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October 29th, 2025

Port of Los Angeles
Construction Division/Contract Administration
425 South Palos Verdes Street,
San Pedro, CA 90731

Attention: Shaun Shahrestani, Chief Harbor Engineer

Subject: Griffith Company Response to Sully-Miller Contracting Co., Protest Letter
Project: Port of Los Angeles Avalon Pedestrian Bridge and Promenade Gateway/2804

This letter responds to the protest dated **October 23, 2025**, submitted by **Sully-Miller Contracting Co.** (“Sully-Miller”), which requests that the Port of Los Angeles withhold award and/or reject the bid of the apparent low bidder, **Griffith Company**, on the asserted grounds of non-responsiveness and/or non-responsibility for an alleged failure to comply with the subcontractor-listing requirements of **California Public Contract Code (“PCC”) § 4104** and related provisions.

Under **PCC § 4104(a)(1)**, a bidder must list each subcontractor who will perform work or render service **in an amount exceeding one-half of one percent (0.5%) of the prime contractor’s total bid or \$10,000, whichever is greater**. The statute’s intent is to ensure transparency and prevent post-bid “shopping,” not to penalize immaterial clerical errors or the inclusion of subcontractors performing below the statutory threshold.

Specifically, the Avalon Pedestrian Bridge and Promenade Gateway project bids were opened on **October 21, 2025**, and Griffith Company submitted its written clarification on **October 22, 2025**, within the statutory window prescribed by **§ 4107.5** for notification of an inadvertent clerical error in the listing of a subcontractor.

The clarification dated October 22, 2025 identified Schwager Davis, Inc’s (“SDI”) actual proposal value as **\$350,000.00**. The attached proposal dated October 21, 2025 shows SDI’s quote to Griffith Company for installation (labor) at **\$350,000.00**. Griffith Company intends to contract with SDI for **\$350,000.00**. Griffith Company’s total bid was **\$104,929,891.10**, making one-half of one percent **\$524,649.46**. Accordingly, SDI’s proposed amount remains **below the statutory subcontractor-listing threshold** established by **§ 4104(a)**. SDI therefore was **not required to be listed** under the Subletting and Subcontracting Fair Practices Act, and its inclusion at any value—clerically entered or otherwise—does not render the bid non-responsive. Griffith Company omitted entry of a dollar amount for SDI because it was not required to list. However, Planet Bids replaced no entry into the amount field with \$0. Upon review, Griffith Company promptly determined that this was a **clerical input error** and, in full compliance with **PCC § 4107.5**, provided written notice to the Port of Los Angeles within **two working days of bid opening**.

The identity, scope, and intent regarding SDI were fully disclosed at bid time. The clerical entry of “\$0.00” neither altered the competitive position of bidders nor misled the Port. California public-contracting precedent consistently recognizes that **minor clerical**

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TRANSMITTAL 3



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or transcription errors in subcontractor listings, when promptly clarified, do not constitute material defects. *Cal-Air Conditioning, Inc. v. Auburn Union School Dist.* (1993) 21 Cal. App. 4th 655, 668, The objectives of the subcontractor-listing statutes—preventing bid shopping and ensuring transparency—were fully satisfied. Please let us know if any further clarification or documentation is required.

For these reasons, Griffith Company respectfully requests that the Port of Los Angeles **deny Sully-Miller's protest** and confirm Griffith Company's bid as **responsive and responsible**. The Port's acceptance of this clarification is fully supported by **PCC §§ 4104(a)(1) and 4107.5**, as well as by long-standing administrative and judicial interpretations favoring the correction of bona fide clerical errors that do not compromise the integrity of competitive bidding.

Please advise if the Port requires any additional documentation or declarations in support of this response. Griffith Company appreciates the Port's careful consideration of this matter.

Respectfully submitted,

Ky McLeod
Chief Estimator

Enclosed is the following documentation in support of Griffith Company:

- Subcontractor quote to Griffith Company.



SCHWAGER DAVIS, INC. 198 Hillsdale Avenue, San Jose, CA 95136. Phone 408-281-9300, Fax 408-281-9301

**SUBCONTRACT PROPOSAL
for
POST-TENSIONING WORK**

California Contractors License # 492582

DIR # 1000005118

Bid Date: October 21, 2025

Bid Documents: Plans and Special Provisions issued by The Port of Los Angeles

Project #: 1-3302

Bid Item: Specialty (partial)
Structural Concrete (partial)

Proposal to: Griffith Company
3050 E. Birch Street
Brea, CA 92821

Fax: 714-854-0227
Phone: 714-984-5500 (Thony Le)
Email: tle@griffithcompany.net
estimating@griffithcompany.net

**Project: Avalon Pedestrian Bridge
The Port of Los Angeles, CA**

SDI Bid #: 26-527

Schwager Davis, Inc. (hereinafter called SDI) is pleased to submit this proposal for the furnishing and installation of post-tensioning materials, steel stay cable material.

