

April 10, 2024

**Via Email & U.S. Mail**

Chair, Construction Review Board  
University of California  
Office of the President  
1111 Franklin Street, 6<sup>th</sup> Floor  
Oakland, CA 94607-5200

Attn: Director, Construction Services

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Also admitted in New York

**Re: Appeal of UCSC's Denial of Carpenters Local Union 505's Bid Protest for Student Housing West Phase 1—Hagar Development**

Dear Chair of the Construction Review Board:

On behalf of Carpenters Local Union 505 ("Local 505"), this office appeals University of California Santa Cruz's ("UCSC") denial of Local 505's March 22, 2024 protest of W.E. O'Neil's bid for UCSC's Student Housing West—Phase 1 Hagar Development ("Project").

In its April 5, 2024 denial of Local 505's protest, UCSC disregarded that on July 15, 2021, on a W.E. O'Neil project in Los Angeles, an energized piece of rebar killed one worker and sent two other workers to the hospital.

UCSC explained that it had for two reasons for doing so:

- (1) The workers' death and hospitalizations occurred on a W.E. O'Neil Construction Co. of California project, while W.E. O'Neil Construction Co. of NorCal was the bidder on the Project at issue, and "while it appears there is some relation between the two companies, we do find persuasive the fact that the companies are separate legal entities," and
- (2) OSHA issued a "Notice of No Violation After Inspection" to W.E. O'Neil Construction Co. of California following the July 15, 2021 death and hospitalizations.

The Construction Review Board should reverse UCSC's decision disregarding the July 15, 2021 construction fatality and hospitalizations because, as explained below, both of UCSC's stated reasons fall flat.

First, W.E. O'Neil Construction Co. of NorCal cannot now argue that it and W.E. O'Neil Construction Co. of California are separate entities when it **leveraged the credentials and experience of W.E. O'Neil Construction Co. of California as a "parent company" in its prequalification application and would not otherwise have prequalified for the Project.** The

Construction Experience section of the Prequalification Questionnaire, Section 4, requires a prospective bidder to have “successfully completed at least 2 comparable projects within the last 10 years” and directs the prospective bidder to submit a project data sheet for each such comparable project. That same section allows a prospective bidder to use the experience of a “predecessor business” when it justifies in writing that it is “**substantially the same organization**” as that business. W.E. O’Neil Construction Co. of NorCal opted to use W.E. O’Neil Corporation of California as a “predecessor business,” explaining in Section 4 that the latter is its “parent company,” it is that parent company’s “subsidiary,” and the two companies share the same president. It then went on to **list five qualifying comparable projects, all five of which were performed by its parent company W.E. O’Neil Construction Co. of California**. What’s more, **one comparable project is the very same Los Angeles project that killed one worker and hospitalized two others on July 15, 2021**. In other words, W.E. O’Neil Construction Co. of NorCal would not have been able to list any comparable projects and would not have prequalified for the Project if it had not relied on W.E. O’Neil Construction Co. of California as a “parent company” that is “substantially the same organization” as itself. This is of no surprise considering W.E. O’Neil Construction Co. of NorCal is a very new construction company, having only been formed in April 2022 and licensed with the Contractors State License Board in January 2023.<sup>1</sup> W.E. O’Neil Construction Co. of NorCal cannot have its cake and eat it too by taking credit for its parent company’s experience with comparable projects including the Los Angeles project but distancing itself from its parent company’s construction fatality and hospitalizations on that very same project.

Second, that W.E. O’Neil Construction Co. of California received a “Notice of No Violation After Inspection” from Cal/OSHA does not mean that W.E. O’Neil Construction Co. of California has no responsibility over the workers’ death and hospitalizations. As Local 505 has already explained, Cal/OSHA issued a “willful” citation for the worker’s death in the amount of \$112,500. W.E. O’Neil Construction Co. of California was able to avoid personal liability under the Labor Code only because it insulated itself via two layers of subcontractors from the death and Cal/OSHA rules do not require a general contractor “to inspect for hazards as frequently...as the subcontractor it hired.”<sup>2</sup> However, these are not the only applicable laws when a worker dies on a construction jobsite. The fact that W.E. O’Neil Construction Co. of California remains the lead defendant in the wrongful death suit pending in Los Angeles Superior Court, *Rodriguez, et al. v. W.E. O’Neil Construction Co. of California, a Delaware Corporation, et al.* (Los Angeles Superior Court Case No. 22STCV30640), shows that the jury is still out under other laws, namely common law torts, and W.E. O’Neil may yet be deemed responsible for the death.

