



## Myers and Sons / ACC, A Joint Venture

September 30, 2014

John McMillan, Deputy Division Chief  
State of California Department of Transportation  
Division of Engineering Services,  
Office of Engineer, MS 43  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816-8041

Subject: Bid Protest – 2<sup>nd</sup> letter

Re: Contract No. 04-041004  
Bids Opened: September 9, 2014  
Bid Protest of C.C. Myers, Inc.

Dear Mr. McMillan:

Myers and Sons /ACC, A Joint Venture (MSC/ACC) is providing this 2<sup>nd</sup> protest letter to rebut C.C. Myers, Inc. (CCM), response to MSC/ACC original protest letter.

"The Subletting and Subcontracting Fair Practices Act" prohibits the practice CCM used on their subcontracting list forms as referenced in the initial protest letter. The Department of Transportation has always ruled that if a bidding contractor uses this practice, their bid will be deemed nonresponsive. The clear reasoning for this is 1) the "Department of Transportation" must protect subcontractors from the possibility of having their "scope of work" being reduced or renegotiated after the original bid date and 2) to not allow "bidding contractors" to have the possibility of having an "unfair bid advantage".

Although CCM ignores the issue in their response letter, the following facts are undisputed:

- CCM listed Bayline Cutting and Coring (BCC) for bid item 26 "Place Polyester Concrete Overlay" as **partial** at bid time.
- Then listed BCC for bid item 26 as **100%** on the 24 hour submittal.
- The Department has found bids non-responsive for the exact same situation (see letter dated May 10<sup>th</sup> 2013 for contract 03-4M4904).

The Department has consistently ruled that the work described on a contractor's "bid day" Subcontract list cannot be revised or changed. The Department has also ruled that the "Percentage of Bid Item Subcontracted" provided on a "24 hour" Subcontract Listing form must be consistent with the scope of work defined on their "bid day" Subcontract List form. And the Department has previously specifically



ruled that the change from "partial" to 100% constitutes an improper change to the Subcontract listing form that renders a bid non-responsive.

In conclusion, CCM's bid should be found to be non-responsive for improper post-bid changes to the subcontractor list. Based upon the Caltrans' consistent practice and in accordance with the applicable law, CCM's bid must be rejected and considered non-responsive and the above referenced contract should be awarded to the next lowest responsive bidder.

Jeff Foerste

President  
American Civil Constructors  
&  
Management Committee Representative  
Myers and Sons / ACC, A Joint Venture

Clinton C. Myers

President  
Myers and Sons Construction, LP  
&  
Attorney-in-Fact  
Myers and Sons / ACC, A Joint Venture

Submitted on behalf of Myers and Sons / ACC, A Joint Venture



# Fax

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10/1/2014

**TO: John McMillan**

**FROM: MYERS AND SONS/ACC, A JOINT VENTURE**

**PAGES: 3 (including cover)**

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**CC:**

**RE:**

**COMMENTS: Bid Protest – 2<sup>nd</sup> letter**

- Urgent
- Please review
- Please comment
- For your records