

**NOTICE OF
POTENTIAL CLAIM No. 3**

for
**Amended Design Criteria for
the East Tie-In**

Presented by: Erwin B. Rufino, P.E.

June 16, 2005

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CONTRACT PARTIES

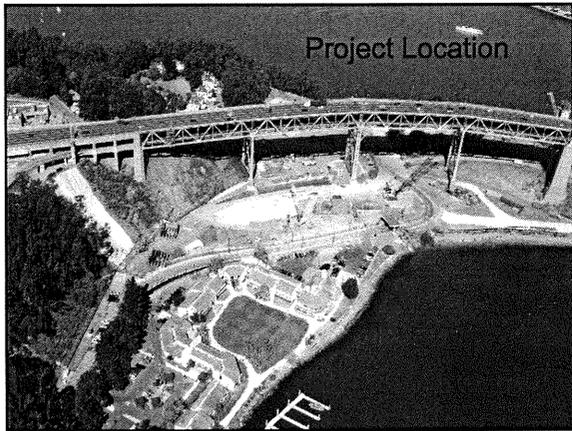
- Contractor: CC Myers, Inc.
- Project Manager: Robert W. Coupe
- Design Subcontractor : Imbsen & Assoc., Inc.
- Design Manager: Roy A. Imbsen, P.E.
- Owner: CALTRANS
- Resident Engineer: Lourdes David, P.E.
- Structure Representative: Gary J. Lai, P.E.

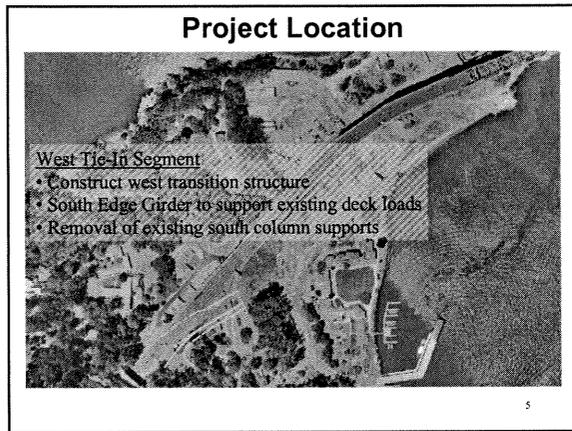
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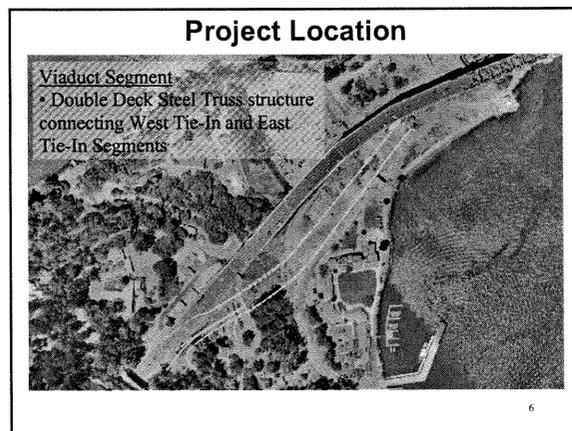
CONTRACT SUMMARY

Performance Based Contractor Design
Design and Construct Detour Structure
Contract Type: A + B
Bid Amount: \$ 71,159,650
Working Days Bid: 475
Bid Opening Date: Dec. 3, 2003
Bid Award Date: Mar. 10, 2004
First Working Date: July 10, 2004

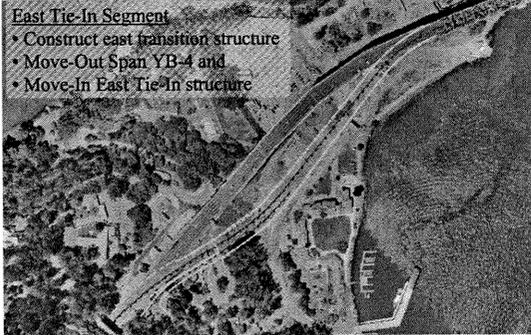
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Project Location



East Tie-In Segment

- Construct east transition structure
- Move-Out Span YB-4 and
- Move-In East Tie-In structure

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The Nature of the DISPUTE Amending the Contract

State's Position – The Contractor's design did not comply with the contract's Design Criteria. In order for the State to accept and review their design, amended criteria needs to be established. A NO COST change order should allow for an amendment to the Contract.

