From: Ron Pierce [mailto:rbpierceapc@gmail.com]
Sent: Thursday, May 29, 2014 11:31 AM
To: Seaberg Jr, Earl R@DOT
Subject: Contract No. 12-OF96C4 (I-5 HOV Extension)-OHL USA, Inc.'s low bid

Mr. Seaberg-

Thank for returning my call to John McMillan regarding this matter. I appreciated speaking to you, day before yesterday.

Supplementing my April 23, 2014 letter protesting the Department's initial listing of OHL's bid as "irregular," attached is my May 28, 2014 letter to assist the Department in making its final decision. As promised, I included the Department's legal brief concerning another recent Department project that involved another contractor's low bid. In that recent, other matter, Department successfully and properly defended exactly the legal position that OHL urges in this matter, waiver of any minor and immaterial irregularity, which position is inconsistent with, and contrary to, the Department's listing of OHL's bid in this matter.

OHL looks forward to the Department's award to OHL and to deliver the specified project to the Department, for the taxpaying public, at the best and lowest price, some $725,000 below other bidders. Everyone deserves that practical result.

I will be in Sacramento next week. Should it be any assistance to you and the Department, I would be glad to meet with you, anyone else in the Department, or your legal team. Please just write me at this email address or call my office telephone number below.

Regards,

Ron

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R
B
PIERCE
A Professional Law Corporation
3050 East Birch Street, Second Floor
Brea, California 92821-6248

Ronald B. Pierce
Attorney at Law

R
B
PIERCE
A Professional Law Corporation

3050 East Birch Street, Second Floor
Brea, California 92821-6248

rbpierceaplc@gmail.com

949.244.9367

Sent by email attachment

May 28, 2014

Earl Seaberg, Chief
Office of Contract Awards & Services
Department of Transportation
1727 30TH Street, MS-43
P.O. BOX 168041
SACRAMENTO, CA 95816-8041

Re: 12-Ora-5-3.7/6.2
12-OF96C4 (I-5 HOV Extension)
Project ID 1200020278
ACNHPI-005-2(966)75E
CMLN-6212(015)E

Dear Mr. Seaberg:

As you know from my April 23, 2014 letter, I represent OHL USA, Inc. regarding its bid referenced above.

As you also know, the Department has initially listed OHL's April 17, 2014 bid on its website as "irregular," and OHL has protested that preliminary classification as inconsistent with the Department's current policies and procedures, with its recent practices and determinations, and with California case law. When you and I spoke by telephone yesterday, you mentioned that the Department has not yet made a final decision about OHL's bid and that the Department intends to explain, in writing, its final decision, when made.

OHL remains ready, willing, and able to perform its low bid. By acknowledging all addendums to the Department's bid package, OHL has agreed to be bound to perform all work at $43,553,689. Indeed, OHL's bid was approximately $756,889 lower than the next bidder. At most, OHL omitted a few addenda that, at the unit prices that OHL did provide, might have added about $22,145 to its bid price. ***Thus, with or without these minor omissions (which Department policy, procedure, practice, and California law be completed at the unit prices that OHL provided), OHL is (and always has been) the low bidder by over $725,000***.

OHL is not asking for any relief from its bid. Neither has any bidder protested OHL's bid. If any omission by OHL caused its bid to be lower than OHL intended, OHL will absorb the financial consequences of its mistake.

Rather, OHL is asking that the Department follow what it did in its Project No. 12-0F0314 only about 19 months ago. There, the Department waived the inconsequential irregularity of contractor Beador's completion of one addendum on the wrong form. There, second bidder C.C. Meyers protested, challenging the Department's decision to award to Beador by writ of mandate in C.C. Meyers, Inc. v. State of California, Department of Transportation, etc. (Beador Construction Company, Inc., etc.), Superior Court of California, County of Orange, Case No. 30-2010 00415819. Attached is Respondent State of California, Department of Transportation's Opposition to Order to Show Cause Re Issuance of Preliminary Injunction, filed October 28, 2010, by the Department's own attorney,

which cited the same case law and applied the rationale that OHL urges for this Project 12-OF96C4 (I-5(HOV Extension). Only the Department has reversed its course, and for no reason.

The Department should apply its policies, procedures, and practices consistently and fairly, consistent with California law. No corruption or extravagance occurred here, just as none occurred with Project No. 12-OF0314 involving Beador and C.C. Meyers. Like Beador, OHL is bound by its low price, at the unit prices that it provided. Since OHL agreed to perform all addenda work, OHL's omission of 3 addenda gave it no advantage, and such omission did not affect any other bid.

