William B. Baker
511 Kortum Canyon Road
Calistoga, California 94515

June 26, 2005

DRB Coordinator
Division of Construction
MS 44
P.O. Box 942874
Sacramento, CA 94274

Re: Contract No. 04-0120-R4
SFOBB – Temporary Bypass Structure

Pursuant to Section II D of the Disputes Review Board agreement for the above referenced project, I am transmitting a copy of the DRB Recommendation dated June 26, 2005.

Sincerely,

William B. Baker
DRB Chair

Cc Lourdes David, Caltrans
Robert Coupe, CCM
Matthew B. McGowan, DRB
Frederick Graebe, DRB

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DISPUTE REVIEW BOARD
SFOBB
TEMPORARY BYPASS STRUCTURE

June 26, 2005

Mr. Robert Coupe
Project Manager
C.C. Myers, Inc.
3286 Fitzgerald Rd.
Rancho Cordova, CA 95742

Mr. Lourdes David
Resident Engineer
Caltrans
333 Burma Road
Oakland, CA 94607

RECEIVED
002048 JUN 29 05

Re: Temporary Bypass Structure
Contract No. 040120R4

Gentlemen:

On June 16, 2005 at the request of C.C. Meyers, Inc. (CCM) on behalf of its Design Consultant Imbsen and Associates, Inc. (IAI) the Dispute Review Board (DRB) held a hearing to consider the merits of the following dispute:

NOPC No. 3, "East Tie-In Design Criteria"

A list of attendees is included as Attachment A.

PROJECT OVERVIEW

This design-build contract provides for a temporary detour structure on the eastern side of Yerba Buena Island that will allow for reconstruction of the new East span of the San Francisco-Oakland Bay Bridge.

NOPC No. 3 "East Tie-In Design Criteria"

INTRODUCTION

CCM on behalf of IAI has requested additional compensation to cover the extra costs (direct and indirect), damages, delays and impacts arising out of or resulting from Caltrans imposed mandates for a new separate East Tie-In Design criteria, unclear direction with respect to the design criteria, inconsistent boundary and design assumptions and other related actions and inactions.

CONTRACTOR'S POSITION

The following is quoted from the position paper transmitted June 6, 2005 by CCM to the DRB. The entire paper, including exhibits, is incorporated herein by reference.

"...CCM submitted a bid to Caltrans on December 2, 2003 which included a well-defined and detailed alternative to the envisioned roll-out/roll-in scenario. CCM/IAI proposed ETI design included a rigid steel frame supported at mid-span (i.e., Bent 53) and incorporated a portion of the upper and lower deck of the existing span YB4 rather than the roll-out/roll-in scenario conceptualized in the bid documents. Notably, three out of the four bidders provided alternatives to the roll-out/roll-in scenario..."

"...Caltrans made a determination that CCM had provided a complete, responsible and competitive bid for performing the work..."

"...On March 11, 2004, Caltrans made a firm commitment to have the final product designed and constructed by CCM team and awarded the Prime Contract to CCM for a total cost of $78,759,650..."

"...Importantly, Caltrans did not condition its acceptance and approval of CCM's bid and ETI alternative on the submission of a new, separate design criteria document, or, for that matter, on meeting any design criteria beyond that included in the as-bid Contract Plans, Specifications, and Special Provisions. Likewise, no provision of the contract documents contemplates or requires development of a new separate design criteria other than those provided in the Contract Plans, Specifications, and Special Provisions.

However, as design progressed beyond the bid and the preliminary submittal state, Caltrans began to require that a new site-specific design criteria document be developed, submitted, reviewed and accepted in order for the final design to be considered and approved by Caltrans. Additionally, Caltrans directed IAI to provide certain design and boundary condition assumptions that were neither required nor consistent with IAI's design.

Caltrans' requirement for a new, site-specific design criteria document resulted in significant delays and extra work for IAI's design of the TBS structure. IAI's resources had to be redirected from the preparation of design documents to the development of Caltrans' newly required ETI design criteria. Ultimately, due to Caltrans actions the implementation of the ETI design criteria took seven revisions and over twelve months for approval..."

