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Subject: Response to Request for Clarification on Proposed Recommendations
In the Matter of David L. Durkee, P.E. v. Converse Consultants Southwest, Inc.,
Scott T. Edberg, and Joseph G. Laurente

Clarification to specific terms of the Findings, Conclusions, and
Recommendations of the Hearing Officer dated July 17, 2009 are as follows:

A. Findings of Fact Section

1. Training (Findings at H)

Converse relied upon other organizations for Inspector Certification methods (see Discussions of Finding of Fact Item H, Page 8). The basis of conclusions by the Hearing Officer related to Training are:

- No on the job formal training classes for steel reinforcement as noted by the submittal by Converse training documents B0562, B0572, B0576, B0579, B0583, B0587, and B0601.
- The cell phone contacts between supervision, inspectors and between inspectors provides proof that there was discussion, but not solid proof of training.
- Joint inspection by Edberg and Laurente on one level of the Harmon Tower is on the job training. Because no link beam flaws were noted on the level that was jointly inspected and the upper floors subsequently inspected by Mr. Laurente, it is concluded that joint inspection of one floor by the two inspectors did not prepare Mr. Laurente for his inspection responsibilities on levels 18, 19, and 20.

2. Organizational Charts (Findings at I)

Converse responded to the Organizational Chart issue in the Post-Hearing Response from Gregory Gilbert, Esq., dated July 10, 2009. Although no modification have been made to the organizational chart by Converse, certain

field duties were changed to accommodate restrictions placed upon Converse by Union Agreements as described by Converse in the testimony during the Special Hearing at the Clark County Building Department on October 8, 2008. The Hearing Officer concluded that prior to disclosure of the organizational changes on City Center during the Hearing of October 8, 2008, Converse did not advise the Clark County Building Department of the changes to block supervision and individual inspector management. The Hearing Officer did not conclude that the Project Site changes to the organizational chart violated the terms of the Quality Systems Manual or the provisions of the Clark County Building Administrative Code. It was concluded that this field organizational change by Converse weakened the communication tie with the Special Inspectors on the Harmon Tower.

3. Role of Third-Party Inspector

The role of the Third-Party Inspector, as the employee of Converse Consultants, a Quality Assurance Agency approved by the Clark County Building Department, is defined in both the Quality Assurance Agreement issued for PAC # 07-19475 and the Clark County Building Administrative Code. In the Quality Assurance Agreement, under Addendum to Special Inspection Agreement, it is noted that

- "In addition to the inspections required by Chapter 17 of the 2000 International Building Code, a special inspector must be present during the construction of the following types of work and must verify approved size, locations and connections of all structural members fabricated on or off site included in this work. Some inspections may be made on a periodic basis to satisfy the requirements of the continuous inspection at Clark County discretion. Agency inspections or testing may only be conducted by a firm approved by Clark County."

In the Clark County Building Administrative Code, it is noted that:

- The third-party inspector is qualified by the Clark County Building Department as per Section 22.02.520 (A) of the Clark County Building Administrative Code.
- The third-party inspector shall inspect the types of work identified in the special inspections agreement for conformance the approved construction documents and the technical codes. Paragraph two of Section 22.02.525 (A) further defines the duties of the special inspector.

The qualifications and duties of the third-party inspector as defined under the sections of the Clark County Building Administrative Code cited above and the provisions of the Quality Assurance Agreement are the guideline criteria used by the Hearing Officer in evaluating the role of the third-party inspector.

B. Conclusions Section

1. Periodic Inspections (Conclusions, Pg.11, Third to last Bullet)

Chapter 17 of the International Building Code referenced in the Quality Assurance Agreement under Table 1704.4 requires periodic inspections of steel reinforcement (Findings of Fact, item 5). The conclusion of the Hearing Officer is based upon the fact that steel reinforcement flaws were missed by the Special Inspectors in 18 link beams on each of the 15 floors of the Harmon Tower. This is evident by the issuance of 276 Non Conformance Reports on the link beams located on levels 5 through 20 of the Harmon Tower. Converse's assumption that the assigned Special Inspectors erred in their individual inspections is not correct. Based upon the fact that not one NCR was issued by the Special Inspectors on the steel reinforcement on levels 5 through 15 and that 276 NCR's written by Converse's inspectors after the fact on the same levels, the Hearing Officer's conclusion is that through inspections on the link beams were not conducted by the Special Inspectors.