The only possible extravagance in this matter would be for the Department to continue in its initial disqualification of OHL's low responsible bid, contrary to, and inconsistent with, its established and current policies, procedures, and practices.

Rather than indulging such a extravagance, California's taxpaying public and the Department should reap the benefit of OHL's bid that was (and is) $725,000 lower than the next bidder (even after correcting OHL's addendum omissions by holding OHL to the unit prices that it provided).

Again, every practical and public policy reason compels the Department to accept OHL's bid, as submitted. For these reasons, OHL respectfully requests that the Department waive any bid "irregularities" as inconsequential, deem OHL's bid as the low and responsible bid, and accordingly award the contract to OHL.

If the Department makes a final decision contrary to its own policies, procedures, and practices and adverse to OHL, OHL requests the due process hearing to which it is entitled, explained in D.H. Williams Construction, Inc. v. Clovis Unified School District, 146 Cal.App.4th 757 (2007).

If you have any questions, comments, or contrary understandings, please contact me.

Very truly yours,

Ronald B. Pierce for
RB PIERCE, A Professional Law Corporation

RBP:tbs
Enclosure

RONALD BEALS, Chief Counsel
THOMAS C. FELLENZ, Deputy Chief Counsel
DANIEL A. NEAR, Assistant Chief Counsel
ERIN E. HOLBROOK, Bar No. 210081
1120 N Street (MS 57), P.O. Box 1438
Sacramento, CA 95812-1438
Telephone: (916) 654-2630
Facsimile: (916) 654-6128

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER
Oct 28 2010
ALAN CARLSON, Clerk of the Court
by M. DEMARIA

The State of California is exempt from filing fees under Government Code section 6103

Attorneys for Respondent State of California
acting by and through the Department of Transportation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

C.C. MYERS, INC., a California corporation, **Petitioner,** **vs.** **STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, and DOES 1 through 100, inclusive** **Respondent,** **BEADOR CONSTRUCTION COMPANY, INC., a California corporation,** **Real party in Interest.**	**Case No.: 30-2010 00415819** **RESPONDENT STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION'S OPPOSITION TO ORDER TO SHOW CAUSE RE ISSUANCE OF PRELIMINARY INJUNCTION** **Hearing Date: November 18, 2010** **Time: 2:00 p.m.** **Dept.: C13**

I. INTRODUCTION

On or about July 22, 2010 the State of California, Department of Transportation (STATE) opened bids on Project No. 12-0F0314 (Project). Both Real Party in Interest, Beador Construction Company, Inc. (BEADOR) and Petitioner C.C. Myers, Inc. (CCM) submitted bids. After bid opening, STATE declared BEADOR the apparent low bidder on the Project and CCM was the second lowest bidder. Beador's bid was for $28,581,800.00 and CCM's bid was for $28,729,083.45, a difference of $147,283.00. (Exhibit D to Petition for Writ of Mandate)

On or about August 6, 2010 CCM submitted a bid protest to STATE protesting the bid submitted by BEADOR on the following grounds: "(1) Beador's bid is not responsive for failure to submit its bid using the required bid forms; and (2) CCMI is the lowest responsive and responsible bidder when Caltrans' own bidding requirements are followed." CCM's protest consisted of 44 pages, including the bid submitted by BEADOR, Addendum No. 4 and legal authority and set forth CCMs arguments as to why BEADOR was not the lowest bidder and why the contract should be awarded to CCM instead. (Exhibit E to Petition for Writ of Mandate)

On or about August 9, 2010 the STATE notified BEADOR that its bid was non-responsive based on the fact that BEADOR had not replaced Page 14 of the Bid Item List as instructed by Addendum No. 4, and that the contract was going to be awarded to the lowest responsive bidder, CCM. (Exhibit F to Petition for Writ of Mandate)

On or about August 10, 2010 BEADOR notified STATE that it protested the finding that BEADOR's bid was non-responsive and on August 26 submitted a supplemental bid protest including, in detail, its reasons for the protest and legal authority supporting those reasons. (Exhibits G and I to Petition for Writ of Mandate)

On or about September 14, 2010 BEADOR submitted a response to CCM's August 6, 2010 bid protest and on September 22, 2010 STATE informed CCM and BEADOR that CCM's protest lacked merit and that the contract was being awarded to BEADOR. (Exhibit J to Petition for Writ of Mandate) Actual award of the contract could not take place until a budget was passed and signed by the Governor so on October 12, 2010 the STATE took official action and awarded the contract to BEADOR.

