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March 8, 2017

City of Sunnyvale, Purchasing Division
City Hall Annex
650 West Olive Avenue
Sunnyvale, CA 94086

Re: City of Sunnyvale Primary Treatment Facility Package 2
Public Works Project No. UY-16/01-20
BID PROTEST

To whom it may concern:

C. Overaa & Co. ("Overaa") hereby protests the bid on the above-referenced contract by Flatiron West, Inc. ("Flatiron"), on the grounds that Flatiron's bid was non-responsive, did not substantially conform to the bid requirements, and gave Flatiron a competitive advantage over Overaa and the other bidders. Specifically,

1. Flatiron does not have the experience performing similar projects to satisfy the bid specifications;
2. Flatiron misrepresented its experience; and
3. Overaa believes that the scope of work of Flatiron's ICSC does not include all that is required of the ICSC under the Technical Specifications.

1. Flatiron's Experience does not Satisfy the Bid Specifications

The City's bid package required that:

4. Bidder must meet both criteria "a" and "b" below.

   a. For the Owner to consider the Bidder properly experienced in work of similar nature to this project, the Bidder must list at least $250 million in construction volume over the past five years. Does the bidder meet this criteria: ___yes; ___ no?

   b. For the Owner to consider the Bidder properly experienced in work of similar nature to this project, the Bidder must list at least $250 million in construction volume on no more than five (5) and not less than three (3) projects completed within the last five (5) years on the following types of projects:

1. Water/Wastewater Treatment Plant Facility where the electrical, mechanical and instrumentation systems were part of the Contractor's contract.

In response, Flatiron submitted a "Project Information Attachment" listing six projects (copy enclosed). Of those six, however, only two were completed within the five years prior to the bid date. The total construction volume of the two listed projects within the given time frame was less than $38 million. Thus, Flatiron did not satisfy either the construction volume or the number of similar projects requirements of the experience criteria of the bid package.

2. Flatiron Misrepresented its Experience

Flatiron misrepresented work on some of the projects listed in its Project Information Attachment as work performed by the bidder when, in fact, the work was performed by an entirely different and only distantly affiliated company. Those are the last two projects on the list, the Rahway Valley Sewerage Authority and the Flushing Bay CSO, both of which were performed by E.E. Cruz, not by Flatiron West.

Flatiron stated in the Project Information Attachment that E.E. Cruz is a subsidiary of Flatiron, but that is untrue. E.E. Cruz is owned by a joint venture of Flatiron Construction Corporation and Turner Construction.[1] Flatiron West is a subsidiary of Flatiron Construction Corporation.[2] Thus, the relationship between Flatiron West and E.E. Cruz is not that of owner and subsidiary, but, rather, as half-siblings of a common parent company. It is unlikely that Flatiron West and E.E. Cruz, separate corporate entities located three thousand miles apart, share employees or expertise, so Flatiron West ought not be able to claim the experience of E.E. Cruz as its own.

3. Flatiron's ICSC may not be Performing all of its Required Scope

Overaa is concerned that Flatiron's bid does not comply with the ICSC system supplier requirements of the Common Work Results for Process Control and Instrumentation Systems, §17050-25, subsection 1.06(E)(2)(a), of the Technical Specifications, that states:

> "Due to the critical and complex technical requirements of this Project, all Work (materials, equipment, products, submittals, labor, services, etc.) specified in the Electric, and the Instrumentation and Control Specifications, and all Work indicated on the Electrical and Instrumentation Drawings is to be furnished by a single system supplier who had a single source responsibility for both the process control and instrumentation systems and the electrical power system."[3]

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[1] http://www.eecruz.com/aboutUs_History.php.

[2] http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=113641587.

[3] This subsection is under the heading "System Supplier Responsibilities, rather than under the heading "ICSC", but the "System Supplier" is defined in §17050-5, subsection 1.03(B)(8) as follows: "System Supplier: As specified in ICSC Qualifications in the Quality Assurance article of this Section." Thus, the "system supplier", as that term is used in subsection 1.06(E)(2)(a), is the ICSC.

