



July 2, 2026

Amandeep Saini, P.E.
Construction Manager
Construction Contracts and Support Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

Re: Response to Bid Protest by Gordon N. Ball, Inc., dated June 29, 2026
Coyote Creek Flood Protection Project
Project No. 26174043 – Contract No. C0724

Dear Amandeep Saini P.E. ,

Shimmick Construction Company is in receipt of Valley Water's letter of July 1, 2026, enclosing the June 29, 2026, protest of Gordon N Ball, Inc (Protester) to the lowest responsive bid submitted by Shimmick to perform the Santa Clara Valley Water District's Coyote Creek Flood Protection Project.

Shimmick appreciates the vital importance of the Coyote Creek project to Valley Water and its ratepayers in reducing the risk of flooding for homes, schools and businesses in the area. As already demonstrated through the District's robust pre-qualification process for the Coyote Creek project, Shimmick is not only a pre-qualified Responsible Bidder but also an industry leader, experienced in heavy construction and climate resilience projects including flood control, dam rehabilitation, and coastal protection.

Responsibility:

As to Protester's first claim that Shimmick is somehow not "responsible", Protester's desperate claims seem to have been created by feeding Shimmick's 470-page completed "Pre-Qualification Application for General Contractors Seeking to Bid on Coyote Creek Flood Protection Project" and related documents seemingly through an AI program which spit-out, replete with hyperbole, outlandish claims of Shimmick's demise. ¹

As an initial matter, Valley Water has broad discretion and exercised its judgment in finding Shimmick responsible in that it met all of Valley Water's requirements for Prequalification. Valley Water has undertaken a rigorous pre-qualification process for all the bidders,

¹ Some of these comments which might even be considered actionable if it weren't for the forum.



including Shimmick. Shimmick is qualified. Shimmick is Responsible. That should be the end of the issue. Protester, as a disappointed bidder, is now fabricating a story to impugn Shimmick's longstanding strength and reputation.

The sole basis of Protester's argument relating to responsibility is Shimmick's financial strength which Protester attacks. Protester's own supporting documents, Shimmick's public filings, the same documents that Protester relies on, tell the opposite story: a company with narrower losses, greater backlog and revenue that can more than successfully undertake the Project.

In addition, to Valley Water's own pre-qualification process, it has other independent third-party professionals who have also closely analyzed and assessed Shimmick's financial strength and capabilities. For example, Shimmick will be providing Valley Water with a payment performance bond as required by Section 22 of the Instructions to Bidders. That bond provided by Berkshire Hathaway Specialty Insurance Company, an A++ (Superior)-rated surety.² As Valley Water is aware, sureties perform full and comprehensive underwriting process. Surety is an expert at assessing a contractor's skill and risk. In addition, the surety requires that their contractor Principal furnish significant security to the Surety before agreeing to issue any bonds. Valley Water has the additional benefit of a top Surety's assessment of Shimmick.

In addition, Shimmick is also a publicly traded company, and subject to rigorous public filing requirements enforced by the Securities Exchange Commission. As part of those regulatory requirements, Shimmick's financial statements are audited by Deloitte & Touche LLP, a Big Four accounting firm and independent auditor. Deloitte issued an unqualified opinion on Shimmick's fiscal 2025 financial statements and did not identify any substantial doubt about the company's ability to continue as a going concern. Likewise, Shimmick's first-quarter 2026 Form 10-Q raised no going-concern concerns. Under applicable auditing standards, auditors must disclose substantial doubt about a company's ability to continue operating for the following year if such doubt exists. Deloitte found none. That independent professional judgment directly contradicts Protester's unsupported claims that Shimmick is "on the verge of bankruptcy". Valley Water also has the added assurance of an

² Shimmick is not going to engage in the slinging of Protester but would merely point-out that the Coyote Creek project would seem to be a stretch for a company like Protester's where most of its projects are much smaller and the Coyote Creek's contract value alone would amount to nearly its entire annual revenue. In addition, Protester's surety is not as strong/rated as Shimmick's



independent auditor, which is a better measure, than the self-serving assertions of a disappointed bidder³.