Scope of Work – Specialty (Steel Stay Cables):

- Placing drawings for stay cables
- Supply of:
 - (13 each) 1-5/8" Full Locked Coil Strands with Fork Socket Ends.
 - All Stay Cable Anchors, duct, 1 ¼" prestressing bar (uncoated), plates & nuts, nylon bar cap, and duct grout material for stay cable anchors.
- Supply of labor, supervision and equipment for fabrication, installation, and stressing of stay cables (price includes one initial stressing, one tension verification, and one tension adjustment operation. If additional are required, the price would be \$900 per cable).
- Supply of labor, supervision and equipment for stressing and grouting cable anchor 1 ¼" prestressing bar (excludes installation of duct, prestress bar, embedded items, and cable anchors).
- **Includes steel stay cables for structure: Avalon Pedestrian Bridge.**

Scope of Work – Structural Concrete (Prestressing CIP Concrete):

- Placing drawings for post-tensioning work.
- Supply of 0.6" uncoated steel prestressing strand, galvanized steel spiro-type duct, end anchorages (including spirals) and grout materials for post-tensioning installation.
- Supply of labor, supervision and equipment for fabrication, installation, stressing and grouting of all post-tensioning.
- **Includes PT for structure: Avalon Pedestrian Bridge**

TOTAL PRICE FOR LABOR: \$350,000.00

TOTAL PRICE FOR MATERIAL: \$418,768.00 (including tax)

Add: \$24,675 for the extension of the Stay Cable Assemblies Supplier warranty to 10 years.

Schedule: The above price is based on completion of SDI's work by July 1, 2028 working regular 8-hour day shifts, five days per week. If through no fault of SDI, work needs to be performed other than during these periods, the price for that portion of the work will be subject to a negotiated increase.

The above price is based on a maximum (2) move-ins for the PT and (2) move-ins for the Stay Cable. For each additional move-in add \$2,000. An additional move-in is defined as the interruption of work by more than one shift by no fault of the Subcontractor.

Payment Terms:

Progress & Final Payment: Due and payable within thirty (30) days after invoice date. No retention shall be withheld.

Exclusions

1. Supply and placement of grillage, duct ties, duct supports, rebar which are sized and dimensioned on the contract documents, and other reinforcing steel.
2. Coordination and rearrangement of reinforcing steel in case of conflict with post-tensioning layout and/or stressing equipment.
3. Field engineering, erection engineering, and surveying.
4. Cable lengths, stressing sequence, and stressing forces.
5. Supply of material and labor to install cable anchor grout pads.
6. Supply of labor to install duct, prestressing bar, and anchors for stay cables.
7. All concrete, patching, and drilling work.
8. Cost of bonds, if required (rate approximately 1.46%).
9. Third party inspections and testing of materials.
10. Vibration testing of cables and supply and installation of any Dampener.
11. Liquidated damages.
12. Any work not specifically included in "Scope of Work" above.

Special Conditions

1. Contractor to provide a written construction schedule no later than 60 days prior to commencement of SDI's work with final confirmation for each structure with no less than seven (14) days-notice. Durations provided by SDI shall be used in the creation of schedule.
2. Contractor to provide traffic control, all-weather truck access to site, parking, sanitary facilities, lighting and ventilation (if required).
3. Contractor to provide unloading, moving and loading of all materials and equipment (max. weight per item 7,000#) including, when applicable, moving of materials and equipment from storage area to location required for installation.
4. Contractor to provide site specific training (if required) at no additional cost to SDI.
5. Contractor to provide hoisting and clear deck area during installation, stressing, and grouting of pedestrian bridge.
6. Contractor to provide duct fabrication area, 100x20 ft adjacent to and approximately level with soffit of structure.
7. Contractor to provide work platforms at each tendon end, approximately 6 ft wide and no more than 1 foot below lowest tendon, in full conformance with all OSHA regulations as well as sufficient access to stress and grout anchor prestressing bars, and tension stay cables from lower anchors.
8. Contractor to provide final stay cable pin-to-pin lengths prior to fabrication.
9. Contractor to provide block-outs and build-outs including bolt holes and shimming per the approved shop drawings.
10. After stressing and grouting, Contractor to provide rust proofing of all anchorages and filling of all block-outs in accordance with contract provisions.
11. Contractor to provide clear deck area of approximately 30 ft at tendon ends for installation and stressing.
12. Contractor to insure that duct is clear and undamaged after concreting and prior to tendon installation (SDI to perform visual inspection upon installation of duct), repair of any damage if discovered subsequent to duct installation, and protect duct openings to prevent intrusion of any foreign objects including water.
13. Contractor to provide pressurized potable water (approx. 50 gpm), concrete washout and compressed air as required for grouting operations, within 50 ft of various points of use
14. Contractor to provide adequate and secure storage area and dumpster at site for disposal of material.
15. If contractor intends to back charge SDI for any reason, SDI shall be notified in writing before charges occur.

Acceptance

The labor and material scopes are interdependent and priced as a single package. Neither scope can be awarded separately.

This proposal is subject to acceptance within 30 days from bid date (contingent upon an award to Buyer).

SCHWAGER DAVIS, INC.