II. LEGAL ARGUMENT

CCM is seeking a preliminary injunction to prohibit the STATE and BEADOR from commencing construction on the Project until resolution of the Petition for Writ of Mandate. In order for a preliminary injunction to issue, the Court must find that CCM is entitled to the relief sought in the Petition, that the commencement of construction on the Project by the STATE and BEADOR would produce waste or great or irreparable injury to CCM, and that there is no other adequate remedy at law. These elements cannot be met. CCM is not entitled to the relief sought by the Petition, CCM will not suffer irreparable injury, and CCM is entitled to bring an action for damages and recover its bid preparation fees and attorneys' fees.

A. CCM IS NOT ENTITLED TO THE RELIEF DEMANDED IN ITS PETITION FOR WRIT OF MANDATE.

It is well recognized by the courts of this State that injunctions should be issued with great caution. The Court in *West v. Lind* (1960) 186 Cal.App. 2d 563 stated, "'to issue an injunction is the exercise of a delicate power requiring great caution and sound discretion, and rarely, if ever, should be exercised in a doubtful case.' [Citation] 'The right must be clear, the injury impending and threatened so as to be averted only by the protective preventive process of injunction.' [Citation]" This was echoed by the Court in *Tiburon v. Northwestern PR Co.* (1970) 4 Cal.App.3d 160 and followed by many courts since. The Court in *Loma Portal Civic Club v. American Airlines, Inc.* (1964) 61 Cal. 2d 582 stated, "Where a prima facie case has otherwise been made out, an injunction will be granted only when such a remedy is appropriate, and in determining the availability of injunctive relief, the court must consider the interests of third persons and of the general public." In the present case, the right of CCM to an injunction is doubtful, at best and its injury, if any, can be compensated by damages. *Even if* CCM could establish a prima facie case, when the interests of the general public are considered, it is clear that a preliminary injunction is not appropriate.

CCM sets forth two reasons why it believes that it is entitled to the relief demanded in the Petition for Writ of Mandate. The first is that the STATE abused its discretion in declaring BEADOR's bid responsive despite BEADOR's failure to replace page 14 of the bid pursuant to

Addendum 4. The second is that the STATE acted without discretion when it applied the decimal error rule to BEADOR's bid. Neither one of these allegations is accurate, CCM is therefore not entitled to the relief demanded and the Preliminary Injunction should be denied.

1. The State Did Not Abuse Its Discretion in Waiving the Irregularity in BEADORS's Bid When BEADOR Did Not Replace Page 14 of the Bid Pursuant to Addendum 4.

CCM contends that because BEADOR did not replace page 14 of the Bid Item List as provided in Addendum 4, the act of the STATE in declaring BEADOR's bid responsive was an abuse of discretion. The STATE disagrees. It is a well established principal that the State has the discretion to waive an immaterial irregularity in the bid, so long as to do so would not create an unfair advantage by allowing a bidder to withdraw its bid without forfeiting its bid bond and that acceptance of a bid that substantially conforms to specifications is proper if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders. (See *Cypress Security, LLC v. City and County of San Francisco, et al.* (2010) 184 Cal.App.4th 1003; *MCM Construction, Inc. v. City and County of San Francisco, et al.* (1998) 66 Cal.App.4th 359; *Ghilotti Construction Company v. City of Richmond* (1996) 45 Cal.App.4th 897; *Valley Crest Landscape, Inc. v. City Council of the City of Davis, et al.* (1996) 41 Cal.App.4th 1432) The Court in *Ghilotti*, in discussing whether a bid that deviates from the bidding requirements should be set aside, stated, "...the deviation must be capable of facilitating corruption or extravagance, or likely to affect the amount of bids or the response of potential bidders. [Citations]. These considerations must be evaluated from a practical rather than a hypothetical standpoint, with reference to the factual circumstances of the case. They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder." (*Ghilotti, supra* 45 Cal.App.4th 897 at 908, 909)