"...IAI is entitled to an equitable adjustment of compensation as a result of the development of the ETI design criteria due to the numerous and substantial impacts caused by Caltrans' often unclear and inconsistent approach to the issue..."

"...**CONCLUSION:**

Caltrans has benefited from the competitively bid pricing of CCM/IAI team. IAI has the right to complete its design services in a timely and efficient manner in order to minimize its cost and support its competitively bid prices. In so far as Caltrans is responsible for additional requirements and unwarranted delay that prevented IAI from efficiently perform its design services, Caltrans is responsible for IAI's resulting increased costs and subsequent impacts and delays..."

CALTRANS' POSITION

The following is quoted from the June 6, 2005 position paper submitted by Caltrans to the DRB. The entire position paper including exhibits is incorporated herein by reference.

"...The Contract provides for the Contractor to design and construct the Temporary Bypass Structure (TBS) per the plans and Specifications. [Appendix 3, Section 5-1.14] The Plans include design criteria to enable a design. [Appendix 2, Design Criteria]..."

"...The East Tie-In (ETI) segment of the TBS is depicted on the plans as a "Move-Out/Move-In" scheme. [Appendix 2, East Tie-In Operation Sequence] This operation entails moving out the existing span YB-4 and moving into place the ETI segment to connect the TBS to the existing bridge. The Move-Out/Move-In operation should take place within a 24-hour time frame. Temporary supports are to be constructed to support all imposed loads during the operations.

CCM has submitted a design, however, which is entirely different from Move-out/Move-In. Their submitted concept is a prescribed staging scheme in which an East Tie-In structural framing system would be constructed to receive an ultimate transfer of loads from the existing span YB4. CCM's staging concept entails jacking at strategic points along the bridge to facilitate in the transfer of loads. During each stage of load transfer, portions of the existing bridge would be removed based on the condition that they no longer carry significant loads..."

"...The Contract contains sufficient information to enable a design which follows a Move-Out/Move-In concept as described in the Plans [sheets 149/193 to 151/193]. This information includes design criteria, which are called out on sheets 96/193 and 105/193 of the Plans. CCM, however, chose not to follow the Move-Out/Move/In concept. Instead, they are choosing to employ a more complex design concept that will utilize the existing YB4 span, however this concept goes outside the boundaries of the existing design criteria in the Contract. In order for the State to give due consideration to the proposed design, the State would have to allow for a deviation in the contract, for both the proposed design and its pertinent criteria..."

"...The State has determined that the submission of amended criteria to support CCM's proposed ETI design is justifiable to facilitate in its review and required this as a condition prior to issuing a no cost CCO to implement the Contractor's requested change..."

"...**Conclusion**

CCM has no merit to their potential claim because they should have had prior knowledge of the requirements of the Plans and Special Provisions before submitting their bid. The Plans and Special Provisions contain

sufficient information to enable the Move-Out/Move-In concept. Instead of following the contract requirements, CCM chose to propose a more complex design that did not utilize the Move-Out/Move-In concept.

CCM had the opportunity to revise their design so that it can conform to the existing design criteria, or amend the criteria to show that the proposed design will manage the risk to the traveling public similar to the Move-Out/Move-In design. Rather than rejecting this proposed design, the State has agreed with the Contractor to concurrently review the amended design criteria with the proposed East Tie-In design. The State has agreed with the technical aspects of the amended criteria but does not believe that it is responsible for any of the resultant costs. In order for the State to consider review, amended criteria would be needed to support any differing design assumptions and boundary conditions. The State requested these amended criteria to facilitate in the analysis and review of the design.

As the contract had already provided the scope needed for the Contractor to design and construct the TBS, all incurred costs and delays to develop the additional criteria should be borne entirely by the Contractor. The State believes that the actual contract design criteria changes are relatively simple. Any additional analysis generated by this Contractor requested change is purely the result of the Contractor's choice of design. The State is entitled, however, to verify that the Contractor has performed due diligence to the design and cannot be expected to provide additional compensation.

