



**Main Office**

P.O. BOX 620 / 6413 32nd Street / North Highlands / CA 95660  
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**Southern California Regional Office**

P.O. BOX 867 / 19010 Slover Ave. / Bloomington / CA 92316  
(909) 875-0533      Engineering / Accounting FAX (909) 875-2243

April 8, 2009

State of California  
Department of Transportation  
345 Burma Road  
Oakland, CA 94607

Attn: Ben Ghafhgazi, R. E.

Re: Contract 04-0120L4  
Oakland Touchdown  
Notice of Potential Claim No. 10

Gentlemen:

Please consider this letter to be MCM Construction's Notice of Potential Claim No. 10. This Notice of Potential Claim relates to all cost impacts caused by the increase in Sales and Use Tax pursuant to Assembly Bill 3 (AB 3, Chapter 18 of 2009 Statute) as mandated by the State of California.

Section 4-1.03(c), "Changes," of the Standard Specifications allows the Department to make changes to the plans and specifications and to adjust compensation to the contractor accordingly. The passage of AB3 increased the state tax 1.00%, thus at bid time MCM could not have reasonably anticipated the additional costs necessary to complete the project once they were subject to the increased sales and use tax.

The State in their April 2, 2009 Memorandum rely on Standard Specification Sections 9-1.02, "Scope of Payment," and Section 7-1.03, "Payment of Taxes," to hold that that increased sales and use tax costs do not constitute a change in contract provisions. Although Section 7-1.03, "Payment of Taxes" states that full compensation to the contractor for all taxes is included in the contract prices, it does not mean that the contractor necessarily bears the risk of paying for the cost of compliance. Additionally, Section 9-1.02 requires the contractor only to assume the risk of unforeseen difficulties in the work "contemplated and embraced" by the contract. The 1% increase in use and sales tax was not "contemplated or embraced under the contract."

The State of California, as owner has the contractual authority to provide additional compensation for the impacts AB 3 has on project costs. Increased sales and use tax costs as directed by the State constitute a change in contract provisions; therefore the State should compensate the contractor for changes in tax rates.



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Attached is the Notice of Potential Claim No. 10, Form CEM-6201A, filed in accordance with Section 9-1.04, "Notice of Potential Claim" of the Standard Specifications as amended, for all cost impacts due to MCM and/ or their subcontractors.

Very truly yours,

MCM CONSTRUCTION, INC.

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EDMUNDO A. PUCHI,  
Treasurer and General Counsel

cc: Greg Allen  
Chris Smith  
Richard McCall  
NOPC #9 File  
JAC  
HDM

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**INITIAL NOTICE OF POTENTIAL CLAIM**  
CEM-6201A (NEW 9/2002)

FOR STATE USE ONLY			
Received By			Date
(For Resident Engineer)			
TO	CONTRACT NUMBER	DATE	IDENTIFICATION #
Ben Ghafhazi <i>(Resident Engineer)</i>	04-0120L4	April 7, 2009	NOPE 10

This is An initial Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim", of the Standard Specifications.  
The act of the Engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on

DATE **April 7, 2009**

The particular nature and circumstances of this potential claim are described as follows:

Please see attached letter dated April 7, 2009 for information.

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents made in full cognizance of the California False Claim Act, Government Code sections 12650 - 12655. The undersigned further understands and agrees that this potential claim to be further considered unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractor's written statement in conformance with Section 9-1.07B of the Standard Specifications.

**MCM Construction, Inc.**

Subcontractor of Contractor

(Circle One)

\_\_\_\_\_  
( Authorized Representative )

For subcontractor notice of potential claim

***This notice of potential claim is acknowledged and forwarded by***

**MCM CONSTRUCTION, INC.**

PRIME CONTRACTOR



( Authorized Representative )

**for. E. FUCHI**

CEM-6201 A (NEW 9/2002)

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 654-8410 or TDD (916) 654-3980 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento CA 95814