In this case, the alleged deviation of BEADOR, by not replacing page 14, did not facilitate corruption or extravagance nor did it, or was it likely to affect the amount of bids or the response of potential bidders. CCM argues that STATE, based on Public Contracts Code Section 10166 which states that bids not presented on forms furnished by the State shall be disregarded,

should have disregarded BEADOR's bid. This is not a case of BEADOR failing to submit its bid on the bid forms furnished by STATE. BEADOR did in fact submit the bid on the required forms. This is merely an incidence of BEADOR not changing out one page of the bid for another one containing revised information on one item. The only change made by the page replacement was to the Estimated Quantity of a particular concrete barrier from 7,430 linear feet to 3,820 linear feet. When BEADOR bid the Project, it did not replace the page containing the original Estimated Quantity with the revised Estimated Quantity, however, upon examination of the Unit Price and Item Total, it is clear that BEADOR used the revised amount in preparing and calculating its bid. For this particular item, BEADOR listed a Unit Price of $31 and an Item Total of $118,420. Dividing $118,420 by $31 yields an estimated quantity of 3,820, the amount reflected in the change. In the present case the deviation of BEADOR in submitting a bid without replacing one page with one change on it, especially considering that BEADOR used the revised quantity stated on the replacement page in calculating the item total, does not "facilitate corruption or extravagance" nor was it likely to affect the amount of bids or the response of potential bidders. The correct quantity was used in calculating the item total.

CCM also contends that BEADOR was given an unfair advantage because it could have withdrawn its bid without forfeiting its bid bond based on the alleged errors in its bid. Again, the STATE disagrees. In order for a bid to be withdrawn without forfeiture of the bid bond, Public Contracts Code section 5103 requires that the bidder establish, that "(a) A mistake was made... (c) The mistake made the bid materially different than he or she intended it to be. (d) The mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications." In the present case, the failure of BEADOR to include the revised page 14 pursuant to Addendum 4 did not make the bid materially different than BEADOR intended it to be. In fact, it is clear that the proper quantity was used by BEADOR when calculating the Item Total and that the item total was exactly as BEADOR intended it to be. No mathematical mistake was made. The failure of BEADOR to replace the page with the revised quantity did not affect BEADOR's Item Total or total bid amount for the Project and BEADOR did not obtain an unfair advantage or benefit not allowed

to other bidders. The answer may have been different if the Estimated Quantity had increased rather than decreased and BEADOR had used the initial lesser Estimated Quantity as then the bid would have been calculated improperly to the unfair advantage of BEADOR. However, that is not what happened here. The correct quantity was used when doing the calculation, producing the correct Item Total and therefore producing a correct final bid amount and BEADOR would not have been allowed to withdraw its bid without forfeiting its bond as the irregularity was immaterial. It was therefore not an abuse of the Department's discretion to waive the irregularity and accept BEADOR's bid as responsive as the irregularity was immaterial and did not give BEADOR an unfair advantage. Therefore, CCM is not entitled to the relief demanded in its Petition for Writ of Mandate and the preliminary injunction should be denied on this basis.

2. The State Properly Carried Out Its Non-Discretionary Duty When it Applied Its Own Bidding Rules and Bidding Discrepancy Guidelines

CCM contends that the STATE failed to carry out its non-discretionary duty to comply with its own rules in addressing discrepancies in the bid submitted by BEADOR and that, on this basis, CCM is entitled to the relief demanded in its Petition and thus, the preliminary injunction. Again, the STATE disagrees.

CCM contends that the STATE, in applying the decimal error exception to certain entries made by BEADOR, failed to comply with its own rules in addressing discrepancies in the bid. In fact, the opposite is true. The STATE did follow its own rules addressing bid discrepancies.

The rules for addressing bid discrepancies are stated on the actual bid form provided by the STATE and submitted by the bidder. These rules state in part:

> 2.1. If a discrepancy between the unit price and the item total exists, the unit price prevails, except:
>
> 2.1.1 If the unit price is illegible, omitted, or the same as the item total, item total prevails and the unit price is the quotients of the item total and the quantity.
>
> 2.1.2 If a decimal error is apparent in the product of the unit price and the quantity, the Department will use either the unit price or item total based on the closest by percentage to the unit price or item total in the Department's Final Estimate.
>
> ...

2.4 Entries are to be expressed in dollars or decimal fractions of a dollar. Symbols such as commas and dollar signs are ignored and have no significance in establishing unit price or item total.