By:

Mohammad Mirah
Post-Tensioning Division

Date: October 21, 2025

SCHWAGER DAVIS, INC. GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE.** This Proposal, which includes these General Terms and Conditions, may be accepted only by signing one copy of the Proposal and returning it to SCHWAGER DAVIS, INC. ("SDI") so that it is received by SDI no later than the date specified on the Proposal. The Proposal may also be accepted by either Buyer's providing written notice to SDI to proceed or Buyer's oral notice to proceed and SDI's commencing of work on the Project. Upon acceptance, this Proposal shall become the Contract between the parties.
2. **WRITTEN ASSENT TO ADDITIONAL TERMS REQUIRED.** This Proposal is subject to acceptance only on the terms and conditions stated in this Proposal. Any additional or different terms and conditions proposed by Buyer are hereby rejected, and shall be of no force or effect unless expressly assented to in writing by SDI. There shall be no contract except upon the terms and conditions provided in this Proposal.
3. **LIABILITY FOR PAYMENT.** Buyer agrees that Buyer is liable to SDI for the Total Price and the terms of payment thereof as set forth in this Contract. If Buyer fails to make payment to SDI when due, or if, in SDI's sole and reasonable opinion, Buyer's ability to make future payment becomes impaired, Buyer shall be in default of this Contract. SDI shall be entitled to cancel this Contract without any liability whatsoever to Buyer, and SDI shall be entitled to recover from Buyer its damages.
4. **DELAY OR FAILURE TO PERFORM.** SDI shall be excused for any delay or failure in performance due to an act of God, war, riot, embargo, an act of any civil or military authority, fire, flood, accident, quarantine restriction, mill condition, strike, difference with workers, delay in transportation, shortage of cars, fuel, labor, material or equipment, delay by Buyer in the approval of any redesign or shop drawing of SDI (when such is part of SDI's obligation) or any other cause beyond the reasonable control of SDI.
5. **SDI INSPECTION AND TESTING.** The material to be furnished under this Contract shall be subject to SDI's standard quality control at the place of manufacture, and any other inspection shall be at the expense of Buyer.
6. **INSURANCE.** Buyer agrees, at Buyer's option, to insure against loss from fire and extended coverage perils, Buyer's interest, including SDI's interest, in the entire structure on which the work of this Contract is to be done, including all property, material and supplies. If Buyer does not maintain such insurance in an adequate amount, Buyer shall reimburse SDI for any loss which would have been recoverable there from. SDI is protected by Worker's Compensation Insurance (and/or Employers' Liability Insurance); Public Liability Insurance for Bodily Injury with limits of Five Million Dollars/Five Million Dollars (\$5,000,000/5,000,000); Public Property Damage Insurance with limits of One Million Dollars (\$1,000,000); and Automobile Casualty Insurance and Property Damage Insurance, and will furnish certificates evidencing such coverage upon request. If Buyer's contract or purchase order places greater responsibility upon SDI or requires further insurance coverage, SDI, if specifically directing in writing by Buyer, shall obtain additional insurance (if procurable) to protect SDI at Buyer's expense, but SDI shall not be responsible for property damage from any cause, including fire and explosion, beyond the amounts and coverage of SDI's insurance, and Buyer agrees to hold SDI harmless from the cost of any such damage, including all expenses related thereto.
7. **DESIGN.** SDI shall not have any liability whatsoever for the design or details of others, and Buyer shall defend, indemnify, and hold SDI free and harmless of any such liability.
8. **INDEMNIFICATION.** SDI shall indemnify and save harmless Buyer against any liability, loss or expense incurred or suffered in consequence either of bodily injury to any person (including death), or damage to any property, to the extent that (1) materials supplied by SDI are defective and have failed; (2) installation of materials by SDI are not in accordance with standard practices and the installation is defective. For any and all other claims which arise by reason or in consequence of SDI's work, Buyer agrees to hereinafter indemnify, defend and hold harmless and release SDI (including SDI's successors and assigns and personal representatives), from and against any and all claims, demands, liabilities, losses, obligations, damages of whatever nature, costs (including, but not limited to, fees and expenses of attorneys to be chosen by SDI), actions and causes of actions of any nature whatsoever, known or unknown, and whether for compensatory or punitive damages.

In claims against SDI by any employee of Buyer, its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation hereunder shall not be in any way limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Buyer or its subcontractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
9. **SAFETY.** Buyer agrees to indemnify and hold SDI harmless for any fines, penalties, damages, attorneys' fees, or any other expense incurred as a result of Buyer's failure to comply with any federal or state OSHA regulation or any other governmental or industrial safety requirement or standard.
10. **COMPLIANCE WITH LAWS.** SDI shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts and workers' or workmen's compensation acts insofar as applicable to the performance of this Contract.
11. **MODIFICATIONS.** This Contract, including in particular the Scope of Work, can be modified or rescinded only by a writing signed by both of the Parties or their duly authorized agents.
12. **WAIVER.** No claim or right arising out of a breach of this Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by a consideration and is in writing signed by the aggrieved party.
13. **ATTORNEYS' FEES AND COSTS.** In the event any legal action arises out of this Contract, the prevailing party shall be entitled to recover from the other its reasonable attorneys' fees and costs of suit.
14. **TIME OF ESSENCE.** With respect to all matters in this Contract, time is of the essence
15. **APPLICABLE LAW.** This Contract shall be governed by the laws of the State of California, including the Uniform Commercial Code as adopted in the State of California as effective and in force on the date of this Contract.



