

DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program

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June 23, 2009

Contract No. 04-0120F4
04-SF-80-13.2 / 13.9
Self-Anchored Suspension Bridge
Letter No. 05.03.01-004442

Michael Flowers
Project Executive
American Bridge/Fluor, A JV
375 Burma Road
Oakland, CA 94607

Dear Michael Flowers,

Steinmetz, Elastomeric Collar Supplier

This letter addresses the inquiry in ABF-CAL-LTR-000930, dated June 4, 2009, requesting further explanation regarding the Department's statement that the contract does not require subcontractors or suppliers to name the State as additional insureds. ABF appears to maintain that each and every provision of the prime contract between the Contractor and the Department should "flow down" to all subcontractors and suppliers. In addition, the Department will address ABF's portrayal of Steinmetz, Inc., as sole source provider.

In general, the "flow down" provisions of the contract apply only to work provisions of the contract and not to general and administrative requirements of the prime Contractor. ABF references Section 8-1.01, "Subcontracting," of the Standard Specifications in support of its view that each and every term of the contract is required to flow down into subcontracts. Section 8-1.01 states, in part, *subcontracts shall include provisions that the contract between the State and the Contractor is part of the subcontract, and that all terms and provisions of the contract are incorporated in the subcontract.* This provision merely requires that terms and provisions of the contract are incorporated into the subcontract. It does not require terms of the contract be changed, i.e., the definition of "Contractor" be changed to include subcontractors. Section 1-1.10, "Contractor," of the Standard Specifications defines Contractor as *the person or persons, firm, partnership, corporation, or combination thereof, private or municipal, who have entered into a contract with the Department of Transportation, as party or parties of the second part or their legal representatives.*

ABF-CAL-LTR-000930 incorrectly cites Section 7-1.12B(1)(c) of the Standard Specifications as this section of the Standard Specifications has been modified by the Special Provisions. The correct reference should be Section 7-1.12B(4)(b) of the Standard Specifications as modified by the Special Provisions. Nevertheless, the insurance requirements of Section 7-1.12, "Indemnification and Insurance," of the Standard Specifications are requirements of the Contractor, not its subcontractors and/or suppliers. Indeed, the opening provision of Section 7-1.12 requires, *the Contractor's obligations regarding indemnification of the State of California and the requirements for insurance shall conform to the provisions in Sections 7-1.12A, "Indemnification," and 7-1.12B, "Insurance," of this Section 7-1.12.*

There are a number of other general and administrative terms of the contract that ABF likely does not pass down to subcontractors. For example, does ABF require the exact same bonding requirements and amounts of all subcontractors and suppliers as the State requires from the Contractor? Does ABF establish dispute review boards with subcontractors to review disputes between the Contractor and subcontractors? Does ABF require each and every subcontractor and supplier involved in the project to fully adhere to the CPM specification requirements, e.g., ZPMC?

The Department, as the author of the contract, maintains the insurance obligations of the Contractor, including the requirement the Contractor name the State as additional insureds, are not contractual requirements of subcontractors and suppliers. It is ABF's prerogative to include terms in subcontracts and supply agreements it feels are appropriate, and to negotiate such terms agreeable to its subcontractors and suppliers. If unable to reach agreement with a particular subcontractor or supplier, ABF's recourse is to attempt to reach agreement with another subcontractor or supplier.

ABF's portrayal in ABF-CAL-LTR-000930 of Steinmetz, Inc., as a Department nominated sole source supplier is unfounded. Department has not entered into a sole source agreement or any other agreement whatsoever with Steinmetz. The Special Provisions provide that the collar manufacturer *shall be Steinmetz, Inc...or approved equal*. ABF is free to utilize Steinmetz or any other supplier it chooses, and the Department will approve any supplier that meets the requirements of the plans and specifications. The Department has confirmed that alternative collar suppliers are readily available.

We hope the above provides the explanation requested via ABF-CAL-LTR-000930. Please contact this office if ABF requires further clarification.

Sincerely,



GARY PURSELL
Resident Engineer

file: 05.03.01