As to Shimmick's performance on the Chickamauga project in Tennessee performed for the US Army Corps of Engineers, Shimmick does not agree with the government's decision to terminate its contract and that decision is disputed and not final. Shimmick has filed an appeal where it fully expects to prevail. As to the federal government, Shimmick is currently engaged in two major flood control projects for the US Army Corps of Engineers including the Folsom Dam in Northern California and Lewisville Dam Safety Modification – Spillway project in Texas. Both projects with excellent performance reviews from the U.S. Army Corps of Engineers. The most recent interim CPARS for the Folsom Dam project rated Folsom Dam Constructors, "Satisfactory" in every evaluated category and recommended the contractor for similar future work. Shimmick's most recent interim CPARS for the Lewisville Dam Safety Modification – Spillway project rated Shimmick "Very Good" in "Quality", "Small Business Subcontracting", and "Safety", and "Satisfactory" in "Schedule, Management", and "Regulatory Compliance". The assessing official likewise recommended Shimmick for similar future projects.

Valley Water has broad discretion in making determinations regarding contractor responsibility. *M & B Construction v. Yuba County Water Agency* (1999) 68 Cal.App.4th 1353, 1361, footnote 3, "contracting entities are vested with great discretion in determining whether a bidder is responsible." Valley Water has conducted a full Pre-Qualification process and through that process determined that Shimmick is Responsible. End of inquiry.

Given the gravity of an allegation regarding a finding of non-responsibility, the law provides Shimmick with a right to due process, to put on evidence, and be represented by counsel through a hearing process. Should Valley Water even remotely considering Protester's baseless contentions, Shimmick will request the opportunity for a full response as provided under the law⁴.

Non-Responsiveness

³ Valley Water also has the Public Contract Code's retention process as further security

⁴ *City of Inglewood-LA County Civic Center Auth. v Superior Court* (1972) 7 Cal 3 861, *Boydston v. Napa Sanitation Dist.* (1990) 222 Cal.App.3d 1362, 1369, public agency must afford a bidder the opportunity to rebut and present evidence before it can be disqualified as not responsible. In the event SCVWD were to find Shimmick's Bid "Unresponsive", it will avail itself to its legal remedies.



Protester's second claim in its Protest, is that Shimmick's bid is "non-responsive" because Protester erroneously claims that Shimmick "front loaded" the Mobilization Bid Item. Shimmick agrees that an "unbalanced" bid as defined by Protester where there are "nominal prices for some work and inflated prices for other work" could form the basis for a finding of "non-responsiveness". However, none of those facts are present here.

All the authorities that the Protester cites are situations where the Government's payment to the contractor exceeded the value of the work being performed and the contractor's pricing was either, 1) distorted from the actual cost allocation or 2) that a bidder received funding unrelated to the project performance- basically that the government did not receive any corresponding benefit for the payment.⁵ In the current instance, neither is the situation. Mobilization includes, among other things, procurement/mobilization of materials and supplies.

Shimmick included the supplies raw material cost needs of the passive flood barrier as an element of Mobilization. Valley Water's payment of the Mobilization Item will be utilized for the Project. Valley Water's response to Question 25 provided in Addendum #6 to the Contract Documents specifically addressed the Schedule of Values and Mobilization bid item. The question was whether there was a "cap" as to the amount a Bidder could place in the Mobilization bid item. Valley Water responded, "there is no maximum percentage cap". Evidently at least 1 other bidder (Granite Construction) included a significant amount for Mobilization, perhaps as part the key supplier's mobilization.

There is no basis for Protesters position that there was a "front loading claim". Shimmick's mobilization item is directly tied to Project work, it is in no way a "vehicle", or whatever other nefarious motive that Protesters may be trying to ascribe to it.

Bid Error

Protester's third protest ground incorrectly assumes that Shimmick designated both C&N Reinforcing, Inc. ("C&N") and Oliveira Fence, Inc. ("Oliveira") to perform rebar work. The bid documents, read as a whole, establish otherwise. Shimmick designated C&N for rebar work and Oliveira for fencing work.

⁵ As an aside, virtually every authority relied upon by Protester is either a GAO bid protest or federal procurement case. The two California cases cited by Protester npc (*Baldwin Lima* and the 1896 case of *Ertel* are "hallucinations" and have absolutely nothing to do with unbalanced bids)



The Instructions to Bidders define the “Bid” as the completed Proposal and all associated Bid Forms. Shimmick’s bid must therefore be evaluated in its entirety, rather than by isolating a single inconsistent description from the remainder of the submission.