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October 31st, 2025

Port of Los Angeles
Construction Division/Contract Administration
425 South Palos Verdes Street,
San Pedro, CA 90731

Attention: Shaun Shahrestani, Chief Harbor Engineer

Subject: Schwager Davis Inc. Clarification

Project: Port of Los Angeles Avalon Pedestrian Bridge and Promenade Gateway/2804

Griffith Company respectfully submits this letter to clarify a comment included in Schwager Davis, Inc.'s ("SDI") proposal stating, "*The labor and material scopes are interdependent and priced as a single package. Neither scope can be awarded separately.*"

This correspondence confirms that those scopes may, in fact, be awarded separately and that Griffith Company intends to subcontract to SDI only the portion of work corresponding to their specialized post-tensioning services, valued at \$350,000. We trust this clarification resolves any misunderstanding regarding SDI's proposed participation and reaffirms Griffith Company's continued adherence to **Public Contract Code § 4104**.

Griffith Company has conclusively established compliance with the requirements of California Public Contract Code §§ **4104 and 4107.5**. Griffith's clerical error did not result in favoritism, bid shopping, discouraging potential bidding, or impede a comparison of the submitted bids. The clerical error was quickly addressed and did not result in an increase of the overall bid. The Port of Los Angeles can and should waive such an immaterial deviation. *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 900.

Accordingly, Griffith Company's bid satisfies all criteria for **responsiveness and responsibility**. We trust that the Port of Los Angeles will confirm the responsiveness of the bid and proceed with the award of the Avalon Pedestrian Bridge and Promenade Gateway Project to Griffith Company who is the lowest responsive bidder

Please do not hesitate to contact us should you require additional documentation.

Respectfully submitted,

Ky McLeod
Chief Estimator





10/31/2025

To whom it may concern,

Per our previous discussions with Griffith Company, the term on our quote 26-527 for the Avalon Pedestrian Bridge that states “The labor and material scopes are interdependent and priced as a single package. Neither scope can be awarded separately” does not apply for this project.

We expect a forthcoming subcontract from Griffith Company in the amount of \$350,000.00

Regards,

A handwritten signature in black ink, appearing to read 'Mohammad Mirah', with a long horizontal flourish extending to the right.

Mohammad Mirah



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November 14th, 2025

Port of Los Angeles
Construction Division/Contract Administration
425 South Palos Verdes Street,
San Pedro, CA 90731

Attention: Shaun Shahrestani, Chief Harbor Engineer

Subject: Griffith Company Response to Sully-Miller Contracting Co., 2nd Protest Letter
Project: Port of Los Angeles Avalon Pedestrian Bridge and Promenade Gateway/2804

Griffith is in receipt of Sully-Miller Contracting Co.'s (hereinafter "Sully-Miller") Second Protest Letter and offers this correspondence in response.

I. MANNER OF INTERPRETING CALIFORNIA PUBLIC CONTRACT LAWS

The most important takeaway from Sully-Miller's Second Protest Letter is that it misconstrues the law to such an extent that it ultimately loses sight of the purpose for which the Public Contract Code was enacted. Sully-Miller advocates for such strict enforcement of the law, that adopting its interpretation would not only obtain absurd results not in the best interest of the public but result in Sully-Miller's own disqualification from an award on this project.

Fortunately, the Court in *Ghilotti Constr. Co. v. City of Richmond* provides significant guidance on how to apply the laws currently at issue here. The laws governing public bidding should be construed in a manner permitting the Port of Los Angeles to solve this protest in a sensible and practical manner.

In *Domar*, supra, our Supreme Court emphasized the necessity of a pragmatic approach, placing the public interest above the interests of the bidders: "As one leading treatise explains: 'The provisions of statutes, charters and ordinances requiring competitive bidding in the letting of municipal contracts are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest. These provisions are strictly construed by the courts and will not be extended beyond their reasonable purpose. Competitive bidding provisions must be read in the light of the reason for their enactment, or they will be applied where they were not intended to operate and thus deny municipalities authority to deal with problems in a **sensible, practical way.**' (10 McQuillin, Municipal Corporations (3d rev. ed. 1990) § 29.29, p. 375, fns. omitted.) Thus, [laws] requiring competitive bidding are not to be given such a construction as to defeat the object of insuring [sic] economy and excluding favoritism and corruption."

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Ghilotti Constr. Co. v. City of Richmond, 53 Cal. Rptr. 2d 389, 396 (Ct. App. 1st Dist. 1996)

This interpretation of California Public Contract law is further supported by the analysis enunciated in *Great West Contractors, Inc. v. Irvine Unified Sch. Dist.*, 187 Cal.App.4th 1425, 115 Cal.Rptr.3d 378 (App. 4th Dist. 2010) which upholds, among other things, the idea that if a public entity is instructed by statute to award a contract to the lowest responsible bidders, the Court is hesitant to permit the public entity from doing otherwise.