It is the above reasons that the State requests the Disputes Review Board to find no merit to CC Myers' Potential Claim No. 3..."

DRB FINDINGS AND CONCLUSIONS

At the DRB hearing on June 16, 2005, presentations were made by CCM, IAI, and Caltrans declaring the respective positions of the parties concerning NOPC No. 3, "East Tie-In Design Criteria".

From the presentations and information provided by CCM, IAI, and Caltrans, taken together with the Contract Documents, the DRB is of the unanimous opinion on the following:

1. Section 9-Description of Bridge Work of the Special Provisions states in part, "...F. East Tie-In - to be constructed in stages with a

short-term closure of the entire bridge. The design concept **envisions** (emphasis added) construction to include erection of the East Tie-In adjacent to the existing Route 80 steel truss (Bridge No. 33-0025) span YB4, between Pier YB-4 and Pier E-1, rolling-out span YB4 onto temporary supports, and rolling the East Tie-In into place…"

2. In prebid inquiry #232 the question was raised:

   "Q: "For the East Tie-In, can we retrofit/modify the existing span between Bents E1 & YB4, in lieu of constructing a new span and perform the slide-in/slide-out, provided that the design criteria set forth in the contract is met for the modified structure, and the portion of the existing structure outside the limits of the revised alignment is removed after traffic is switched over?"

   Caltrans' answer was:

   A: "The specifications allow the option proposed by the Contractor. However, the State does not see how this can be accomplished in the time allowed for the bridge closure. The design for the TBS East Tie-In segment proposed by the Contractor must meet a number of criteria, including but not limited to the TBS Design Criteria. Contractor Area Use constraints shown on the C-sheets, and time allotted for bridge closure in the currently approved Traffic Management Plan (TMP). Bidders are advised that delays caused by additional approvals and other changes are at the Contractor's risk."

3. Caltrans accepted CCM's alternate proposal for the East Tie-In by virtue of awarding the contract to CCM on March 11, 2004.

4. Special Provisions Section 1, Specifications and Plans, states in part:

   "…All designs prepared by the Contractor shall comply with all design criteria requirements shown on the project plans and in these special provisions…"

5. In accordance with the Contract requirements, it was reasonable for Caltrans to require modifications to the Design Criteria to conform to the CCM alternate design.

6. It was reasonable for Caltrans to require a full understanding of the manner in which the CCM alternative design would be constructed and how it would function.

Caltrans, after a Pre-Award Meeting and after review of a Pre-Award Information/Questionnaire and the Proposal Drawings of CCM's design, awarded the contract to CCM as the lowest responsible and responsive bidder. Therefore, the DRB finds that CCM complied with the terms of the contract.

However, the DRB finds that the review process Caltrans employed in the CCM alternative design for the design criteria and for the design was sufficiently protracted, delayed, ambiguous, contradictory and confusing to cause CCM unreasonable delay and extra cost.

No Contract Change Order should be required to enable CCM to proceed with its design. Caltrans' insistence that a CCO is required to effect CCM' design does not comport with Caltrans' award of the contract to CCM as a responsive bidder.

DRB RECOMMENDATION

The DRB recommends that CCM is entitled to additional cost and time attributed to the Caltrans review process of CCM's alternative design of the East Tie-In structure. However, the DRB at this time makes no findings and expresses no opinions regarding the length of any such delays or the costs associated with such delays.

Respectfully submitted:

Date: 6/26/05

Frederick Graebe
DRB Member

Date: 6/26/05

Matthew B. McGowan
DRB Member

Date: 6/26/05

William B. Baker
DRB Chair

ATTACHMENT A

DISPUTES REVIEW BOARD (DRB)
SIGN-UP SHEET

Project: **04-0120R4**
04-SF-80-12.6/13.2
Temporary Bypass Structure

Date: **Thursday, June 16, 2005**
Time: **10:00 AM**

Location of Meeting: **Caltrans SFOBB Field Office**
333 Burma Road, Oakland, CA 94607

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