Shimmick’s signed Bid Form No. 4 expressly identifies:

- C&N for “Rebar” in the amount of \$3,933,391; and
- Oliveira for “Fencing” in the amount of \$1,289,452.

Bid Form No. 4 also identifies the applicable fencing bid items assigned to Oliveira. The subcontractor names and dollar amounts correspond exactly to the information entered elsewhere in Shimmick’s bid. The sole inconsistency is that “Rebar” was inadvertently repeated in the electronic description associated with Oliveira.

That isolated clerical entry does not create a genuine ambiguity concerning the intended allocation of work. C&N Reinforcing was identified for the rebar scope, while Oliveira Fence was identified for the fencing scope. The signed bid materials make that distinction clear.

Valley Water too recognized the apparent clerical error even before Shimmick received Protester’s protest and sought confirmation. When Valley Water requested confirmation, Shimmick explained that Oliveira’s scope was fencing and that the rebar description had been entered in error. Valley Water responded: “We thought so but needed to see it in writing.” That contemporaneous exchange confirms that Shimmick was not attempting to revise or reallocate work after bid opening but was confirming the scope already disclosed in Bid Form No. 4.

Shimmick Did Not List Two Subcontractors for the Same Portion of Work

Public Contract Code section 4104(b) requires the prime contractor to identify the portion of work to be performed by each listed subcontractor and to list only one subcontractor for each defined portion of work. Shimmick complied with that requirement.

The complete bid identifies C&N as the rebar subcontractor and Oliveira as the fencing subcontractor. Shimmick is not selecting between the two firms for the rebar scope, changing either subcontract amount, reallocating work after bid opening, or substituting one firm for another.

Accordingly, the clerical description error created no opportunity for bid shopping, bid peddling, or post-bid manipulation. The subcontractor identities, amounts, and intended scopes were disclosed in the bid itself.



Protester's reliance on *R.J. Land & Associates Construction Co. v. Kiewit-Shea* is misplaced. That case involved subcontractors designated for the same portion of work. Here, the bid materials identify separate scopes for C&N and Oliveira. Protester's argument depends on disregarding the signed Bid Form that expressly states those scopes.

Oliveira Is Properly Licensed for the Work Assigned to It

Protester's licensing argument relies on the same mistaken assumption that Oliveira was designated to perform rebar work. It was not.

Oliveira was identified for fencing work and holds a C-13 Fencing Contractor license appropriate for that scope. C&N—not Oliveira—was identified for the rebar work. Oliveira's lack of an A or C-50 classification is therefore immaterial because Shimmick has not assigned Oliveira any reinforcing-steel work.

Protester's suggestion that Shimmick may now replace Oliveira with an unidentified rebar subcontractor is similarly unfounded. Oliveira was never intended to perform the rebar scope, and Shimmick is not seeking to replace or substitute either listed subcontractor.

The Isolated Description Error Is, at Most, a Minor Waivable Irregularity

Section 21(A) of the Instructions to Bidders expressly reserves to Valley Water the right to waive minor defects or irregularities in submitted Bid Forms.

The erroneous descriptor did not affect Shimmick's total bid price, the identity of either subcontractor, either subcontract amount, the actual allocation of work, or the comparison of competing bids. It also did not provide Shimmick with any competitive advantage.

Shimmick is not seeking to change its bid, withdraw its bid, revise any price, replace a subcontractor, or alter the allocation of work. Shimmick is simply confirming what its signed Bid Form already establishes: C&N was designated for rebar and Oliveira was designated for fencing.

Protester's protest elevates an isolated clerical inconsistency over the substance of Shimmick's complete bid. Because the bid itself clearly identifies the intended subcontractors and their respective scopes, the error does not render Shimmick's bid materially nonresponsive. At most, it is a minor irregularity that Valley Water is expressly authorized to waive.

Protester's third protest ground should therefore be denied.



California's competitive bidding laws were enacted for the benefit of property owners and taxpayers, not to enrich disappointed bidders and they must be strictly construed to accomplish that purpose. Shimmick is the lowest Responsible and Responsive Bidder.

Protester's Bid Protest should be rejected by Valley Water. Shimmick looks forward to successfully delivering this important Project to the Santa Clara Valley Water District.

Should the District have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

SHIMMICK CONSTRUCTION COMPANY, INC.

By: _____

Trace Porter

Vice President, Northwest Division

cc. John Carpenter esq

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