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May 7, 2015

VIA FACSIMILE AND U.S. MAIL 916-227-6282

Mohsen Sultan
Acting Chief, Office of Contract Awards and Services
Department of Transportation
Division of Engineering Services
Office of Contract Awards and Services
1727 30th Street
P.O. Box 168041, MS-43
Sacramento, CA 95816-8041

**Re: Good Faith Effort Reconsideration Committee Determination
Contract No. 03-0F6904
Our File No. 30331.1**

Dear Mr. Sultan:

This firm represent Myers & Sons, LP ("Myers") with respect to the above-referenced Good Faith Effort Reconsideration Committee Determination (the "Determination") for California Department of Transportation ("Caltrans") Contract No. 03-0F6904 (the "Contract").

As you may know, on April 21, 2015, Myers was notified that the Office of Business and Economic Opportunity, Contract Evaluation Unit (the "CEU") concluded that Myers did not make a good faith effort to meet the DBE goal for the Contract. In that letter, the CEU provided a date for the reconsideration meeting and advised that "[f]ollowing the meeting, the Committee will send your company a written decision on reconsideration, *explaining the basis for finding that your company did or did not meet the goal or make adequate good faith efforts to meet the goal.*"

Myers' responded to the CEU's notification on April 21, 2015, a copy of which is also attached. In that letter, Myers stated, "[w]e have asked Caltrans on several occasions to elaborate or provide additional information justifying their conclusions in this letter and [they] have refused to provide this information, making our response difficult." Myers attended the Reconsideration Hearing on April 27, 2015 and, once again, requested that Caltrans provide a basis for its decision.

On May 1, 2015, Myers received a one paragraph response from Caltrans, entitled "Findings and Conclusions Of The Good Faith Effort Reconsideration Committee." Rather than explaining the basis for its finding, as it stated it would in its April 21, 2015 letter and as requested by Myers on numerous occasions, Caltrans summarily stated that "[t]he Reconsideration Committee has concluded that Myers & Sons Construction, LP failed to demonstrate that it made an adequate good faith effort to meet the 17% contract goal." Such a conclusory

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statement gives the appearance of arbitrary decision making and provides no guidance to Myers or other contractors as to how they can meet Caltrans' interpretation of the Good Faith Effort Requirements of Title 49 of the United States Code of Federal Regulations Part 26.

Accordingly, Myers requests that Caltrans provide a detailed explanation of the Reconsideration Committee's determination that Myers did not meet the Good Faith Effort Requirement. Concurrently herewith, Myers is also submitting a Public Records Act Request to Caltrans, requesting all documents regarding Caltrans' implementation of 49 CFR Part 26.

Please feel free to contact me with any questions.

Very truly yours,



Erin K. McDonough

EKM:ekm

Enclosure

cc: Clinton Myers

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May 7, 2015

VIA ELECTRONIC MAIL ONLY marcy.freer@dot.ca.gov

Marcy Freer
Public Records Officer
California Department of Transportation
1120 N Street
Sacramento, CA 95814

**Re: PUBLIC RECORDS ACT REQUEST
California Government Code Section 6250, et seq.
Our File No. 30331.1**

Dear Ms. Freer:

On behalf of our client, Myers & Sons, LP ("Myers"), request is hereby made pursuant to the Public Records Act, California Government Code section 6250, et seq., for copies of certain records relating to the California Department of Transportation's ("Caltrans") implementation of Title 49 of the United States Code of Federal Regulations Part 26 (49 CFR Part 26).

As you are aware, California has enacted the California Public Records Act (the "Act") as Government Code section 6250, et seq. In enacting the Act, the Legislature found "that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Government Code § 6250. For purposes of the Act, a public record is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Government Code § 6252.

Pursuant to the Act, "public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as [otherwise] provided [in the Act]." Government Code § 6253(a). Further, Caltrans must promptly make available copies of all non-exempt records that have been requested by any person, upon payment of the direct cost of duplication, or a statutory fee if applicable. Government Code § 6253(a).

Any denial of a request for public records, in whole or in part, must be in writing and must set forth the names and titles of each person responsible for the denial. Government Code §§ 6255(b) and 6253(d). When a request has been denied, the requesting party is entitled to institute a special proceeding to secure production of the records and is entitled to recover attorneys' fees and costs if it prevails.

Exemption of certain records is provided for in Government Code section 6254, et seq. However, none of these exemptions apply to the requests requested by this letter. If Caltrans

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nonetheless contends that the documents are exempt, it will bear the burden of proving each of the prerequisites set forth in the statute. See *Citizens for a Better Environment v. California Department of Food and Agriculture*, 171 Cal.App.3d 704 (1985).

To the extent that Caltrans may contend that a portion of the requested information is exempted by an express provision of the Act, Caltrans must state the reason for its contention. Government Code §§ 6253(c) and 6255(b). In addition, if any exemption is claimed, Government Code section 6253(a) obligates Caltrans to segregate and delete exempted material so that the remainder of the information may be provided to satisfy the request.

With this background in mind, the public records as defined in the Act, which Myers would like to inspect, are those records described in the attached Exhibit A.

Please notify me within ten (10) days of receipt of this letter a date and time on which Myers may inspect the documents identified.

If you have any questions or concerns, please feel free to give me a call.

Very truly yours,



Erin K. McDonough

EKM:ekm

cc: Clinton Myers

EXHIBIT A

Myers & Sons, LP ("Myers") requests the following public records relating to the California Department of Transportation's ("Caltrans") implementation of Title 49 of the United States Code of Federal Regulations Part 26 (49 CFR Part 26).

1. All documents that comprise, refer to, identify, or describe any guidelines drafted by, for, or on behalf of Caltrans regarding Caltrans' determination of Good Faith Efforts to meet DBE participation pursuant to 49 CFR Part 26.

2. All documents that comprise, refer to, identify, or describe any guidelines drafted by, for or on behalf of the Federal Highway Administration regarding the determination of Good Faith Efforts to meet DBE participation pursuant to 49 CFR Part 26.

3. All documents that comprise, refer to, identify, or describe any internal correspondence regarding the determination of Good Faith Efforts to meet DBE participation pursuant to 49 CFR Part 26.

4. All documents that comprise, refer to, identify, or describe any correspondence between Caltrans and the Federal Highway Administration regarding the determination of Good Faith Efforts to meet DBE participation pursuant to 49 CFR Part 26.

5. All documents that comprise, refer to, identify, or describe any direction given to Caltrans' employees regarding the determination of Good Faith Efforts to meet DBE participation pursuant to 49 CFR Part 26.

6. All Findings and Conclusions of the Good Faith Effort Reconsideration Committee submitted within the last 2 years.

7. All preliminary determinations of the Office of Business and Economic Opportunity, Contract Evaluation Unit sent within the last 2 years.



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