Sully-Miller's arguments are not compatible with the tenets addressed above.

II. SULLY-MILLER LACKS STANDING TO BRING THIS PROTEST

To establish standing sufficient to bring a bid protest such as Sully-Miller's, the protesting party must establish that it has standing --- a concept that, in this context, is intertwined with a showing of prejudice. *Info. Tech. & Applications Corp. v. United States*, 316 F.3d 1312, 1319 (Fed. Cir. 2003)

To establish such prejudice, the protesting party must show that "...there was a "substantial chance" it would have received the contract award but for the alleged error in the procurement process." *Info. Tech. & Applications Corp. v. United States*, 316 F.3d 1312, 1319 (Fed. Cir. 2003)

Here, a review of Sully-Miller's bid submissions will identify several material inconsistencies that raise substantial questions as to Sully-Miller's bid responsiveness and/or responsibility. Specifically, on PlanetBids, Leed Electric, Inc. (hereinafter "Leed") is listed with a subcontract value of **\$17,966,000**. However, Sully-Miller's *Contractor/Subcontractor/Supplier Information Form*, submitted after the bids were opened, lists the same subcontractor at **\$16,873,541**—a discrepancy exceeding **\$1.09 million**. Likewise, Sully Miller listed **Griffith Company** on PlanetBids at **\$4,141,919** while Sully-Miller's supplier list identifies the amount as **\$3,618,500**. These variances are not clerical oversights, but **material discrepancies** that affect the composition and transparency of the bid, create uncertainty as to the true bid amount, and suggest bid shopping may have occurred following the opening of the bids.

Such inconsistencies strike at the core purpose of the **Subletting and Subcontracting Fair Practices Act** (PCC § 4100 et seq.), which was enacted to prevent **bid shopping and bid peddling** after bid opening. By listing conflicting subcontractor amounts, Sully-Miller's submission allows flexibility to adjust, renegotiate, or substitute subcontractor scopes post-award. Such conduct is expressly prohibited under **PCC § 4107** and condemned in *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1180–1181. As the court explained in *Menefee*, failure to provide accurate and consistent subcontractor information is a **material defect** because it undermines the statutory safeguards that ensure transparency and fair competition.

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Similarly, in *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 904, the court held that **any deviation affecting price or creating uncertainty as to the overall bid amount is material and non-waivable**. Discrepancies of this magnitude directly impair the Port's ability to verify bid totals and subcontractor participation. Further, such discrepancies suggest that Sully-Miller may have obtained more favorable quotes after seeing other parties' bids thereby defeating the very purposes of PCC § 4104 and the Port's own specification requirements.

To be clear, Griffith is only alleging that under the legal interpretation Sully-Miller has advanced through its protest; its own conduct would necessarily disqualify it from being awarded the Contract. Griffith's bid merely contained a system default number, which was corrected timely in accordance with Public Contract Code § 4107.5. The default number does not change the overall amount of Griffith bid on the project. However, the discrepancies in Sully-Miller's contract documents not only change its bid but also suggests that Sully-Miller may have gone out and bid shopped to procure better contracts for itself following the opening of the bids.

For these reasons, **Sully-Miller's own bid contains material inconsistencies** that render it **non-responsive, irresponsible, and/or** susceptible to the type of **post-bid manipulation and bid shopping** that California law expressly seeks to avoid. As such, Sully-Miller lacks the ability to demonstrate that it has/had a "substantial chance" of obtaining the contract but for the alleged procurement error.

Sully-Miller's inability to demonstrate that it would obtain the Contract but for the alleged procurement error means that it cannot show prejudice should the Port decide to award the contract to Griffith. Without prejudice, Sully-Miller lacks standing, and its protest should not be entertained.

Nevertheless, out of an abundance of caution, and the consideration that The Port may still prefer responses despite Sully-Miller's lack of standing, Griffith Company will address the specific arguments made by Sully-Miller in its protest.

III. The Alleged Deviation Is Immaterial and Fully Waivable

California law distinguishes between **material deviations**, which affect bid price or competitive fairness, and **inconsequential irregularities**, which may be waived by the awarding agency.

- In *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 904, the Court held that a deviation is material only if it "gives the bidder a substantial advantage or benefit not enjoyed by other bidders."
- *Poza v. Department of Transportation* (1983) 145 Cal.App.3d 269, 273 and *Taylor Bus Service, Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331, 1341 reaffirm that minor variances that do not affect price, quantity, or quality may be waived in the taxpayers' interest.
- *Great West Contractors, Inc. v. Irvine Unified School District* (2010) 187 Cal.App.4th 1425, 1428 confirms that public entities "have discretion to waive

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inconsequential deviations that do not affect the amount of the bid or give the bidder an unfair advantage.”

