The Act further mandates that Contractors state in their bid “[t]he **portion of the work** that will be done by each subcontractor under this act.” (Pub. Cont. Code § 4104(b); emphasis added).

Similarly, Standard Specification § 2-1.10 “SUBCONTRACTOR LIST” of the Bid Documents instructs bidders as follows:

On the Subcontractor List form, list each subcontractor to perform work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont. Code § 4100 et seq.).

For each subcontractor listed, the Subcontractor List form must show:

1. Business name and the location of its place of business.
2. California contractor license number for a non-federal-aid contract.
3. Public works contractor registration number
4. **Portion** of work it will perform. **Show the portion of the work by:**
 - 4.1. Bid item numbers for the subcontracted work
 - 4.2. Percentage of the subcontracted work for each bid item listed²
 - 4.3. **Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent.**

(Revised Standard Specification § 2-1.10; emphasis added).

Bidders are instructed to “Complete the forms in the Bid book” and “[f]ailure to submit the forms and information as specified may result in a nonresponsive bid.” (Standard Spec. § 2-1.33A).

Flatiron’s Bid Contained Three Material Errors

In its bid, Flatiron listed subcontractors for less than 100 percent of the bid item work, but either omitted a description of what work the subcontractor would do, or gave an inaccurate or incomplete description of the work as follows:

1. Southwest V-Ditch

Flatiron listed Southwest V-Ditch to perform 82% of Bid Item 134. Flatiron described Southwest’s portion of work as “Ditch Excavation.” In its subsequently-sent letter, Flatiron said that Southwest V-Ditch would perform “Slope Paving.” (See Attachment 1, pg. 23 of Flatiron’s bid.) Bid Item 134 is Slope Paving. Bid Item 50 is Ditch Excavation.

Flatiron’s bid did not comport with the requirement to provide the correct “description” for Item 134. Caltrans does not accept bids containing inaccurate descriptions, nor does it permit changes to descriptions after bid time. To be consistent, Caltrans should not permit such a change in this case.

² Coffman explains in separate correspondence that the many Caltrans websites and online manual referenced in the Bid Documents for this Electronic Bidding Contract allow the work percentages to be submitted up to 24 hours after bid opening.

2. **Bert W Salas, Inc.**

Flatiron listed Bert W Salas Inc. to perform 98% of Bid Item 135. Flatiron gave no description of Salas' work with its bid. (See Attachment 2, Additional Subcontractor List 2 of Flatiron's bid.) Since the work percentage is identified as less than 100 percent, Flatiron was required to submit a description of Bert W Salas' work at bid time. By not fulfilling this statutory and contractual requirement, Flatiron did not comply with the bidding instructions. Caltrans does not accept bids containing omissions of requisite information. Nor does Caltrans consider information submitted outside of the bid (such as Flatiron's subsequent letter to the State) to supplement contractors' bids. To be consistent, Caltrans should not permit such an omission in this bid.

3. **Morales Contracting Services**

Flatiron listed Morales Contracting Services to perform 3% of Bid Item 82. Flatiron described Morales' portion of work using the full name of the Bid Item – "Jointed Plain Concrete Pavement" – although Morales was not performing the paving work. Flatiron's letter clarified that Morales was to perform only the "green saw" portion of the Item 82 work. By not giving an adequate and correct description, Flatiron did not comply with statutory and contractual requirements. With such a broad description, could later change what work Morales will perform. Caltrans consistently determines whether descriptions of work are adequate and finds bids nonresponsive when Caltrans determines the descriptions are inaccurate. Thus, Caltrans must find this error renders Flatiron's bid nonresponsive.

As Caltrans has asserted many times in past decisions, without proper descriptions, the State cannot know what work the subcontractors will perform, giving Flatiron the ability to manipulate the work and cost of its subcontractors, in direct conflict with the Act and the State's instructions. Allowing Flatiron to change the percentage and description of work for the above-referenced subcontractors after bid time would give Flatiron an unfair advantage over other bidders.