Contractor's Position – The State is requesting additional information beyond the scope of the contract and therefore, the State should be responsible for the additional costs.

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NOPC 3
October 7, 2004

The POTENTIAL CLAIM and CCM's Position

"The Caltrans Design Criteria as included in the Contract Plans and Special Provisions is not in conformance with the Contract between Caltrans and C.C. Myers."

"This added requirement by Caltrans has a significant impact on our design cost and schedule."

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The CONTRACT Requirements

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Special Provisions Sect. 1, Specification and Plans

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISIONS
Amended Contract No. 40010002

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

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Special Provisions Sect. 5-1.14, Contractor Design

5-1.14 CONTRACTOR DESIGN

This work shall consist of designing and providing detailed design plans, supplemental technical special provisions and quantities of various items of work for the construction of the Temporary Bypass Structure, including all appurtenances required for bridge mounted utilities, deck drainage system, and signs, at locations shown on the plans and as specified in "Temporary Bypass Structure," elsewhere in these special provisions, and in these special provisions.

The Temporary Bypass Structure shall be designed in accordance with the design criteria as shown on the plans, and as specified in these special provisions. Engineering design and calculations, and independent design check calculations shall be submitted to the Engineer for review and acceptance.

"The Temporary Bypass Structure shall be designed in accordance with the design criteria as shown on the plans, and as specified in these special provisions."

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The Design Criteria for the TBS

Plan Sheet 96 / 193



DESIGN CRITERIA

GENERAL

The Temporary Bypass Structure shall be designed in accordance with "Bridge Design Specifications" (BDS), LFD Version, April 2000, California Department of Transportation, (1996 AASHTO with Interims, and revisions by Caltrans), modified or augmented as detailed in this design criteria document.

10	REVISED PER ADDENDUM NO 10 DATED SEPTEMBER 22, 2003
7	REVISED PER ADDENDUM NO 7 DATED AUGUST 4, 2003
5	REVISED PER ADDENDUM NO 5 DATED JUNE 27, 2003
3	REVISED PER ADDENDUM NO 3 DATED JUNE 4, 2003

PROJECT NO. 96-193
TEMPORARY BYPASS STRUCTURES
DESIGN CRITERIA NO. 1

The TBS DESIGN CRITERIA Covers:

- Seismic Design
- Loading Conditions
- Stress, Fatigue and Stiffness Conditions
- Staging & Constructability Concerns - (Move-Out / Move-In)

The DEVIATION from the CONTRACT

<p>Contract Requirement</p> <p>[Plan Sheets 97, 98, 105, 149-151 / 193]</p> <p>Move-Out/ Move-In Concept</p>	<p>CC Myers Proposed Design</p>
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East Tie-In (Roll-Out/ Roll-In Structure)

Existing Cont' Level Truss

A

B

C

Roll-Out / Roll-In

**DESIGN CRITERIA
for East Tie-In**

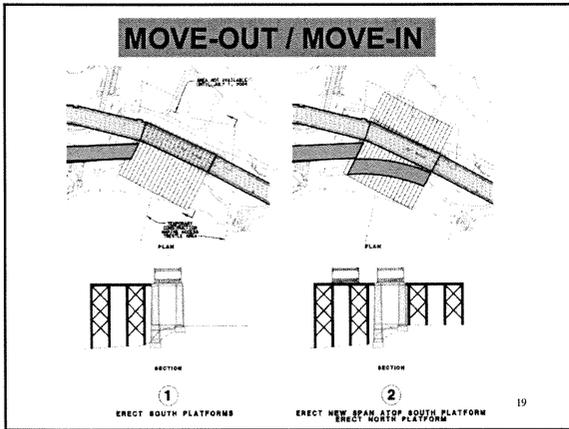
ROLL-OUT / ROLL-IN (MOVE-OUT / MOVE-IN)
[Plan Sheet 97 / 193]