2.5 Unit prices and item totals are interpreted by the number of digits and decimal placement.

BEADOR's bid contained a cent (¢) symbol. CCM contends that the STATE failed to comply with its own rules by failing to ignore the symbol. This is not the case. In every instance where the symbol appeared, it was clear, based on the item total and the estimated quantity, that the stated value in the unit price was expressed in cents. Therefore, the STATE simply applied rule 2.1.2, the decimal error rule. (See Exhibit J to C.C. Myers Petition for Writ of Mandate) The application of the decimal error rule was not a failure of the STATE to comply with its own rules but was in fact an act of strict compliance with its own rules.

CCM also contends that the STATE's action in applying the decimal error rule to line item 252 of the bid was not in compliance with its own rules. Line item 252 on BEADOR's bid contained the number 50 in the unit price column. This, however, created a discrepancy between the unit price and the item total as the item total was stated as $3360 and the estimated quantity was stated as 6720. Multiplying $50 by 6720 gives you a total $336,000 whereas multiplying $.50 by 6720 gives you a total of $3360. It was apparent in this case that there was a decimal error. The Department again applied rule 2.1.2 which was not a failure of the Department to comply with its own rules but was in fact strict compliance with its own rules.

CCM cites the case of *Pozar v. Department of Transportation* (1983) 145 Cal.App.3d 269 to support its allegations that the Department failed to comply with its own rules. *Pozar* is distinguishable from the case at hand. In *Pozar* , the bid contained a line item for and estimated quantity for binder of 90 tons. Pozar listed a unit price of $20 per ton and a total price of $18,000. There was clearly a discrepancy between the unit price and total price. The bid form contained bid discrepancy language that stated that "In case of discrepancy between the item price and the total set forth for a unit basis item, the item price shall prevail..." Rather than applying the rule, the Department determined that the price should have been $200 per ton rather than $20 and awarded the contract to the next lowest bidder. The Court held that the Department had not complied with its own rules and ordered the Department to compute the bid using the

$20 per ton figure which resulted in the award of the contract to Pozar. There is no mention in *Pozar* that any rule was applied, only that an assumption was made that the unit price should have been $200, not $20. That is not the case here. In the present case the STATE clearly complied with its own rules and applied the decimal error rule in calculating BEADOR's bid. Therefore, there is no ministerial duty for the Court to direct the Department to carry out.

Additionally, the application of the decimal error rule did not afford BEADOR an unfair advantage over other bidders and BEADOR would not have been allowed to withdraw its bid without forfeiting its bid bond. No mathematical error was made and any "mistake" in using the cent symbol did not make the bid materially different than BEADOR intended it to be. Where the cent symbol was used, BEADOR intended it to be calculated using cents and on line item 252 where no symbol was used, BEADOR again intended it to be calculated using cents. Any finding to the contrary would not be in the best interest of the public. The STATE properly carried out its non-discretionary duty when it applied its own bidding rules and bidding discrepancy guidelines. Therefore, CCM is not entitled to the relief sought in the Petition for Writ of Mandate and the preliminary injunction should be denied on this basis.

B. CCM HAS FAILED TO ESTABLISH THAT IT WILL SUFFER IRREPARABLE HARM IF WORK ON THE PROJECT COMMENCES.

CCM makes no showing of the irreparable harm that it will suffer if the STATE and BEADOR commence work on the Project. CCM's allegations of harm are as follows: that CCM and other bidders are deprived of a "fair and procedurally proper bidding process" and that the taxpayers of California will bear the expense of having to "unravel an illegal contract and determine how to address work performed by a non-responsive bidder who is also not the lowest responsible bidder". These allegations hold no weight and CCM has alleged no real harm because none exists. To begin with, CCM waited to bring this action until after the contract had already been awarded, instead of immediately filing it when it was informed that the contract was going to be awarded to BEADOR. If any real harm existed to CCM, they would have immediately taken action to seek a stay of the award of the contract. Additionally, CCM and bidders were not deprived of a "fair and procedurally proper bidding process". As discussed

above, the STATE did not violate the Public Contracts Code and did in fact employ a "fair and procedurally proper bidding process" and acted within its discretion to waive minor irregularities in a bid and apply their own rules to discrepancies in a bid. Therefore, CCM has not, and cannot establish that it will suffer irreparable harm if the injunction is not issued.