Overaa has reason to believe – although this cannot be confirmed without review of Flatiron's subcontracts and sub-subcontracts, which ought to be in escrow by the time this letter is transmitted -- that the scope of work of Flatiron's ICSC on which Flatiron's bid was based does not include all of the above required equipment & services to be performed by a "single system supplier", that some of the tasks listed have been left to the equipment suppliers to complete.

Overaa's two prospective electrical subcontractors received proposals from three of the four pre-approved ICSCs, Tesco, Wunderlich-Malec and Glenmount Global Solutions (copies enclosed). Both electrical subcontractors who gave proposals to Overaa attempted to obtain proposals from Technical Systems, Inc. (TSI), but TSI would not respond, and we suspect TSI proposed exclusively to Flatiron & Blocka Construction. Of the three system integrator proposals received by Overaa's prospective subcontractors, only the proposal from TESCO included all of the scope required by §1.06(E)(2)(a).

We do know that Flatiron's electrical subcontractor, Blocka Construction, received a proposal from an equipment supplier, Buckles Smith, who represents Rockwell/Allen-Bradley, in the form of a "contractor package", as opposed to a "system integrator package". The "contractor package" proposed to have the Rockwell/Allen Bradley supplier perform all of the professional services of those gear packages , including complete Rockwell/Allen Bradley Submittal Package for the VFD's and MCC's, Complete Rockwell/Allen Bradley Factory Wiring, Witnessed Factory Testing at Rockwell/Allen Bradley's Facility, Start-Up Services by Rockwell/Allen Bradley, Testing Services by Rockwell/Allen Bradley, Training Services by Rockwell/Allen Bradley and a Complete Spare Parts Package. All of those are prescribed to the ICSC under the technical specifications. A copy of that proposal for the Rockwell/Allen Bradley MCC "contractor package" equipment is enclosed. One can assume only that Blocka solicited the "Contractor Package", and that their ICSC (TSI) was not going to perform those tasks. This may also indicate that other suppliers were also asked provide the "Contractor Package", from which may be inferred that Blocka and Flatiron were not going to have the ICSC supply, customize and provide all associated professional services on the required electrical gear package.

TESCO, in contrast, obtained a "system integrator package" from the sole-sourced Rockwell/Allen Bradley vendor, Buckles Smith, per the requirements of the Common Work Results for Process Control and Instrumentation Systems, §17050, subsection 1.06(E)(2)(a). The "system integrator package" requires the ICSC to complete a wide range of tasks, including creating a custom submittal package for all of the MCC control wiring, custom control wiring/labeling by the ICSC at their facility, witnessed factory testing at the ICSC's facility, start-up services by the ICSC, training services by the ICSC and final on-site testing services by the ICSC.

Thus, it seems likely that Flatiron's bid contemplates that much of the work required to be performed by the ICSC will be performed, instead, by equipment suppliers. This would render Flatiron's bid non-responsive, because it would not satisfy the intent of the specifications, which is to have a single source responsible for the PCIS system. This would also have given Flatiron a

substantial bid advantage, because the equipment suppliers can charge less to wire and test than does the ICSC system integrator for their custom equipment engineering, product configuration, custom control wiring & professional services.

Overaa respectfully requests that Flatiron's bid be disqualified.

