

Radoslovich | Parker, PC  
Attorneys

Via Facsimile & US Mail  
(916) 227-6282

701 University Ave., Ste. 100  
Sacramento, CA 95825P. 916 565-8161  
F. 916 565-8170

radlegal.com

February 19, 2015

Ms. Molly Yumikura  
Contract Awards Analyst / Office Engineer  
Department of Transportation  
Division of Engineering Services  
P.O. Box 168041, MS-43  
Sacramento, CA 95816-8041

Frank M. Radoslovich  
Port J. Parker  
Marcus L. Turner  
Joseph F. Klatt  
Tejvir S. Grewal  
Richard D. Shoemaker-Moyle  
Megan A. Shapiro  
Marjan Hajimirzaee  
Andrea M. Hsu  
James R. Ling  
Myles G. Taylor  
R. Shane Quigley

Re: RESPONSE OF SHASTA SERVICES, INC. d/b/a TIMBERWORKS TO MYERS & SONS LETTER OF 2/18/15  
Caltrans Contract No.: 03-0F6904

Dear Ms. Yumikura:

I am in receipt of Mr. O'Connor's letter dated February 18, 2015, on behalf of Myers & Sons Construction. This letter shall serve as Shasta Services Inc. dba Timberworks' ("Timberworks") response to the same. As set forth below, through this recent letter, Myers & Sons is attempting to mislead Caltrans into rejecting Timberworks' responsive bid by alleging demonstrably false "facts," in an attempt to set up an inapplicable legal argument. Whether inadvertent, or by design, these tactics should not be condoned by Caltrans, and proves that Myers & Sons' bid protest is, and always has been, without merit. Timberworks' bid is the lowest responsive bid and the Contract should be awarded accordingly.

First, Myers & Sons disingenuously allege, "Timberworks admits that it changed the scope of work to be subcontracted to Rhoades from Bid Items 60, 67, and 71 (on its Subcontractor List) to Bid Items 60, 61, 66, 67, and 71 (on its DBE Commitment form), thereby impermissibly adding two bid items to the work to be performed by Rhoades." This is an untrue and demonstrably false allegation.

Timberworks did not "admit" it changed the scope of work, because Timberworks did not change Rhoades' scope of work. Although Rhoades provided quotes for multiple bid items, Timberworks, with the consent of Rhoades' pre-bid, accepted Rhoades quotes for Bid Items 60, 67, and 71 in the total amount of \$272,988.00, and agreed to list Rhoades for those Bid Items, which it did. Timberworks properly listed Rhoades on its Subcontractor Bid List as performing Bid Items 60, 67, and 71. Timberworks listed the proper dollar amount for Bid Items 60, 67, and 71, that Rhoades will perform on its DBE Commitment form, \$272,988.00. Timberworks does admit, it inadvertently made a clerical error when it handwrote in the bid item numbers for Rhoades onto its DBE commitment form, and inadvertently and erroneously included reference to Bid Items 61 and 66.

Ms. Molly Yumikura  
Contract Awards Analyst / Office Engineer  
February 19, 2015  
Page 2

Next, Myers & Sons attempts to spin Timberworks' proper admission of a clerical error into a specious claim that Timberworks is asking Caltrans, "to allow Timberworks to correct its bid by deleting Bid Items 61 and 66 from its DBE Commitment Form with respect to S.T. Rhoades." This is not true and a transparent attempt by Myers & Sons to twist the Timberworks' facts into being similar to the low bidder's facts found in *Valley Crest v. City of Davis*, 41 Cal.App.4<sup>th</sup>, 1440 (1996), so that Myers & Sons can argue Timberworks' bid must be rejected.

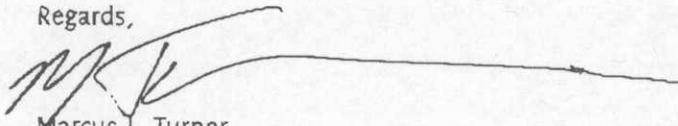
After distorting the facts, Myers & Sons' claims that Timberworks is "Like the low bidder in *Valley Crest*" and, as such, the Timberworks' bid must be rejected. This argument is completely without merit. The low bidder in *Valley Crest*, submitted a bid wherein it had made a mistake in the percentage of work it intended to have performed by subcontractors. The Court held that the low bidder in *Valley Crest* had an unfair advantage because it could have withdrawn its bid pursuant to Public Contract Code section 5103, because misstating the correct percentage of work to be done by a subcontractor, in the nature of a typographical error, resulted in the bid being materially different. The Court properly stated, "[t]he doctrine that inconsequential irregularities may be waived does not permit this change in the subcontractor percentages," and correctly found the bid to be nonresponsive.

Unlike the low bidder in *Valley Crest*, Timberworks did not make a mistake in the percentage, or the dollar value, of work it intended to be performed by Rhoades. The listed amount of \$272,988.00 for Rhoades is the correct value and is consistent with Timberworks' Subcontractor Listing. Timberworks' clerical error did not make Timberworks' bid materially different, or different at all, it did not give Timberworks an unfair advantage, and Timberworks could not have withdrawn its bid pursuant to Public Contract Code section 5103. Accordingly, Caltrans should waive the minor irregularity and Timberworks' bid should be deemed responsive.

As to Myers & Sons' argument related to A.C. Dike, again they are attempting to distort the facts. When Timberworks inadvertently referenced Bid Item 66 for Rhoades on the DBE Commitment Form, it resulted in Bid Item 66 being listed twice, for Rhoades and A.C. Dike. As set forth above, Timberworks did not intend the reference to be included for Rhoades. The Subcontractor List and the DBE Commitment Form, as it relates to A.C. Dike and A.C. Dike's value for Bid Item 66, are correct and accurate. Further, as previously addressed, even if Caltrans' position is that the DBE form must be addressed in the same manner as the Subcontractor List, duplicating a bid item does not render a bid nonresponsive and other remedies are available.

Timberworks is confident that Caltrans will find Myers & Sons' protest to be without merit, and will await your decision. Thank you in advance.

Regards,



Marcus L. Turner

MLT:fj

cc: Robert O'Connor (via email)

Radoslovich | Parker, PC  
Attorneys701 University Ave., Suite 100  
Sacramento, CA 95825

P. 916 565-8161

F. 916 565-8170

[radparkerlaw.com](http://radparkerlaw.com)**Facsimile Transmittal**

Date: February 19, 2015

To: Ms. Molly Yumikura  
Contract Awards Analyst / Office Engineer  
Department of Transportation  
Division of Engineering Services

Fax No.: (916) 227-6282

From: Lindsey Dickinson,  
Assistant to Marcus L. TurnerRe: **RESPONSE OF SHASTA SERVICES, INC. d/b/a TIMBERWORKS TO MYERS &  
SONS' LETTER of 02/18/15**  
Caltrans Contract No.: 03-0F6904

No. of Pages: 3 (including cover)

Message: **Transmitted herewith is correspondence of today's date.**  
Original  will  will not follow via U.S. Mail.**IMPORTANT NOTE**

This transmission and the pages that follow are confidential and may contain attorney-client privileged material or work product. The information is solely intended for the person or persons listed above. Any review by unauthorized persons is strictly prohibited. If you have received this transmission in error or if you have any questions regarding this transmission and the pages that follow, contact the sender's office at (916) 565-8161.