



1701 S. PADRE ISLAND DRIVE, CORPUS CHRISTI, TEXAS 78416 | 361.808.2660 | WWW.TXDOT.GOV

August 10, 2022

Mr. Keith Armstrong
Project Manager
Flatiron/Dragados, LLC
1620 N Port Ave
Corpus Christi, Texas 78401

RE: US 181 Harbor Bridge Replacement Project
CSJ# 0101-06-095
SEL: 000810 Suspension of Work on New Harbor Bridge – Suspension for Convenience

Dear Mr. Armstrong:

The Texas Department of Transportation (“TxDOT”) is in receipt of Flatiron/Dragados, LLC’s (“FDLLC”) letter dated August 4, 2022, regarding the suspension of work on the New Harbor Bridge under section 16.2.3 (“Developer Defaults Related to Safety”) of the Comprehensive Development Agreement (“CDA”) between TxDOT and FDLLC, dated September 28, 2015.

On April 29, 2022, TxDOT delivered to FDLLC a notice detailing 23 separate items of Nonconforming Work, and attached to that notice the independent engineering report prepared by International Bridge Technologies (“IBT”). FDLLC was then obligated, within ten days, to correct such Nonconforming Work (which TxDOT acknowledged would not be feasible with 10 days), or to provide, within ten days, a schedule acceptable to TxDOT for correcting such Nonconforming Work. To date, FDLLC has neither acknowledged any defects in the work nor provided a schedule for its correction.

Since TxDOT’s April 2022 notice, TxDOT has reasonably and in good faith agreed to a series of meetings that included Arup-CFC and IBT so that FDLLC and Arup-CFC could gain a better understanding of IBT’s report and the findings of Nonconforming Work. Through the date of this letter, there have been both in person meetings and virtual meetings between the parties and the engineering firms. During these meetings, FDLLC and Arup-CFC made vague statements that TxDOT and IBT did not have all the information needed for IBT’s independent design review. After TxDOT repeatedly requested that FDLLC identify the additional information FDLLC believes IBT needed, FDLLC could only point to a wind report. We have worked also with FDLLC fully and transparently to provide FDLLC with the information it states it needs to determine whether Nonconforming Work exists.

Since TxDOT issued its Notice of Nonconforming Work in April, FDLLC has criticized TxDOT for exercising its right to have an independent design review performed to satisfy TxDOT’s concerns, concerns that TxDOT repeatedly expressed to FDLLC regarding its design prior to engaging IBT. FDLLC has also criticized TxDOT for providing notice to FDLLC of the defects in its design prior to receiving a “final report” from IBT. Yet, in its most recent letter, FDLLC criticizes TxDOT for not providing IBT’s January 2021 report sooner. FDLLC also complains that TxDOT did not stop FDLLC when FDLLC chose to commence construction despite TxDOT’s concerns regarding FDLLC’s design

OUR VALUES: *People • Accountability • Trust • Honesty*
OUR MISSION: *Connecting You With Texas*

An Equal Opportunity Employer

Mr. Keith Armstrong

2

August 10, 2022

and also states that TxDOT should not have suspended the work. FDLLC's various statements are contradictory, inconsistent, and are an effort to avoid the real issues of the Nonconforming Work.

The January 2021 report prepared by IBT was based on IBT's review of the design prepared by FDLLC's previous designer, FIGG Bridge Engineers, Inc. ("FIGG"). By the time the January 2021 report was issued, FIGG, had been terminated from the project due to TxDOT's concerns over its design of the New Harbor Bridge. FIGG was the Lead Engineer for a pedestrian bridge in Miami that collapsed and killed six people. The National Transportation Safety Board conducted a lengthy investigation, and ultimately found FIGG and Mr. Denney Pate, the Engineer of Record for the New Harbor Bridge, culpable for the collapse due to design errors. Also in January 2021, FIGG was debarred by the Federal Highway Administration and is prohibited from bidding on any federal-aid project until 2029. By January 2021, FDLLC had replaced FIGG with Arup-CFC, and FDLLC and Arup-CFC were aware of TxDOT's concerns regarding FIGG's design. In January 2021, TxDOT had been receiving designs from Arup-CFC and expected that the new Arup-CFC design would correct the many problems with the FIGG design.

TxDOT then requested that IBT change its efforts to perform an independent design review of Arup-CFC's design. This review resulted in the April 2022 IBT report, which was provided to FDLLC once signed and sealed by IBT.

Unfortunately, as TxDOT came to learn, the new design by Arup-CFC did not address TxDOT's concerns, yet FDLLC nevertheless chose to proceed with construction. In our letters of June 10, 2021 and June 28, 2021 we made clear our concerns about the Arup-CFC design, and that any decision to proceed with construction in the face of those concerns was at FDLLC's risk. As you know, the CDA makes clear that TxDOT's acknowledgment of receipt of the Certification of Compliance does not in any way relieve FDLLC from its liability for defective work or its obligation to build a safe project that conforms to contractual requirements. It was only after FDLLC made clear that it would ignore TxDOT's concerns and continue to construct the bridge that TxDOT was forced to take action.

TxDOT has met in good faith multiple times with FDLLC in an effort to resolve the issues raised in the Notice of Nonconforming Work and two meetings were scheduled for later this week. However, FDLLC in its August 4, 2022 letter states that the issues have been "exhaustively discussed" and that "there are no Developer Defaults." FDLLC further claims that its "thorough engineering review by its designers and third parties has not found any of IBT's assertions of defects to be correct" and accuses TxDOT of "wrongfully blaming FDLLC for the suspension." Finally, FDLLC's counsel yesterday communicated with the disputes board stating "TxDOT's issuance of a Nonconformance Report followed by a Suspension of Work is a sham." In light of those statements, TxDOT does not see the utility in meeting with Arup-CFC and IBT on August 11, 2022 and is taking the meetings off calendar.

FDLLC's continued refusal to acknowledge the serious issues which have been identified is disturbing. The suspension is wholly due to FDLLC's acts and omissions, including the Nonconforming Work that FDLLC refuses to remedy. FDLLC states that it "stands ready and willing to discuss a plan to move the Project forward." However, in view of FDLLC's August 4, 2022 letter, it is clear that FDLLC is not interested in finding a resolution to the Nonconforming Work unless the resolution is for TxDOT to permit FDLLC to continue to construct the Project in accordance with its defective design, a "resolution" that would create a danger to persons and property. TxDOT cannot allow that to happen.

OUR VALUES: *People • Accountability • Trust • Honesty*
OUR MISSION: *Connecting You With Texas*

An Equal Opportunity Employer

Mr. Keith Armstrong

3

August 10, 2022

Sincerely,

DocuSigned by:
Joseph Briones
2956969BAA3C4CE...

Joseph Briones, P.E.
Corpus Christi District Project Manager
Texas Department of Transportation

cc: Kurt Knebel, Flatiron Constructors, Inc.
Justo Molina, Flatiron/Dragados, LLC
Jaime Hurtado Cola, Dragados USA, Inc
Valente Olivarez, Jr., P.E., TxDOT
Juan Quiroga, P.E., HNTB

Liberty Mutual Insurance Company
Attn: Gretchen Eck
Surety Claims Counsel
2815 Forbs Ave.
Suite 102
Hoffman Estates, IL 60192