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.
6413 32ND STREET
NORTH HIGHLANDS, CA 95660

April 15, 2009

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

Letter No. 05.03.01-001474

Attn: Mr. Greg Allen
Project Manager

Subject: Response to NOPC No. 10
MCM-TRN-000853R00

Dear Mr. Allen,

We have reviewed MCM's letter dated April 8, 2009 regarding the Notice of Potential Claim No. 10.

MCM bases this claim on Standard Specification 4-1.03, "Changes", presuming that the Department directed an ordered change necessary for the proper completion of the work. The Assembly Bill 3 is not an ordered change to the contract that is necessary for the proper completion of the work. The increased sales and use tax costs do not constitute a change in contract provisions.

Your attention is directed to Standard Specifications sections 9-1.02, "Scope of Payment," and 7-1.03, "Payment of Taxes," which state that full compensation to the contractor for all taxes is included in the contract prices.

In reference to these specifications, the Department has no contractual or legal authority to provide additional compensation regardless of the impacts AB 3 may have on project costs. Your claim No. 10 is therefore denied.

Please be advised that there is another Assembly Bill 1523 that is currently under review by the Committee of Revenue and Taxation that would make further changes to the State sales tax that would be beneficial to contractors with existing contracts. The Department has no objection should MCM wish to postpone the DRB hearing until voting has occurred on this new Bill.

Sincerely,

Ben Ghafghazi
Resident Engineer

cc:

file: 05.03.01
62.00