- **Konica Business Machines U.S.A., Inc. v. Regents of the University of California** (1988) 206 Cal.App.3d 449, 455 adds that courts defer to an agency’s discretion in determining materiality unless the decision is arbitrary or capricious.

Here, the alleged error neither altered Griffith’s total bid amount nor conferred any competitive advantage (see below). It is therefore an inconsequential irregularity within the Port’s discretion to waive.

IV. The Subcontractor Listing Requirements are Fully Satisfied.

Griffith’s actions fully satisfy both the **letter and intent** of § 4107.5. The “\$0” figure entered for SDI was a clear **data-entry mistake** in the electronic form, not a revision of scope, identity, or bid amount. Within two working days of the October 21 bid opening, Griffith submitted written notice and supporting correspondence from SDI (dated October 23, 2025) clarifying the subcontractor’s correct labor-only value of \$350,000 and affirming that no portion of the bid total was affected. SDI did not object and expressly confirmed the inadvertent nature of the error — precisely the circumstance § 4107.5 addresses when it provides that *“failure of the listed subcontractor to file written objection ... shall be primary evidence of his or her agreement that an inadvertent clerical error was made.”*

Accordingly, Griffith’s clarification was not a post-bid modification but a **statutorily authorized correction under PCC § 4107.5**, which allows adjustments where (1) the correction concerns an inadvertent clerical error, (2) it is submitted within two working days of bid opening, and (3) it does not alter the amount of the bid. Because all three conditions are satisfied here, the Port has both the authority and the discretion to accept the correction without affecting the bid’s responsiveness or validity.

V. The “Bid-Splitting” Allegation Is Misplaced and Legally Inapplicable

The assertion that Griffith engaged in “illegal bid splitting” under The Public Contract Code misconstrues The Code entirely. Sections such as **PCC §§ 22033 and 20163** apply solely to **public agencies**—not to private bidders. Those sections prohibit a *public entity* from dividing work into multiple smaller contracts to evade formal competitive bidding thresholds.

A review of each cited Public Contract Code section specifically cited by Sully-Miller makes it clearer that the bid-splitting prohibition is directed at *agency conduct*, not the internal subcontracting structure of bidders. For instance, Public Contract Code § 22033 includes the phrase “This Article,” thereby limiting its application to the Article in which it is found. That Article is Article 3. In Article three is found § 22030 which is titled “Applicability of Article.” Public Contract Code section 22030 states that Article 3, which includes the section cited by Sully-Miller, only applies to particular public agencies. California Code, Public Contract Code – PCC § 22030. The other two sections cited by Sully-Miller similarly obviate their intended application to public agencies, and not public

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bidders, when examined in the intended context, and not Sully-Miller's intentionally narrow interpretation.

Griffith Company's intent to purchase the post tension materials through a distinct vendor separate from SDI is permitted. The result is SDI performing the labor-only portion of the post-tensioning work at a price of \$350,000. Such an amount is well below the listing threshold of \$524,649.46 established by Griffith's total base bid of \$104,929,891.10.

California Courts have not forbidden contractors splitting out material purchases from subcontract scopes. Most notably in *Ghilotti* wherein a Prime Contractor resolved a failure to stay within the specified limits of subcontracted work by deciding to purchase materials for its subs instead of having the subs purchase the materials themselves. (*Ghilotti Constr. Co. v. City of Richmond Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897.)

When examined further, Sully-Miller's allegation that Griffith engaged in illegal bid splitting is completely without merit. No improper bid splitting has occurred.

VI. Griffith Received No Competitive Benefit; It Could Not Withdraw Its Bid

Sully-Miller cites *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1180-1181, to argue that Griffith had an unfair advantage. The reasoning being that the \$0 next to SDI's name in Griffith's bid would have permitted Griffith to withdraw its bid without forfeiting its bid bond. While Griffith does not dispute the general law; it takes issue with Sully-Miller's application to Griffith.

In its second protest letter, Sully-Miller specifically listed Public Contract Code § 5103 as the basis under which Griffith could have withdrawn its bid. In referencing the statute Sully-Miller also listed each element that must be established to the satisfaction of the Court before a withdrawal is permitted. (Sully Miller Protest, Pg. 5)

In attempting to demonstrate that Griffith could establish each element contained in Public Contract Code § 5103 Sully-Miller spends little time on subsection (c), which requires that the mistake upon which relief is sought must have made the bid materially different than what the bidder intended. Instead, they state only that "[t]he failure to include the bid price is material because Griffith was required to list SDI under the listing laws for the reasons argued above." This is merely a conclusory statement that case law specifically disproves. Further, it fails to show that Griffith's clerical error materially altered its bid, such that it no longer conformed with its intentions.

The reason Sully-Miller did not describe how Griffith's bid was made materially different than intended, is because the clerical error did not alter the contract. Even if Griffith were permitted to change the \$0 to an accurate sum, the total bid amount would not change. Because it would not change, Griffith would not be able to demonstrate that its error made the bid materially different from what was intended. As a result, Griffith would have been unable to withdraw its bid without forfeiting its bid bond.

