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

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

MCM CONSTRUCTION, INC.
6413 32ND STREET
NORTH HIGHLANDS, CA 95660

April 16, 2008

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

Attn: Mr. Greg Allen
Project Manager

Letter No. 05.03.01-000665

Subject: Notice of Potential Claim #5 Supplemental
MCM-LTR-000349

Dear Mr. Allen,

We has received MCM's supplemental notice of potential claim dated April 4, 2008 for NOPC # 5 and offer the following response as to why the Department is not eligible for hazardous waste disposal fees.

Visual assessment of the work area indicates there are at least two potential sources of lead contamination. One is the surface coating on the existing bridge and the other is vehicle exhaust emissions. Since containment of sandblasting debris was not mandatory until the 1970s, it is known that uncontrolled sandblasting occurred on the CIRCA 1936 Bridge, which was painted with a base coat containing red lead (typically 30 - 40% lead). It is not possible to distinguish between lead from lead-based paint and vehicle exhaust using standard analytical methods. That was not an objective of the investigation because the individual source of the lead is not relevant to the disposal characterization. However, the distribution of the contamination in the vicinity of past sandblasting activities near the bridge and maintenance yard and at depths atypical for vehicle emissions provide evidence that lead from sandblasting debris is a source.

Health and Safety Code Section 25174.7 allows an exemption to hazardous waste disposal fees for government agencies removing contamination caused by another entity. Since it is known that Caltrans contributed directly to the contamination by lack of debris containment during sandblasting and one contaminant source cannot be separated from the other, the Department is not eligible for the exemption.

In the special provisions for aerially deposited lead in other projects, aerially deposited lead is defined as "lead deposited within unpaved areas or formerly unpaved areas, primarily due to vehicle emissions." If the Department had determined that this was the case for this project, the special provisions for aerially deposited lead would have been included in the contract. The fact that those special provisions are not included is an alert to the bidder that something is different between this contract and previous contracts with special provisions for aerially deposited lead.

The bidder does not have the prerogative to unilaterally interpret regulatory compliance when information is needed from the Department to make the interpretation. In conformance with Section 2-1.03 of the Standard Specifications, the bidder is obligated to confirm interpretations with Caltrans before submitting a bid. Since the contract special provisions did not state that the exemption for disposal fees would be invoked, that provision is not part of the contract.

In light of the explanation provided above, the Department is not exempt from the hazardous waste disposal fees and hence, finds NOPC # 5 to be without merit.

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Sincerely,

Ben Ghafghazi
Resident Engineer

cc:

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