Very truly yours,

Jeff Naff

Jeff Naff
Vice President – Municipal Infrastructure

cc: Flatiron West, Inc.
Via fax: 707-746-1603

Bidder's Experience - Project Information Attachment

Project Name	Owner	Location	Contract Price	Construction Time	Date of Substantial Completion	Owner Representative Contact Information	Description of Project
Leo J Vander LansWater Treatment Facility Expansion project	Water Replenishment District of Southern California	Long Beach, CA	$32,748,000	550 Calendar Days	Nov-14	Paul Fu 4040 Paramount Blvd. Lakewood, CA 90712 Tel 562-275-4251	The Leo J. Vander Lans Advanced Water Treatment Facility in Long Beach, Calif., received the effluent from the Long Beach Water Reclamation Plant, after a first round of treatment. At this plant, water is further treated through advanced microfiltration and reverse osmosis, resulting in a near-distilled quality. The plant currently produces 3 million gallons of treated water per day. Flatiron expanded the facility, to 8 million gallons per day and reduced the area's dependence on imported water. Work included construction and installation of new water treatment systems, including microfiltration, reverse osmosis, ultraviolet disinfection with advance oxidation, dissolved air flotation, chemical systems, piping, pump stations, site work, structural, electrical, instrumentation and all associated work. The expansion improves the plant's efficiency and reduces operations and maintenance costs.
Santaquin Water Reclamation Facility	Santaquin Water Reclamation District	Santaquin, Utah	$14,951,220	490 Calendar Days	Nov-13	Benjamin Reeves 275 West Main Street Santaquin, UT 84655 Tel 801-754-3211	The Santaquin Water Reclamation Facility in Santaquin, Utah, represents the culmination of over six years of community planning and public outreach. This revolutionary facility is the first of its kind in Utah that will store and reuse 100 percent of its treated water for a residential secondary irrigation system, with no discharge to nearby lakes. The use of reclaimed water for irrigation purposes allows the city to conserve higher quality groundwater for drinking, while establishing a model for sustainable water resource development in Utah and the Intermountain West. The facility is capable of processing over one million gallons of water per day. The process begins in the headworks building, where wastewater is screened to remove coarse materials like trash or large grit. Next, wastewater is distributed into biological basins, a process where specific bacteria is grown to degrade contaminants. Following biological treatment, the effluent is separated from this bacteria using membrane filtration. The filtered water then flows to the UV disinfection system for further treatment, where disinfection occurs through the inactivation of waterborne pathogens. The final stage is the reclaimed water pump station, where disinfected effluent is pumped to existing large storage reservoirs near the lagoon site. From here, the Type I reclaimed water is pumped into the City's pressure irrigation system. The headworks building is fully odor controlled, with contaminated air exhausted to an adjacent biofilter for treatment. The biological basins and membrane filtration capacities were constructed with special features to allow for easy expansion as the City grows, including a third treatment train temporarily used for sludge storage and empty tanks with room for added membrane filtration modules. In the unlikely event that the reclaimed water does not meet Type I water quality criteria, a valve located between the UV disinfection system and the reclaimed water pump station automatically closes and diverts flow to an on-site temporary storage pond. Flatiron also oversaw the construction of 7,200 feet of new trunk line, as well as numerous tie-ins.
Southwest Groundwater Treatment Plant	Jordan Valley Water Conservancy District	West Jordan, Utah	$23,665,433	730 Calendar Days	Nov-11	David McLean 8215 South 1300 West West Jordan, UT 84088 Tel 801-565-4300	Flatiron constructed a new groundwater treatment plant in West Jordon, Utah, a suburb of Salt Lake City, next to the Jordan River. The state-of-the art water treatment facility will remove contamination from a local aquifer and produce 8,235 acre-feet per year of treated water using reverse osmosis, a thorough method of water purification that reduces the levels of total dissolved solids and chemical impurities by using pressure to force water through a semi-permeable membrane. The municipal plant will consist of a 38,000 square-foot process building, three reverse osmosis trains and one bypass train utilizing ultraviolet light disinfection technology. The construction of separate treatment trains is necessary to incorporate deep and shallow groundwater wells, supply wells, pipelines, a byproduct disposal system and associated facilities. Flatiron is also installing a new 1,400-foot-long pipe system to bring contaminated water to the plant and return purified water back to the local clean water system. The plant's by-product, a heavy-brine waste stream, will be piped to a 22-mile line to the Great Salt Lake. When the reverse osmosis treatment plant is complete, the Jordan Valley Water Conservancy District anticipates future expansion to increase the plant's capabilities from 7 million gallons per day to 14 million gallons per day.