2. Performance of Management Staff (Conclusions, Second to Last Bullet)

The Hearing Officer has concluded that the Harmon Tower Special Inspector's supervisory oversight did not instill the safeguards implied in the Quality Systems Manual. The Hearing Officer further concluded that although Converse executed management and supervisory procedures such as that noted under Method 2 of the Technician Training (B0052 and B0053), the Special Inspectors were not closely audited by their immediate supervisors. Converse notes that minimum requirements were met under Training Method No. 2 of the QSM and by reason of this achievement; Converse had no other Technical obligation. The Hearing Officer concluded that reliance upon Certification by other organizations may be satisfactory regarding the general knowledge of the Special Inspector's technical scope, however, the link beam steel reinforcement configuration either appears to be outside the capabilities of the Special Inspectors certification or the inspections were not made. Regardless, the training of the Special Inspectors by the Operations Manager (B0050) appears to not be effective because one of the duties of the Operations Manager is to ensure that all technicians and inspectors are trained, experienced, certified, and currently verified for the tasks they are performing.

3. In response to the bullets listed by Converse, it is noted that:

- The enhanced organizational structure did not aid in the inspection of levels 5 through 20 of the Harmon Tower.
- The periodic training classes that are “in excess of the QSM requirements” are listed under Discussion of the Findings of Fact item H. The classes have nothing to do with inspection of steel reinforcement.
- The cellular phone records do not support whether training of Edberg and Laurente was involved in the discussion with supervision, however it show assistance was available by telephone.
- Information in William Taylor’s report refers to discussions with Joseph Laurente, Ray Smith, Lee Miller, Vance Smithy and Don Christiansen yielded that supervision was available to the two Harmon Tower inspectors.
- The inspector time records provided by Converse (B0533, B0549 to B0566) shows training for Mr. Laurente on sewer main, water main, masonry, and Pad Certification. Time sheets provided for Mr. Edberg do not indicate training time.
- Internal audits were conducted on Mike Biondo, Mike Saborido, Jeremy Swangel, Dave Selander, Nick Armijo, Ladd Sterling, Ray Smith, Adam Gordon, Jack Buckley, and John Cleary. No audit was performed on the performance of Joseph Laurente and Scott Edberg.
- The Special Inspection Agency Assessment Report by IAS dated February 6 and 8, 2007 (corrected to 2008). Structural Steel, Non-Destructive Testing, Fireproofing, Prestressed Concrete, Reinforced Concrete, and Structural Masonry were the specialties reviewed by the IAS assessors. The reinforced concrete inspector interviewed was Mr. Fragoso who was questioned regarding concrete placement. There are not references to steel reinforcement placement or not contact with Mr. Laurente and Mr. Edberg by the Assessors.

The Hearing Officer considered all of the bullets listed above in addition to the Daily Report Sheets and Pour Sheets filed by the two inspectors on the Harmon Tower in forming the conclusion that the inspectors were left unsupervised for the majority of the inspection period on Harmon Tower levels five through twenty.

C. Recommendations Section

Converse request that the Hearing Officer clarify the proposed suspension of Converse as follows:

1. *Converse’s suspension is limited to responsibilities and factors that it can achieve and control*

2. *The suspension is not intended to stall or interrupt (to) numerous other projects in the County.*
3. *The suspension relates to reinforced concrete inspections.*

These are clarified by the Hearing Officer as follows:

1. *Converse's suspension is limited to responsibilities and factors that it can achieve and control*

The recommended suspension of Converse Consultant's Quality Assurance Agency qualification is for new work only. All work that was under contract before July 17, 2009 may continue to completion.

2. *The suspension is not intended to stall or interrupt (to) numerous other projects in the County.*

The suspension is for any new work not yet under contract or agreement.

3. *The suspension relates to reinforced concrete inspections.*

The suspension only relates to Steel Reinforcement inspections.

Sincerely:



Charles M. Thomas, P.E.

CC: Ron Lynn, Building Official
Gregory Gilbert, Esq.
Clifford Jeffers, Deputy District Attorney
David L. Durkee, Principal Engineer