

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
SUPPLEMENTAL NOTICE OF POTENTIAL CLAIM  
CEM-6201B (NEW 9/2002)



TO Pedro Sanchez <small>(resident engineer)</small>	CONTRACT NUMBER 04-0120E4	DATE 12/17/2004	IDENTIFICATION NUMBER 01 03 <i>Meda Schurz</i>
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This is a Supplemental Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on:

DATE: December 6, 2004

The particular nature and circumstances of this potential claim are described in detail as follows:

See attached

*(attach additional sheets as needed)*

The basis of this potential claim including all relevant contract provisions are listed as follows:

See attached

*(attach additional sheets as needed)*

The estimated dollar cost of the potential claim including a description of how the estimate was derived and an itemized breakdown of individual costs are attached hereto.

See attached

*(attach sheets as required)*

A time impact analysis of the disputed disruption has been performed and is attached hereto. The affect on the scheduled project completion date is as follows:

See attached

*(attach time impact analysis as required)*

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12850-12855. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

Oregon Iron Works, Inc. (OIW)

SUBCONTRACTOR or CONTRACTOR  
(Circle One)

*[Signature]*  
(Authorized Representative)

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded by

Kiewit - FCI - Manson JV  
PRIME CONTRACTOR

*[Signature]*  
(Authorized Representative)

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**Supplemental Notice of Potential Claim #1**

**Partial Joint Penetration Weld – Ultrasonic Testing Requirement – Revision 1**

**December 22, 2004**

Pursuant to Amended Standard Specification 9-1.04 – Notice of Potential Claim, Oregon Iron Works, Inc. (OIW) offers the following supplemental information to support OIW's position regarding the PJP-UT dispute.

**A. *The complete nature and circumstances of the dispute which caused the potential claim.***

OIW agrees that an Ultrasonic Testing ("UT") examination of partial Joint Penetration ("PJP") welds is required as shown in the table in Special Provision Section 10-1.31 "Steel Structures," under the heading "Shop Welding," and under the sub-heading "Inspection and Testing," but a procedure for this examination cannot be developed using the contract Documents by themselves. OIW has requested direction from both The State and Kiewit / FCI / Manson JV (KFM), but both have been unwilling to provide the specific information required to develop an acceptable UT examination procedure. Without this information, OIW continues to expend additional effort to develop a UT procedure and it appears that implementation of an acceptable UT procedure will be more costly and more time-consuming than could have been reasonably anticipated from the Contract Documents.

- Per the contract specifications there is no requirement for the contractor to provide a specific procedure for UT inspection of partial penetration welds. The only requirement is that "UT Examination shall confirm specified weld size and for welds greater than 15 mm shall also evaluate accessible weld volume to the requirements of AWS D1.5 for welds in compression." This would imply that there already is a procedure for accomplishing this requirement available in the Contract Documents, Standard Specifications, Special Provisions or Applicable Codes. As previous investigations have already shown, none of the Contract Documents provide such a procedure other than stating all welding and inspection is to be per AWS D1.5. Therefore, it was agreed that OIW would work with Caltrans in an attempt to work out a procedure that might be acceptable to Caltrans and OIW because the contract specifications are incomplete in providing such a procedure.
- As further indicated below such a procedure could not be agreed on by both OIW and Caltrans after intensive and very costly attempts were made by OIW to work out a procedure.
- In June 2004, OIW was in the process of preparing their required Welding Quality Control Plan (WQCP). During the course of preparation, a contradiction between the required UT Testing and Acceptance criteria for the PJP welds was discovered in the Special Provision Section 10-1.31. Caltrans clarified the requirements by correcting the Specification language. All references to "Tension" criteria were changed to "Compression" criteria for

Shop Welding. A change order was issued to change the Specification language.

- With this direction in hand, OIW began the process of trying to understand the procedure required to test the PJP welds to the required "compression" criteria. As the fact unfolded, the referenced AWS D1.5 did not address UT testing of PJP welds and therefore did not assist OIW in our quest to understand the requirements as laid out in the Special Provisions.
- Multiple conversations were held between USI, OIW, KFM and Caltrans regarding the lack of information and specifics provided in the Contract Documents.
- OIW attempted to develop an acceptable UT procedure with the help of an outside consultant, which was subsequently transmitted to Caltrans for information. OIW found that the developed procedure was unreliable and the time required to perform the testing was not practical and could not have been contemplated at bid time. Therefore this procedure is not an acceptable solution for production welding nor will it provide accurate and repeatable testing information.
- OIW and KFM determined that, at best, the contract documents were ambiguous since neither the specifications nor the referenced documents provided enough information to develop a procedure. Subsequently, both KFM and USI/OIW asked for direction from Caltrans and the issuance of a Contract Change Order to cover the cost of developing and implementing a UT procedure that fell outside the specifications of the contract and outside of normal industry practice.
- Caltrans and KFM met twice to come to an agreement regarding the Contract requirements to no avail. On November 23, 2004 Caltrans suggested that KFM file an initial NOPC since agreement on this issue was not likely. KFM did so on the same day and OIW followed up on December 10<sup>th</sup>, 2004.

Attached is a chronological listing of verbal and written correspondence on the PJP-UT issue that led to the filing of the initial Notice of Potential Claim filed December 10, 2004 and this Supplemental information as required by Specification.

