STATE OF CALIFORNIA-BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program
345 Burma Rd.
Oakland, CA 94607
(510) 286-0352, (510) 622-5165 fax

MCM Construction, Inc.
450 Burma Road
Oakland, CA 94607

December 10, 2007

Contract No. 04-0120L4
04-Ala-80-1.6/2.7
Oakland Touchdown
SFOBB-ESSSP

Attn: Mr. Greg Allen
Project Manager

Letter No. 05.03.01-000305

Subject: Response to MCM's Notice of Potential Claim #2

Dear Mr. Allen,

This letter responds to MCM's Notice of Potential Claim (NOPC) No. 2 which asserts that Caltrans improperly deducted $812,825.00 from Progress Payment No.3. Contrary to the assertion in the NOPC No. 2, the deduction of $812,825.00 from progress payment No. 3 was not improper.

Section 5-1.40, "OWNER CONTROLLED INSURANCE PROGRAM (OCIP)," Subsection, "Contractor Insurance Cost Deduction," of the Special Provisions requires that an 8% deduction be applied to each progress payment until verifiable contractor's cost of insurance documentation is submitted. This required documentation is needed in order to calculate the final composite OCIP deduct rate. MCM still has not provided all contractually required documentation to enable Caltrans to calculate the composite OCIP deduct rate.

Please note that Subsection A, "Contractor Insurance Cost Inclusion in Bids," requires that Worker's Compensation credit shall reflect coverage to include injury to the Contractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act (USL&H), the Jones Act or under laws, regulations or statutes applicable to maritime employees. If there is any discrepancy between the accepted credit and the actual credit calculated at any time during the course of the contract with regard to USL&H exposure, reconciliations will be made per Subsection, "Audit and Recovery of Contractor Insurance Cost."

To resolve the OCIP deduct issue in an efficient manner and in compliance with the contract terms, please provide us with ONE of the following:

1. An actual quotation from an insurer for primary general liability (GL) coverage limits using the option allowed per contract Subsection B. "Adjustment to Contractor Insurance Costs." Caltrans then will accept 40% of the GL premium as the credit for the $25M Excess Liability coverage as required in the contract. An "indication" submitted by MCM is not acceptable in place of an actual quotation.
2. An insurer provided or actuarially developed estimate of losses ("loss pick") usable to calculate the GL rate for a $25K deductible program using the option allowed per Subsection C. "Contractor Insurance Cost Deduction Identification Rules." The list of loss claims submitted by MCM along with the original CT OCIP Form 1 is not accepted in place of an insurer provided or actuarially developed estimate of losses ("loss pick").

If you have any questions, please call me at (510) 286-0352.

Sincerely,

Ben Ghafghazi
Resident Engineer

attachments:

1. CEM-6201A – NOPC #2
2. MCM Letter 307-246
3. Arch Indication

file: 05.03.01
12.02.04