Flatiron's Bid Errors do not fall under Public Contract Code § 4107.5

Flatiron's letter identifies its bidding errors as "inadvertent clerical errors" under Public Contract Code § 4107.5 which states in relevant part:

The prime contractor as a condition to assert a claim of **inadvertent clerical error in the listing of a subcontractor** shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of that notice to both **the subcontractor he or she claims to have listed in error and the intended subcontractor** who had bid to the prime contractor prior to bid opening.

...

The awarding authority shall, after a public hearing as provided in Section 4107 and in the absence of compelling reasons to the contrary, **consent to the substitution of the intended subcontractor:**

(a) If (1) the prime contractor, (2) the subcontractor listed in error, and (3) the intended subcontractor each submit an affidavit to the awarding authority along with

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such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or

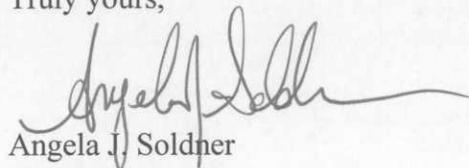
(b) If the affidavits are filed by both the prime contractor and the intended subcontractor within the specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to the awarding authority and to the prime contractor, written objection to the prime contractor's claim of inadvertent clerical error as provided in this section.

As evident by the language of the statute, the only "inadvertent clerical error" for purposes of § 4107.5 is an erroneous listing of one subcontractor in lieu of another intended subcontractor. The Act prohibits the prime contractor to substitute any other subcontractor for the subcontractor listed in the original bid, except in specified narrow circumstances (Pub. Cont. Code §§ 4107, 4107.5). (*R.J. Land & Associates Const. Co. v. Kiewit-Shea* (1999) 69 Cal. App. 4th 416, 420). Section 4107 gives a bidder the opportunity to overcome that prohibition when it demonstrates to the awarding authority that the name of the subcontractor listed in the original bid was an inadvertent clerical error.

None of the errors listed by Flatiron involve the erroneous inclusion of an unintended subcontractor in its bid. Rather, the errors in Flatiron's bid are incorrect or omitted information about properly-named subcontractors. Thus, Flatiron's request for its bid errors to be waived pursuant to § 4107.5 is improper.

For all of the foregoing reasons, Caltrans must reject Flatiron's bid and proceed to award the contract to Coffman as the lowest responsible, responsive bidder.

Truly yours,



Angela J. Soldner
General Counsel

Encls.

ATTACHMENT 1

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 11-288814 Project ID: 1113000167

Bidder Name: Flatiron West, Inc.

Bidder ID: VC0000003877

DES-OE-0102.2B (REV 5/2014)

Bidding Firm: Flatiron West, Inc.

List this sub? Yes

13) Business Name Coral Construction Company
Location City Wilsonville State OR
California Contractor License Number 332441
CA Department of Industrial Relations' Registration Number 1000005868
Portion of Work Subcontracted:

Item %	Description
36	
101	
102	
103	
104	

List this sub? Yes

15) Business Name Southwest V-Ditch
Location City Riverside State CA
California Contractor License Number 569779
CA Department of Industrial Relations' Registration Number 1000004410
Portion of Work Subcontracted:

Item %	Description
50 100	
132 100	
134 82	Ditch Excavation

ATTACHMENT 2

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
Contract No.: 11-288814 Project ID: 1113000167
Bidder Name: Flatiron West, Inc. Bidder ID: VC0000003877
DES-OE-0102.2B (REV 5/2014)

Bidding Firm: Flatiron West, Inc.