**B. *The contract provisions that provide the basis of the claim.***

- 4-1.3 – Changes (provides for entitlement)
- 10-1.31 – Steel Structures (provides UT examination requirements)
- AWS D1.5 – 2002 Edition (provides UT examination requirements for CJP Welds).

**C. *The estimated cost of the potential claim, including an itemized breakdown of individual costs and how the estimate was determined.***

Specific information is required to be furnished by Caltrans to develop an acceptable procedure prior to determining the cost impact to the project. The current costs are estimated currently to be in the rough order or magnitude approximating \$35,000 and will be accumulating on a daily basis relative to additional handling of materials and OIW's having to deal with resolution to this issue. We are currently segregating and accumulating our cost records in preparation for future discussions.

**D. *A time impact analysis of the project schedule that illustrates the effect on the scheduled completion date due to schedule changes or disruptions where a request for adjustment of contract time is made.***

The nature and magnitude of the time impacts are currently unknown. As noted in "C" above, specific information is required to develop an acceptable procedure prior to determining the schedule impact to the project. We are currently at a point in the project where girders are ready to have PJP welds of webs of webs to flanges inspected and we can not proceed any further with these items in our fabrication sequencing we request immediate resolution to this issue to minimize further anticipated additional delays and costs.

As stated in the specification, "If the estimated cost or effect on the scheduled completion date changes, the Contractor shall update information in items C and D above as soon as the change is recognized and submit this information to the Engineer."

PJP Welds - UT Testing Acceptance

Date	Document						Comments
	Compression vs. Tension Criteria	OIW WQCP	OIW UT Procedure	Position Meetings	KFM CCO Requests	Fabricator's CCO Request	
06/17/04	USI RFI #38						Clarification request on "compression vs. Tension Criteria" for Shop Welding Testing and Acceptance Criteria
06/18/04	KFM RFI #41r0						Submit USI's RFI #38 - "Compression vs. Tension Criteria"
07/19/04	CTL #92						Response to RFI #41r0 - Use "compression Criteria"
08/18/04	CT Tm #50						CCO#19 - Revised Welding Acceptance criteria from Tension to Compression
09/30/04				OIW/KFM/CT Meeting			Meeting regarding PJP-UT requirements
10/05/04		KFM Tm #40r0					OIW WQCP
10/07/04				OIW/USI/TMF/NPI/KFM CT Meeting			Meeting at OIW regarding PJP-UT Requirements
10/11/04			OIW Tm #47				OIW UT Procedure for PJP Welds
10/13/04			KFM Tm #40r1		KFM Let #54		KFM Transmitted OIW's Tm. #47 - PJP-UT Procedure FYI
10/13/04							Request for CCO - not enough info provided in contract or codes
11/02/04					KFM Let #58		KFM requests timely response to KFM Let. #54 CT is working on response
11/05/04							2nd Request for CCO - not enough info provided in contract or codes
11/08/04						USI Tm. #68	USI Request for CCO - not enough info provided in contract or codes
11/08/04						OIW Let #26	OIW Request for CCO - not enough info provided in contract or codes
11/09/04				Tuesday Owner's Meeting			KFM submitted follow up letter #58. CT expects to forward response 11.9-10.
11/12/04			CTL #292				Response to Tm. #40r1 - Address comments, final approval contingent upon satisfactory mockup exam. Results"
11/15/04					CTL #298		Response to KFM let. #54 - No CCO forthcoming, specification language argument

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Date	Document						Comments
	Compression vs. Tension Criteria	OIW WQCP	OIW UT Procedure	Position Meetings	KFM CCO Requests	Fabricator's CCO Request	
11/16/04						USI Tr. #81	USI request for CCO/NPI Report - not enough info provided in contract or codes
11/16/04				Tuesday Owner's Meeting			KFM has not rcv'd response from CT on letter #54 or 58. CT Sent letter on Friday
11/18/04					Position Matrix		C. Webb's attempt to understand Fab/KFM/CT's positions
11/19/04		CTL #308					Response to Tr. #40r0 - Response to WQCP - Incomplete - (Note: CT is allowed 2 wk review period after "complete" submittal rcv'd)
11/19/04				Mngt. Roundtable			RWE/Sanchez/Locke discussion on PJP-UT Positions
11/20/04		Nate Lindell Email					Comments on CT's response to OIW WQCP
11/22/04						KFM Let. #64	Request for CCO on behalf of OIW/USI
12/06/04				Tuesday Owner's Meeting			CTL #298 rcv'd 12/06 denying request for CCO
11/23/04				Owner's Meeting Follow-Up Discussion			RWE/SHA/MSC/PS/NL/MV/SG - Converstaion re: CCO Request - Nlocke - "File NOPC"
11/23/04					KFM Tr #59r0		Initial NOPC #1
12/01/04				OIW/USI/TMG/KFM/ CT Conference Call			Discussion re: NDE report findings
12/01/04					CTL #326		Response to KFM let. #58 - No CCO Forthcoming
12/03/04					CTL #329		Response to KFM Tr. #59r0 - NOPC follow up
12/07/04						CTL #341	Response to KFM Let. #64 - No CCO forthcoming, willing to consider alternatives.
12/08/04					KFM Let #65		Technical Response only to CTL #298
12/08/04					KFM Tr #59r1		Supplemental NOPC #1
12/10/04						OIW Fax	OIW Initial NOPC #1
12/17/04						OIW Fax	OIW Supplemental NOPC#1

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