C. IF THE INJUNCTION IS GRANTED, IT IS THE STATE, AND THE PEOPLE THEREOF THAT WILL SUFFER THE GREATEST HARM.

It is the STATE, and the people thereof, that will suffer irreparable harm if the injunction *is* granted. This project has already been delayed due to the lack of a State budget, further delay until there is a resolution of the Petition for Writ of Mandate will not serve the public interest in the least. It is the role of the Department of Transportation to increase mobility across California and to provide the citizens of the STATE with a state highway system that is adequate to meet the increasing demands, and to do so at the lowest cost possible. If the STATE is forbidden from doing so, it is the citizens of this STATE who suffer the greatest consequence. A delay in the commencement of the Project could result not only in the inability to provide an adequate roadway system, but could also result in increased costs to the STATE, and in turn, to the public.

CCM seeks a stay of this project not for the benefit of the public but for the benefit of itself. CCM was not the lowest bidder on the Project. The bid submitted by CCM was $147,283.00 higher than that of BEADOR. Awarding the contract to CCM would cost taxpayers more, not less as CCM alleges and delaying the commencement of the Project would also cost the taxpayers more in the end. Inherent in the award of every contract for a public project is the potential for a protest of that award because with every project there is at least one unsuccessful bidder. The STATE cannot afford to put every project on hold just because an unsuccessful bidding contractor is upset because it was not the lowest bidder. Establishing a precedent for doing so would only encourage unsuccessful contractors to protest the award of every contract, whether with merit or not, simply to stall the process. If contractors are allowed to arbitrarily stall the award of STATE contracts and thus stall the productivity of the STATE, it would not serve to protect the public from the misuse of public funds, competition would not be stimulated in a manner conducive to sound fiscal practices, and favoritism, fraud, and corruption in the

awarding of public contracts would not be eliminated, as is the purpose of the public bidding process. To illustrate, on October 12, 2010, the same day that the contract involved in this matter was awarded to BEADOR, STATE awarded a total of 14 contracts, all totaling in excess of $170 million. And this was just in one day. Opening the door to bidders by allowing this type of remedy would be extremely detrimental to the public. Doing so would give bidders an incentive to challenge an award of a contract that might not otherwise be challenged, simply to stall the process in the hopes of obtaining the contract award for itself. The harm that would be suffered by the STATE and the public if every contract was challenged and commencement of work under those contracts was stalled is unfathomable. The Court in *Ghilotti Construction Company v. City of Richmond, et al.* (1996) 45 Cal.App.4th 897, quoting *Judson Pacific-Murphy Corp. v. Durkee* (1956) 144 Cal.App.2d 377 addressed exactly this concern when it stated, "It certainly would amount to a disservice to the public if a losing bidder were permitted to comb through the bid proposal...of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy." That is exactly what CCM is doing here. However, not only is CCM serving its own interest to the detriment of the public by attempting to cancel the award of the contract to the lowest bidder on a minor technicality, but CCM is also seeking a stay on commencement of the Project until the Petition is resolved, which is even a further disservice to the public. There is currently no date on calendar for the hearing on the Petition. What if CCM is unsuccessful on its Petition? Then what? Does the stay extend through the resolution of an appeal (as CCM has recently requested on another case)? At what point does the STATE get to conduct its business and build, repair and modify its roads to meet the needs of the public? There is no public interest served in prohibiting the STATE from going forward with the PROJECT.

Since CCM can show no harm, and since the irreparable harm suffered will be by the STATE, the Preliminary Injunction should be denied.

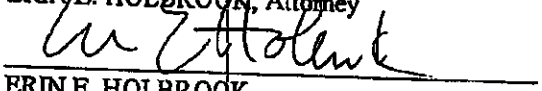
III. CONCLUSION

The harm suffered by the STATE and the tax-paying public if issuance of a preliminary

injunction as requested by CCM would far outweigh the harms, if any, suffered by CCM. The STATE did not abuse its discretion when it waived the irregularity in the submission of BEADOR's bid when it failed to replace page 14 of the bid pursuant to Addendum 4 nor did the STATE fail to comply with its own rules in determining discrepancies in the bid. To the contrary, the STATE did in fact comply with its own rules when it applied the decimal error rule to entries in BEADOR's bid containing the cent (¢) symbol and on line item 252. The actions of the STATE did not provide BEADOR with an unfair advantage over CCM or other bidders to the Project. Prohibiting the STATE from moving forward with commencement on the Project would be catering to the private interest of a disappointed bidder, who did not submit the lowest bid, rather than viewing things in light of the interest of the public. Therefore, it is respectfully requested that the request for issuance of a preliminary injunction be denied.