Bidder's Experience - Project Information Attachment

Project Name	Owner	Location	Contract Price	Construction Time	Date of Substantial Completion	Owner Representative Contact Information	Description of Project
Lenihan Dam Outlet Modifications	Santa Clara Valley Water District	Los Gatos, CA	$39,000,000	750 Calendar Days	Sep-09	Capital Program Unit Manager Beth Redmond 5750 Almaden Expressway San Jose, CA 95118 Tel 408-630-2682	At the foot of the Santa Cruz Mountains, Flatiron replaced the deteriorating outlet structure for the 50-year-old Lenihan Dam - a 1,000-foot-long earthen barrier holding water stored at the Lexington Reservoir in Los Gatos, Calif. The project was a seismic upgrade for the existing outfall pipe, a 50-inch steel pipe that was restricted to a maximum outlet of 70 percent capacity. Alternatively, the new 54-inch pipeline allows maximum outflow of the reservoir in the event the reservoir needs to be lowered to prevent the failure of the dam during an earthquake. Flatiron constructed a new 2,000-foot-long outlet structure that is approximately 14 feet wide by 13 feet tall through Saint Joseph Hill. The tunnel begins near the existing outfall pipe, terminates on the reservoir side of the dam and connects to a new 15-foot-diameter intake facility by way of a 35-foot vertical shaft. Originally, the shaft required excavation and grout around its base, which was very time consuming and costly. Flatiron proposed an innovative water-tight pile secant wall for the shaft excavation that allowed us to build quickly, reduce cost and decrease environmental disturbances by keeping grout from entering the reservoir. The value engineering solution additionally improved water-tightness around the shaft. The new outfall building has three sets of valves to control the discharges into Los Gatos Creek. The new intake structure consists of 450 feet of 54-inch welded steel pipe, with four 42-inch intake gates and a new building to house the hydraulic control unit and various monitoring equipment. A road header was used to bore through soft material and explosives were used to fracture the harder rock. After excavating the material, Flatiron utilized an arched traveling form to pour 60-foot-long sections of the tunnel. Ventilation and low-flow pipes were then hung from the tunnel ceiling and a 5-foot welded steel outtake pipe was installed, held in place by permanent cast-in-place supports. During construction, Flatiron created a detour for the highly used Los Gatos trail to ensure safe public recreation. The project was completed nine days ahead of schedule and $1.4 million under budget.
Rahway Valley Sewerage Authority: Contract 155 **(Project # 2)**	Rahway Valley Sewerage Authority	Rahway, NJ	$138,965,112	1450 Calendar Days	Feb-09	Robert V. Valent 1050 East Hazelwood Avenue Rahway, NJ 07065 - Tel 732-388-0868	E.E. Cruz (a Flatiron subsidiary) expanded Rahway Valley Sewerage Authority Wastewater Treatment Plant's sewage capacity from 63MGD to 105 MGD and upgraded and replaced the plant's outdated systems. The temporary SOE systems on the project included the installation of sheet piling and soldier piles, steel wales and struts, and tiebacks. The construction consisted of major upgrades to the primary, secondary, and tertiary treatment facilities. Upgrades to these facilities consisted of the construction of a new headworks facility, construction of a new primary settling tank, upgrades to the aeration system, construction of new final settling tanks, construction of a new effluent sand filter facility, construction of a new UV disinfection chamber, construction of a new effluent pump station, and the construction of a new cascade aeration station. In addition, E.E. Cruz was also responsible for constructing a new rotary drum building. Within the new facilities a significent amount of misc metals work of which included the installation of new hand rails. All work was performed while maintaining plant operations.
Flushing Bay CSO: Contract 4-4G **(Project # 3)**	New York City Department of Environmental Protection	Queens, NY	$133,737,200	2450 Calendar Days	Nov-08	Mike Borsykowsky 59-17 Junction Blvd. Flushing, NY 11373 Tel 718-595-5921	E.E. Cruz (a Flatiron subsidiary) was responsible for the second phase of a two phase program to construct the Flushing Bay Combined Sewer Overflow Retention Facility. The project involved mass excavation of contaminated material, construction of a deep soil mix earth support system, dewatering, site utility work, pipe piles, and the installation of steel sheet piling, reinforced concrete, and structural steel. The project required extensive mechanical work which included the installation of nine tide gates, two belt conveyor systems, five three story mechanical bar screens, a storage cell flushing and cleaning system, chemical and air treatment systems, and interconnection piping. In addition, E.E. Cruz constructed a 40,000 square foot structural steel building with a brick façade, a 25,000 square foot recreational facility, and an 11,000 square foot maintenance facility for the NYC Department of Parks and Recreation.