

**DOWNEY BRAND**  
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May 6, 2015

**VIA FACSIMILE (916) 227-6282 AND U.S. MAIL**

John McMillan  
DEPARTMENT OF TRANSPORTATION  
Division of Engineering Services  
Office Engineer  
P.O. Box 168041, MS-43  
Sacramento, CA 95816-8041

**Re: Response to JF Shea Construction Bid Protest - Contract No. 02-4G7304**

Dear Mr. McMillan:

This letter is in response to the May 1, 2015, letter of J.F. Shea Construction, Inc. ("J.F. Shea"), which protests the bid submitted by Myers and Sons Construction, LP ("Myers").

Contrary to J.F. Shea's claim, Myers' DES-OE-0102.5 Certified DVBE Summary is correct. J.F. Shea claims that Myers incorrectly listed the dollar amount of \$12,000 for bid item number 45 (mobilization) on its DVBE summary for Mallard Construction, but did not list bid item number 45 on any of Myers' paperwork. Thus, J.F. Shea claims that \$12,000 cannot be counted toward Myers' DVBE participation. J.F. Shea is incorrect.

Bid item number 45 is mobilization. Mallard Construction will be paid for mobilization in the amount of \$12,000. Bid item number 45 was not listed on the DVBE Summary, or the Subcontractor List, because as Caltrans has recently reaffirmed, the Subcontractor List, is only required to list bid items that are defined by the Business and Professions Code as work of a subcontractor. As your December 3, 2014, letter to David Cruce of Papich Construction regarding Contract Number 06-0Q2504, stated, "[Mobilization] services are not defined by the Business and Professions Code for that of a subcontractor and is not considered work subject to the Public Contract Code 4100 (et.seq)." Because mobilization is not considered work subject to the Public Contract Code 4100, et. seq., it is not required to be listed in the Subcontractor List. And because the DVBE Summary is only required to "be consistent with the names and items of work in the Subcontractor List" mobilization is also not required to be listed on the DVBE Summary. Even though it is not required to be listed, it still counts towards Myers' DVBE participation, however, because it is funds that will be paid to a Disabled Veteran Business Enterprise.

John McMillan  
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Myers and Sons is required to and will pay Mallard Construction their full bid amount of \$57,605.00. Myers and Sons cannot parse out Mallard Construction's bid to exclude mobilization, as in order to do all the other bid items, Mallard Construction, must mobilize to the project.

We hope this clears up any confusion J.F. Shea may have had and we would request that the project be awarded to the lowest responsive bidder Myers and Sons Construction, LP.<sup>1</sup>

Should you have any questions or concerns please do not hesitate to contact me.

Very truly yours,

DOWNEY BRAND LLP

*Dictated by the Writer:  
Mailed in His Absence  
To Avoid Delay*

Matthew J. Weber

MJW/bs

Enclosure

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<sup>1</sup> Even though J. F. Shea's assertion against Myers was incorrect, it does appear that its protest of Mercer-Fraser is correct and the lowest responsive bidder is Myers and Sons Construction, LP.

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

**DEPARTMENT OF TRANSPORTATION**  
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*Serious drought.  
Help save water!*

December 3, 2014

Facsimile: (805) 481-5966

David Cruce  
Papich Construction Co., Inc.  
P. O. Box 2210  
Pismo Beach, CA 93448

06-0P1804  
06-Kin-5-9.0/16.5  
B.O. 10/29/2014

Dear Mr. Cruce:

The Department of Transportation (Caltrans) received a letter dated November 12, 2014, from Papich Construction Co., Inc. (Papich) protesting the bid submitted by Granite Construction Company (Granite). The protest alleges that Granite listed Super Seal and Stripe for work described as Pavement Delineation and St. Francis Electric for work described as Electrical on its Subcontractor List form at time of bid, but added Mobilization on the 24 hour submittal. Papich also alleges that on bid day, Granite did not include the portion (percentage) of work to be performed by A.C. Dike and KRC Safety (KRC). Papich requests Caltrans find the bid submitted by Granite nonresponsive and award the contract to Papich.

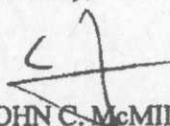
Caltrans reviewed the bid documents and determined that Granite was not required to list Mobilization. This service is not defined by the Business and Profession Code for that of a subcontractor and is not considered work subject to the Public Contract Code 4100 (et.seq).

In addition, Granite identified the subcontractor and the work to be performed per the bidding instructions. The bid items numbers and portion of work is not required to be submitted at time of bid, rather the 24 hour submittal.

And based on the above Caltrans will proceed to award this contract to the lowest responsive and responsible bidder.

If you have any questions, please contact Mulissa Smith, Contract Awards Analyst, at (916) 227-6228.

Sincerely,

  
JOHN C. McMILLAN  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services

**\*\* Transmit Conf. Report \*\***

P.1  
CALTRANS CONTR AWARDS Fax 916-227-6282

Dec 3 2014 03:45pm

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If you have any questions, please contact Melissa Smith, Contract Awards Analyst, at (916) 227-6228.

Sincerely,

  
 JOHN C. McMILLAN  
 Deputy Division Chief  
 Office Engineer  
 Division of Engineering Services