Dated: October 27, 2010

RONALD W. BEALS, Chief Counsel
THOMAS C. FELLENZ, Deputy Chief Counsel
DANIEL A. NEAR, Assistant Chief Counsel
ERIN E. HOLBROOK, Attorney



ERIN E. HOLBROOK
Attorneys for Respondent STATE OF CALIFORNIA, Department of Transportation

State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Memorandum

Serious drought.
Help Save Water!

To: JOHN C. McMILLAN,
Deputy Division Chief
Office Engineer
Division of Engineering Services

Date: May 29, 2014

Attention: EARL R. SEABERG, JR.
Office Chief
Contract Awards and Services

File: 07-1W6101
LA-1, 47,91,110,405,710-
PM Var
B.O. Date May 22, 2014

From: SHAWN ENJILY
Senior Transportation Engineer
Maintenance Engineering-South Region
Division of Maintenance

Concurred By: GREG FARR
District Office Engineer

Subject: **CONTRACT AWARD RECOMMENDATION**

Bids for Contract 07-1W6104 were opened on May 22, 2014. The contract will treat bridge decks with methacrylate, repair spalls, epoxy cracks, overlay with polyester concrete, repair and replace approach slabs, rehab columns, and replace joint seals in Los Angeles County at various locations. Nine bids were received as follows:

1.	The Sun Group	$1,098,290
2.	Velarde Construction Inc.	$1,141,830
	(comparison amount due to SB preference is	$1,091,830)
3.	Peterson Chase General Engineering Construction Inc.	$1,154,352
4.	Western Structures	$1,161,000
5.	J Francis Company	$1,197,383
6.	J McLoughlin Engineering Co. Inc.	$1,249,296
7.	Autobahn Construction Inc.	$1,318,022
8.	Beador Construction Co. Inc.	$1,477,700
9.	Diana Prince Construction Inc.	$1,583,685

The second lowest bid of $1,141,830 was 10.7 percent under the Engineer's Estimate of $1,277,947. The District recommends the contract be awarded to Velarde Concrete Construction Inc. or to the next lowest responsible bidder.

The Office of Maintenance Engineering has reviewed the bid results for possible mathematical or material unbalancing in accordance with 23CFR 635.102 and find no evidence of material unbalancing of the low bid.

On May 29, 2014, Marlon Sarmiento, Project Engineer, contacted and discussed the bid with Gus Velarde, Estimator for Velarde Concrete Construction Inc. He stated that he is comfortable with the bid and was looking forward to constructing this project.

All required clearances have been obtained. There are no outstanding permits. Right of Way Certification No. # 1 was approved on December 16, 2013. There are no contributor funds on this contract.

If you have any questions or need additional information, please contact me at 213-897-1829, or the design engineer Marlon Sarmiento at 213-897-4215.

State of California
DEPARTMENT OF TRANSPORTATION

California State Transportatioa Agency

Memorandum

To: JOHN C. McMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services

Attn: EARL R. SEABERG, JR.
Office Chief, Contract Awards and Services

From: PATRICK D. BISHOP
North Region Office Engineer
Office of Engineering Services

May 21, 2014

Bid Opening:	4/30/14
District-EA:	**01-481104**
Project ID:	01 0000 0385
Location:	DN-197-4.5
Description:	Widening

Subject: Recommendation to Reject All Bids

The Department received three bids for construction of the above project. Competition was adequate with three bids of $266,848.50, $381,863.00, and $458,175.00. The apparent lowest bid is 24.59% ($87,017.50) under the engineer's estimate of $353,866.00. However, District 1 is recommending rejection of all bids due to a preliminary injunction granted in federal court May 2, 2014. A court hearing is scheduled for November 19, 2014, after which the District will take appropriate action toward resolving this litigation.

The preliminary injunction prevents any earth-disturbing activities, which significantly limits the work the contractor could perform. At a minimum, this creates a substantial and costly right of way delay. In addition, depending on the resolution, there are several potential issues that could increase costs or impact the contractor's ability to successfully complete the work. It is therefore recommended that all bids for this contract be rejected.

Concurrence:

Patrick D. Bishop

PATRICK D. BISHOP
North Region Office Engineer

APPROVED

Charles Fielder

CHARLES C. FIELDER
District 1 Director

c: File
Peter Lovelady, North Region Construction
Kevin B. Church, Project Manager

Matt Brady, Deputy Director,
Program/Project Management

Mark Suchanek, Deputy Director
Maintenance and Operations

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