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It is also important to point out that when deciding whether such a drastic alteration of the bid occurred so as to provide the bidding party with relief under Public Contract Code § 5103, the Court in *Ghilotti* specifically distinguished the case before it from *Valley Crest Landscape* and *Menefee*, upon which Sully-Miller incorrectly rely.

We believe the ability to withdraw is a more significant factor in cases involving formal defects in bids, such as the missing signature in *Menefee*, supra, 163 Cal.App.3d 1175, than it is in cases involving deviation from contract specifications. (*Ghilotti Constr. Co. v. City of Richmond*, 53 Cal. Rptr. 2d 389, 398 (Ct. App. 1st Dist. 1996))

Konica, the leading California case on deviation from specifications, does not cite *Menefee*, or discuss the low bidder's ability to back out as a factor in analyzing whether the deviation resulted in a competitive advantage. (*Ghilotti Constr. Co. v. City of Richmond*, 53 Cal. Rptr. 2d 389, 398 (Ct. App. 1st Dist. 1996))

Ghilotti and *Konica* demonstrate that the ability to withdraw a bid after bid opening is not relevant when it comes to deviations from contract specifications (as opposed to formal defects). However, even if the Port is inclined to determine whether Griffith had the ability to withdraw, the nature of the error, and the lack of any impact on Griffith's ultimate bid amount, demonstrates that Griffith did not have a competitive advantage.

VII. The CEC Form 55 Requirement Is Administrative, Not Material

The protest misinterprets the scope and purpose of the CEC Form 55 requirement. Section 00012.09(g) of the Specifications provides that CEC Form 55 must be submitted "within four (4) business days after bids are closed, or within four (4) business days after receiving a written request from the Engineer," and states that failure to do so "shall be cause to deem the bid non-responsive." When read together with Section 00022.14(a), which governs subcontractor listings, Section 00012.09(g) functions as a **timing and disclosure provision** for those subcontractors that are required to be listed.

Section 00022.14(a) requires that bidders list each subcontractor whose portion of work exceeds one-half of one percent (0.5 %) of the total bid or \$10,000, whichever is greater. Section 00012.09(g) then ensures that City Ethics Commission disclosures are received for those same listed entities, establishing an ethics-reporting mechanism that complements, rather than conflicts with, the subcontractor-listing provisions. The Los Angeles City Ethics Commission's own Form 55 Instructions support this interpretation, noting that the form is used to disclose information for "subcontractors with subcontracts valued at \$100,000 or more," confirming that it targets significant, identifiable subcontractors rather than minor vendors or suppliers.

Assuming arguendo that a Form 55 was required, its absence would not be material. Under long-standing California law, a deviation is material only if it affects bid price, quantity, or competitive fairness. (*Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 904; *Konica Business Machines U.S.A., Inc. v. Regents of UC* (1988) 206 Cal.App.3d

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449, 455; *Great West Contractors, Inc. v. IUSD* (2010) 187 Cal.App.4th 1425.) Administrative post-bid paperwork that neither alters the bid price nor provides a competitive advantage is waivable at the agency's discretion. Just because a particular event is identified as a cause to deem a bid non-responsive, does not mean that the occurrence of that event **requires** the bid to be deemed non-responsive. Discretion is provided explicitly on the face of the relevant section. The CEC Form 55 requirement is an administrative ethics disclosure, intended to support the City's integrity-review process rather than determine bid responsiveness.

It also must be considered that Sully-Miller has **unclean hands** with respect to its protest of Griffith's CEC compliance. Under section 00030.07(c) Sully-Miller was required to provide the original signature copy of its own CEC Form 55 with its four-day documents in accordance with NOTICE INVITING BIDS Section, Subsection 9. Sully-Miller did not comply with that requirement.

The Port retains full discretion whether to **accept Griffith's bid as responsive and request or receive any additional Form 55 information as a curative submission**. This interpretation gives full effect to both Section 00012.09(g) and Section 00022.14(a), preserves the Port's compliance oversight, and aligns with the California courts' consistent rule that **non-material administrative variances do not defeat bid responsiveness**. **However, should The Port decide to deem Griffith's bid non-responsive due to CEC Form 55 requirements, it would be required to do the same for Sully-Miller.**

VIII. Numerous Administrative Errors in Sully Miller's Bid Documents

As stated above, the Port has the discretion to determine which errors it deems immaterial and waivable versus those that impact the bid process making them material and non-responsive.

Griffith Company reasserts that Sully-Miller had significant material deviations in its bid that are forbidden by the text and spirit of The Public Contract Code, as well as relevant Case Law.

However, a more detailed review of Sully-Miller's bid causes Griffith Company to find Sully-Miller's protest more and more disingenuous. This is due to the number of errors, inconsistencies, and omissions Griffith Company has found in Sully-Miller's bid. Below are the portions of Sully-Miller's bid that Griffith Company considers to be of a similar nature to Griffith Company's omission of SDI's CEC form and Sully Miller's omission of its own CEC form, for which Sully-Miller has issued its protest.