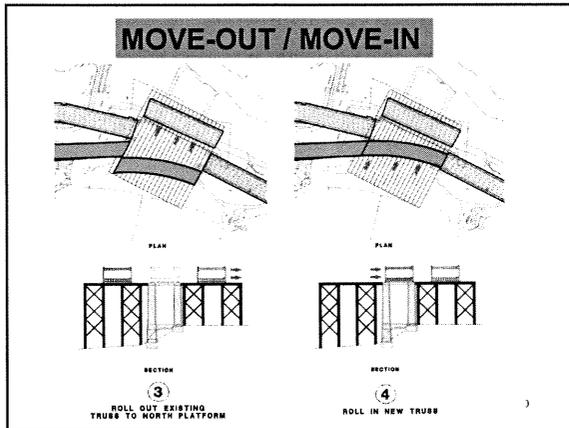
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The Design Criteria for the TBS

Plan Sheet 105 / 193 Move-Out Span YB4

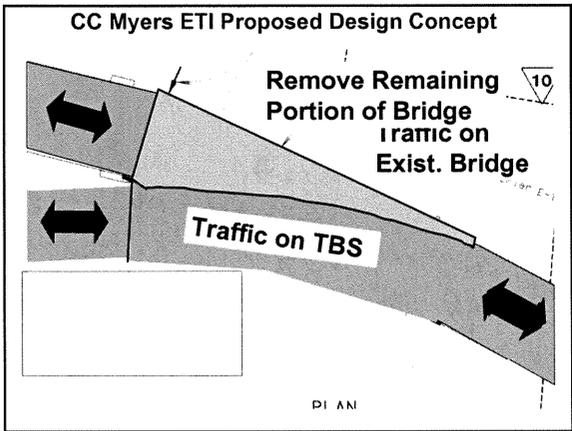
10.1	<p>MOVE-OUT SPAN YB4 EVALUATION</p> <p>10.1.1 Move-Out Weights Evaluate weight of span was to be rolled from existing device. Move-out span shall be capable of moving at least 3000 ft/min at 100 ft/sec.</p>	
10.2	<p>10.2.1 Span YB4 Move-Out System - Overview</p>	
10.3	<p>• Loading and Weight Conditions</p>	10 ft/min 100 ft/sec
10.4	<p>• Tolerances in Stiffness & Deflection</p> <p>• Tolerances in Vibration Periods</p> <p>• Written Procedures for Operation</p>	11 ft/min 100 ft/min 100 ft/sec 11 ft/min 100 ft/min 100 ft/sec
10.5	<p>• Monitoring and Contingency Plans</p>	11 ft/min 100 ft/min 100 ft/sec





<p><u>Contract Requirement</u></p> <p>[Plan Sheets 97, 98, 105, 149-151 / 193]</p> <p>Move-Out/ Move-In Concept</p>	<p><u>CC Myers Proposed Design</u></p> <p><u>Load Transfer</u> and Demolition Staging Concept</p>
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DIFFERENCES

Move-Out / Move-In vs. Load Transfer

The **parameters** (i.e. tolerances, loading conditions, operation procedures) warrant different conditions for each design concept.

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<u>Contract Requirement</u> [Plan Sheets 97, 98 / 193]	<u>CC Myers Proposed Design</u>
<u>Simply-Supported</u> Span	

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DIFFERENCES

Simply-supported span vs. Continuous span

The **load path** is easily predictable for a simply-supported span than for a continuously supported span.

Design assumptions and boundary conditions are more readily identifiable for a simply-supported span.

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The State's Position

KEY POINTS

- CCM's proposed design **does not conform** to the Design Criteria. [Plan Sheets 97,98,105/193]
- The Design Criteria **must be amended** to provide a standard of basis for CCM's proposed design.

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State Letter # 3
March 11, 2004

REQUEST for CRITERIA SPECIFIC to PROPOSED DESIGN

DEPARTMENT OF TRANSPORTATION
1000 North Capitol Street, N.W.
Washington, D.C. 20001-4501

"Item #24c
The contract envisioned a 'move out – move in' at the East Tie-In,

"If the contractor proposes to modify the exist truss instead of the envisioned 'Move out – Move in', he needs to submit his criteria for stabilizing and monitoring the existing truss."