List this sub? Yes

19) Business Name Bert W Salas Inc
Location City Santee State CA
California Contractor License Number 275199
CA Department of Industrial Relations' Registration Number 1000004246
Portion of Work Subcontracted:

Item %	Description
123 100	
124 65 36"	Concrete Flared End Section
125 100	
126 100	
127 100	

List this sub? Yes

20) Business Name Bert W Salas Inc
Location City Santee State CA
California Contractor License Number 275199
CA Department of Industrial Relations' Registration Number 1000004246
Portion of Work Subcontracted:

Item %	Description
129 100	
130 100	
131 53	RSP Backing
135 98	
171 2	Mobilization

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
Contract No.: 11-288814 Project ID: 1113000167
Bidder Name: Flatiron West, Inc. Bidder ID: VC0000003877
ADDITIONAL SUBCONTRACTOR LIST 2
DES-OE-0102.2B (REV 5/2014)

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 11-288814 Project ID: 1113000167

Bidder Name: Flatiron West, Inc.

Bidder ID: VC0000003877

ADDITIONAL SUBCONTRACTOR LIST 1

DES-OE-0102.2B(REV 5/2014)

Bidding Firm: Flatiron West, Inc.

List this sub? Yes

16) Business Name Bert W Salas Inc

Location City Santee State CA

California Contractor License Number 275199

CA Department of Industrial Relations' Registration Number 1000004246

Portion of Work Subcontracted:

Item %	Description
29 100	
38 100	
41 22	Remove Concrete
42 100	
48 100	

List this sub? Yes

17) Business Name Bert W Salas Inc

Location City Santee State CA

California Contractor License Number 275199

CA Department of Industrial Relations' Registration Number 1000004246

Portion of Work Subcontracted:

Item %	Description
86 100	
114 100	
115 100	
116 100	
117 100	

List this sub? Yes

18) Business Name Bert W Salas Inc

Location City Santee State CA

California Contractor License Number 275199

CA Department of Industrial Relations' Registration Number 1000004246

Portion of Work Subcontracted:

Item %	Description
118 100	
119 87 72"	RCP
120 100	
121 100	
122 100	

ATTACHMENT 3

Bidding Firm: Flatiron West, Inc.

List this sub? Yes

43) Business Name Select Electric Inc
Location City Poway State CA
California Contractor License Number 297034
CA Department of Industrial Relations' Registration Number 1000001036
Portion of Work Subcontracted:

Item %	Description
164 100	
165 100	
166 100	
167 100	
168 100	

List this sub? Yes

44) Business Name Select Electric Inc
Location City Poway State CA
California Contractor License Number 297034
CA Department of Industrial Relations' Registration Number 1000001036
Portion of Work Subcontracted:

Item %	Description
169 100	
170 100	
171 4	Mobilization
92 0.5	FW Opening Lights

List this sub? Yes

45) Business Name Morales Contracting Services
Location City Baldwin Park State CA
California Contractor License Number 700464
CA Department of Industrial Relations' Registration Number 1000012697
Portion of Work Subcontracted:

Item %	Description
82 3	Jointed Plain Concrete Pavement
83 100	
84 47	Isolation Joint Seal



FAX TRANSMISSION

DATE: 6/24/2015

PROJECT: Contract No. 11-288814; 11/125/905 Separation

SUBJECT: Coffman Letter and Protest of Flatiron's Bid

TRANSMIT THE FOLLOWING COPIES TO:

NAME: JOHN C. MCMILLAN, Deputy Division Chief

COMPANY: Caltrans Office Engineer

FAX NUMBER: (916) 227-6282

TOTAL NUMBER OF PAGES ¹¹~~18~~ INCLUDING TRANSMITTAL SHEET.

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MESSAGE OR SPECIAL INSTRUCTIONS:

Please see the attached protest filed by Coffman Specialties.

IF TOTAL NUMBER OF PAGES ARE NOT RECEIVED, PLEASE CALL OUR OFFICE AT (858) 536-3100

SIGNED: Angela J. Soldner, Esq.

CC: _____

9685 Via Excelencia, Suite 200 San Diego, California 92126 (858) 536-3100 Fax No. (858) 536-3131



ACTIVITY REPORT

TIME : 06/24/2015 16:12
 NAME : COFFMAN SPECIALTIES
 FAX : 8585363131
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 SER. # : BROD8J799767

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BUSY: BUSY/NO RESPONSE
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