- Sully Miller failed to provide the correct bid date on their CEC 55 Form provided on bid day (October 8, 2025 entered vs October 21, 2025 amended bid date)
- Sully Miller inconsistently checked box yes and no on Lucas Builders CEC Form 55 which stated the subcontractor has one or more principals
- Sully Miller inconsistently checked box no on S&P Fabrication Services CEC Form 55 indicating the subcontractor does not have one or more principals, then proceeded to list principal Scott Pace

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- Sully Miller failed to identify their Group (e.g. SBE, VSBE, MBE, WBE, DVBE, OBE) on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller falsely stated Griffith Company is not a Local business in section 00660.03 supplier list form
- Sully Miller failed to identify if Ace Fence is a subcontractor or a supplier on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify if 316 Engineering and Construction is a subcontractor or a supplier on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify if LEED Electric, Inc. is a subcontractor or a supplier on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify if MCM Construction, Inc is a subcontractor or a supplier on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify if S&P Fabrication/Services is a subcontractor or a supplier on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify if Griffith Company is a subcontractor or a supplier on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify if Lucas Builders, Inc is a subcontractor or a supplier on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify if Cicero Engineering is a subcontractor or a supplier on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify if Granstrom Masonry, Inc. is a subcontractor or a supplier on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify if Shaw & Sons, Inc. is a subcontractor or a supplier on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify if SpectraTurf is a subcontractor or a supplier on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify MCM Construction, Inc.'s Group (e.g. SBE, VSBE, MBE, WBE, DVBE, OBE) on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify SpectraTurf's Group (e.g. SBE, VSBE, MBE, WBE, DVBE, OBE) on Form 00660.01 Contractor/Subcontractor/Supplier Information
- Sully Miller failed to identify LEED Electric, Inc. as an OBE on Form 00660.01 Contractor/Subcontractor/Supplier Information despite showing the same LEED Electric, Inc.'s affidavit.

These errors demonstrate that Sully-Miller is attempting to hold Griffith to a standard it does not hold itself to. The best explanation being that it is a standard no contractor should be held to, as demonstrated by California Case Law.

California courts uniformly hold that competitive-bidding laws exist to protect the public, not to create technical traps for bidders. As stated in *Taylor Bus Service*, supra, 195 Cal.App.3d at 1341, these laws "are not intended to operate as traps for the unwary." Rejecting the apparent low bidder over a minor, clerical, and curable omission would elevate form over substance and contravene the fundamental objective of obtaining the best value for the public.

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IX. Conclusion

Griffith Company's bid fully complies with all substantive requirements of Specification No. 2804 and the Public Contract Code. Each issue raised in Sully-Miller's protest is either factually incorrect, legally unsupported, or immaterial under controlling precedent.

It is important to recall that California's competitive bidding laws are designed **to protect the public, not to arm unsuccessful bidders with technicalities to defeat a lawful low bid.** To entertain repetitive or speculative bid protests risks **undermining that statutory purpose**, delaying award, and potentially creating conditions conducive to **bid shopping and post-bid manipulation** — conduct expressly prohibited under *Public Contract Code* §§ 4100 and 4107.

The protest presented here, which reiterates immaterial points already addressed and relies on strained interpretations of administrative provisions, appears more designed to **delay award and force a rebid** than to advance any legitimate claim of non-responsiveness. A rebid would not only waste public resources but would also expose the project to the very competitive distortions that the Fair Practices Act seeks to prevent.

Accordingly, Griffith Company respectfully requests that the Port of Los Angeles **deny Sully-Miller's protest in its entirety and proceed with an award to Griffith Company**, the lowest responsive and responsible bidder. Doing so will uphold the integrity of the Port's procurement process, maintain compliance with applicable law, and serve the public interest in the timely delivery of this vital infrastructure improvement.

Respectfully submitted,

Geoffrey Kraemer
General Counsel

Attmnt: CEC 55 Form - SDI

Schedule B - Subcontractors and Their Principals

Please identify all subcontractors whose subcontracts are worth \$100,000 or more. Separate Schedule B pages are required for each subcontractor who meets the threshold.

Subcontractor's Name Schwager Davis, Inc. (SDI)
Subcontractor's Address 198 Hillsdale Ave., San Jose, CA 95136

Please check one of the following options:

This subcontractor has one or more principals. Yes* No

** Each principal's name and title must be identified below. Attach additional sheets if necessary. Principals include a subcontractor's board chair, president, chief executive officer, chief operating officer, and individuals who serve in the functional equivalent of one or more of those positions. Principals also include individuals who hold an ownership interest in the subcontractor of at least 20 percent and employees of the subcontractor who are authorized by the bid or proposal to represent the subcontractor before the City.*

Name: Guido Schwager Title: Chairman
Address: 198 Hillsdale Ave., San Jose, CA 95136

Name: Mike Schwager Title: President
Address: 198 Hillsdale Ave., San Jose, CA 95136

Name: _____ Title: _____
Address: _____

Name: _____ Title: _____
Address: _____

Name: _____ Title: _____
Address: _____

Name: _____ Title: _____
Address: _____

Check this box if additional Schedule B pages are attached.