1000 North Capitol Street, N.W.
Washington, D.C. 20001-4501
Tel: 202-418-3000
Fax: 202-418-3000
www.dot.gov

1000 North Capitol Street, N.W.
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Tel: 202-418-3000
Fax: 202-418-3000
www.dot.gov

State Letter # 23
June 4, 2004

**REQUEST for CRITERIA
SPECIFIC to
PROPOSED DESIGN**

"As commented on the previous Preliminary Design Submittal, dated January 16, 2004, the contract envisioned a 'move out – move in' operation at the East Tie-In.....

"Clearly, the design criteria has not been developed for the proposed modification of the existing truss.....

"If the Contractor opts to modify the existing truss, then a **new East Tie-In specific criteria needs to be submitted** together with the preliminary design package."

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The State's Position

**Amended Design Criteria is
JUSTIFIABLE**

The State **must understand** CCM's proposed design to proceed with the review. This includes design criteria that is pertinent to their design.

The State's review is accordance with the Contract's design review process. [SP Section 5-1.14]

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ROLES

The Engineer of Record – This is the Contractor's Engineer who is responsible for **producing**, stamping and signing a **TBS design** according to the Contract requirements. [SP Sect. 5-1.14]

The State – The State shall review the design to ensure compliance with the Contract requirements and to ultimately **approve** and **authorize for construction**. [SP Sect. 5-1.14]

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BID PROPOSAL PROCESS

Does an acceptance of a **bid proposal** design constitute an acceptance of the proposed design?

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NOPC 3 (Part B)
October 20, 2004

CC Myers Argument



"Caltrans awarded the contract to CC Myers, thus **accepting their alternative**, which was represented with proposal drawings with the bid package."

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State's Position

The bid proposal package is subject to Special Provisions, **Section 2-1.07** and **Section 3-1.01A**

CC Myers' Argument

The proposed design has been considered as accepted by the State upon submission with the bid proposal.

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ALTERNATIVE DESIGNS

Would the State allow alternative designs for review and approval?

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NOPC 3 (Part B)
October 20, 2004

**CC Myers
Argument**

"At a pre-bid meeting in Oakland, Caltrans asked for innovative concepts. Question 232 of the Bidder Inquiry List asked if the span between Bents E1 and YB4 can be modified or retrofitted. Caltrans said this was acceptable as long the Contractor met a number of criteria. Nowhere did it state a new criteria would be required."

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Contractor's Inquiry Responses **Bid Inquiry # 232**

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?"

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 closures 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."

The State's Position

ALTERNATIVE DESIGNS

The allowance of alternative designs is acceptable; provided that it meets the **design criteria** shown on the Plans.

State Letter # 137

September 30, 2004



NO- COST
Change Order

"The State will only process a no cost change order, initiated by CCMyers, to allow for the deviation from the Contract Plan and Specification design criteria."

CCM Myers, Inc. 10000 Wilshire Blvd., Suite 1000, Beverly Hills, CA 90210
Tel: 310.274.1111 Fax: 310.274.1112
www.ccmymyers.com

The State's Position

- The Contract has contained **sufficient information** to enable a design at time of bid.
- The **proposed design is different** than what the Contract calls for.
- If CCM wishes to proceed with their design, they should **initiate a NO-COST change order to allow only for a deviation** from the Contract requirements.

CONCLUDING REMARKS

- The Contractor's design **did not comply** with the contract's Design Criteria.
- The criteria must be **amended** in order for the State to proceed with review and approval.
- The request for these criteria is **justifiable**.
- A **NO COST** change order would allow for an amendment to the Contract.

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CONCLUDING REMARKS

- At time of bid, CCM is presumed to **have knowledge** of the Contract requirements.
- CC Myers **assumes risk** for their choice of design.
- Resultant costs for CCM's choice of design and its pertinent criteria should **be borne entirely by the Contractor**.

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CONCLUDING REMARKS

The State requests the Disputes Review Board to determine **NO MERIT** to CC Myers Potential Claim No. 3.

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