



2/23/15

Department of Transportation
Office Engineer
ATTN: John McMillan
P.O. Box 168041 MS-43
Sacramento, CA 95816-8041

RE: RESPONSE TO MCM PROTEST ON CONTRACT 06-432604

Dear Mr. McMillan,

Myers and Sons Construction LP is in receipt of MCM Construction's protest letter dated February 11, 2015 and Caltrans' letter of February 20, 2015 requesting our response.

MCM's protest is unfounded and should be rejected. Our understanding is that MCM's bid on this contract has now been rejected as non-responsive. This means that MCM is not eligible to be awarded the contract. As a result, MCM does not have legal standing to pursue a bid protest regarding this particular contract. The legal remedy of a protesting bidder is to file a so-called writ of mandate action. Under California law, "Only parties with standing may pursue a mandamus action." *Lindelli v. Town of San Anselmo*, 111 Cal. App. 4th 1099, 1106-07 (2003). A person has standing only if "he or she has some special interest to be served or some particular right to be preserved or protected through issuance of the writ." A person does not have standing if he or she "will gain no direct benefit from its issuance and suffer no direct detriment if [legal relief] is denied."

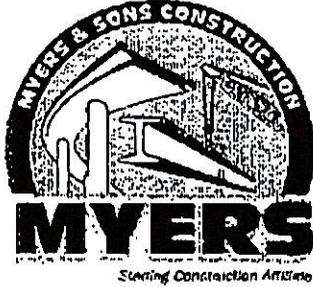
MCM's protest also is unfounded and should be rejected because it is factually wrong. Although in hindsight some of the descriptions we used in our Subcontractor List and our DBE Commitment form could have been more precise, Myers had (and has) no intention of expanding the scope of work to be subcontracted to Papich Construction or any other subcontractor. If Caltrans needs more information on this matter then Myers and Sons Construction can provide that information which includes Papich's bid day quote to us, and a letter from Papich confirming their quote and scope on bid day showing that all of the work we intend to subcontract to Papich was within its scope on bid day.

Based on the above, we respectfully request that MCM's protest be rejected and the contract be awarded to Myers as the lowest responsive and responsible bidder.

Sincerely



Clinton W. Myers



Fax

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FROM: MIKE LEWIS

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CC:

RE: CONTRACT 06-432604

COMMENTS:

- Urgent
- Please review
- Please comment
- For your records