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July 20, 2020

VIA EMAIL AND FIRST CLASS MAIL (jcarothers@cityofcamas.us)

Curleigh “Jim” Carothers
City of Camas
616 NE 4th Avenue
Camas, Washington 98607

**Re: NE 3rd Avenue Bridge Seismic Retrofit Project
City Project Number: T1010
Reply to Conway**

Dear Mr. Carothers:

This letter responds to Conway Construction, Inc.’s (“Conway”) response to Stellar J’s Notice of Protest. While Conway argues otherwise, the bid documents clearly require the Specialty Subcontractor Pre-Qualification form (“Pre-Qualification Form”) be submitted at the time of bid opening.

- At the top of the Pre-Qualification Form, it states, “TO BE SUBMITTED WITH THE BID PROPOSAL” (emphasis original).
- The Bidder’s Check List states, “The bidder’s attention is especially called to the following forms, which must be executed in full and submitted at the bid opening.”
- The Bidder’s Check List further states, “**DID YOU COMPLETE, SIGN, AND INCLUDE THE SPECIALTY SUBCONTRACTOR PRE-QUALIFICATION FORM SHOWING EXPERIENCE WITH GROUND IMPROVEMENT CONSTRUCTION?**” (emphasis original).
- Under the heading “Submit with the Bid Documents,” Special Provision Section 8-05.1(4), lists the requirements included in the pre-qualification form.

There is no valid argument that the Pre-Qualification Form was not required to be submitted at bid time.

Moreover, Conway’s response confirms that it did not comply with the bid documents.

- Conway confirmed it did not submit the Pre-Qualification Form with its bid.
- Conway confirmed that it “failed to remove Condon-Johnson’s name from the subcontractor mandatory bidder responsibility criteria form.”
- Conway confirmed it submitted its Pre-Qualification Form a day late; and

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- Conway confirmed that it changed its ground improvement contractor to PLI Systems in its untimely submission.

As Conway notes in its response, it received PLI's proposal 16 minutes before bid opening. While Conway emphasizes its careful examination of the solicitation, visitation of the site, consultation with experts, and preparation of its proposal, it was unable to submit PLI's qualifications with its bid. The City included a requirement in its bid documents and Conway failed to comply. Thus Conway's bid is nonresponsive and must be rejected.¹

Moreover, based on Conway's Pre-Qualification Form as detailed in my previous letter, PLI did not meet the required qualifications for a ground improvements contractor. Thus Conway was not a responsible bidder as it did not include a ground improvements contractor with the requisite experience. This would relax the qualifications for the ground improvements contractor and open the door to a number of other subcontractors who could perform this work for a lower price, prejudicing Stellar J, which included Condon-Johnson and met the qualifications in the Special Provisions.

The City included the Pre-Qualification Form in the bid documents and required it be submitted with the bid. It also made a determination of the qualifications that were necessary for the ground improvements contractor and included those in the special provisions and the Pre-Qualification Form. To permit Conway to submit the Pre-Qualification Form late and include a contractor that does not meet the qualifications would significantly prejudice Stellar J and violate the requirements of the bid documents.

"If the Owner awards the contract, the award will be given to the lowest responsive, responsible, qualified Bidder submitting the lowest Bid Proposal acceptable to Owner." Stellar J is the lowest responsive responsible bidder and requests the City reject Conway's bid and award the project to Stellar J.

Should you have any question or wish to discuss this matter with me, please feel free to contact me.

Sincerely,

LANDERHOLM, P.S.



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Jesse Conway jesse@conwaylaw.net

¹ I-5, Paragraph 9 – "... proposals which are incomplete ... may be rejected as non-responsive."; I-15 – "Incomplete bid packages will be considered non-responsive and will be rejected."