Given the above, Local 505 urges the Construction Review Board to reverse UCSC’s denial of Local 505’s bid protest and direct UCSC to take one of two actions:

- (1) Continue to treat W.E. O’Neil Construction Co. of NorCal and W.E. O’Neil Construction Co. of California as different companies, in which case UCSC should not allow W.E. O’Neil Construction Co. of California to be treated as a “parent company” or “predecessor business” for purposes of prequalification. UCSC would then have to revoke W.E. O’Neil Construction Co. of NorCal’s

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<sup>1</sup> See W.E. O’Neil Construction Co. of NorCal’s initial filing with the California Secretary of State, attached hereto as Attachment 1 and CSLB Contractor’s License Detail for License # 1100240, available at <https://www.cslb.ca.gov/OnlineServices/CheckLicenseII/LicenseDetail.aspx?LicNum=1100240>.

<sup>2</sup> *Harris Construction Company, Inc.*, Cal/OSHA App. 03-3914, Decision After Reconsideration (Feb. 26, 2015); see also Lab. Code, § 6400, subd. (b).

prequalification on the Project, which would not have been granted without its parent company's experience.

-or-

- (2) Treat W.E. O'Neil Construction Co. of NorCal and W.E. O'Neil Construction Co. of California as the same entity for purposes of the Project prequalification and bid process. This entails applying renewed scrutiny to all W.E. O'Neil Construction Co. of NorCal/W.E. O'Neil Construction Co. of California's prequalification and bid statements to ensure the contractor is not picking and choosing to define itself as including or excluding the parent company as it benefits them. This also requires considering the workers' death and hospitalizations on the Los Angeles project and W.E. O'Neil Construction Co. of NorCal/W.E. O'Neil Construction Co. of California's perjurious "No" answer to the construction fatality question in determining responsibility. If UCSC decides to go this route, UCSC would be hard pressed to find W.E. O'Neil Construction Co. of NorCal/W.E. O'Neil Construction Co. of California responsible.

Local 505 looks forward to receiving the Construction Review Board's decision on appeal.

Please contact the undersigned at [amatsuoka@unioncounsel.net](mailto:amatsuoka@unioncounsel.net) or 916.443.6600 with any questions related to this correspondence.

Sincerely,



Andrea Matsuoka

ACM:lcw

Attachment

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# **ATTACHMENT**

**1**



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B0699-9399 05/03/2022 1:07 PM Received by California Secretary of State



**STATE OF CALIFORNIA**  
*Office of the Secretary of State*  
**STATEMENT AND DESIGNATION - OUT-OF-STATE**  
**STOCK CORPORATION**  
 California Secretary of State  
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 Sacramento, California 95814  
 (916) 653-3516

For Office Use Only  
**-FILED-**  
 File No.: 5055542  
 Date Filed: 5/3/2022

Corporation Name Corporation Name	W.E. O'Neil Construction Co. of NorCal
Jurisdiction This Corporation is Formed in	DELAWARE
Street Address of Principal Office of Corporation Principal Address	1245 W. WASHINGTON BOULEVARD CHICAGO, IL 60607
Mailing Address of Corporation Mailing Address  Attention	1245 W. WASHINGTON BOULEVARD CHICAGO, IL 60607
Street Address of California Office of Corporation Street Address of California Office	2100 MAIN STREET, SUITE 300 IRVINE, CA 92614
Agent for Service of Process California Registered Corporate Agent (1505)	COGENCY GLOBAL INC. Registered Corporate 1505 Agent
Consent to Service of Process <p>The corporation irrevocably consents to service of process directed to the corporation upon the agent designated and to service of process on the Secretary of State if the agent designated or the agent's successor is no longer authorized to act or cannot be found at the address given.</p> <p>Consent under this paragraph extends to service of process directed to the out-of-state corporation's agent in this state for a search warrant issued pursuant to California Penal Code section 1524.2, or for any other validly issued and properly served search warrant, for records or documents that are in the possession of the out-of-state corporation and are located inside or outside of this state. This shall apply to a out-of-state corporation that is a party or a nonparty to the matter for which the search warrant is sought. "Properly served" means delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed in California Corporations Code section 2110, or any other means specified by the out-of-state corporation, including, but not limited to, email or submission via an Internet Web portal that the out-of-state corporation has designated for the purpose of service of process.</p>	
Electronic Signature <input checked="" type="checkbox"/> I am a corporate officer and am authorized to sign on behalf of the out-of-state corporation.	
<i>John Finn</i> Signature	<u>05/02/2022</u> Date

# Delaware

The First State

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I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "W.E. O'NEIL CONSTRUCTION CO. OF NORCAL" IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-SEVENTH DAY OF APRIL, A.D. 2022.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "W.E. O'NEIL CONSTRUCTION CO. OF NORCAL" WAS INCORPORATED ON THE TWENTY-FIFTH DAY OF APRIL, A.D. 2022.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL FRANCHISE TAXES HAVE BEEN ASSESSED TO DATE.



A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

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SR# 20221661443

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

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