

**DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program**

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Kiewit-FCI-Manson, JV  
220 Burma Rd.  
Oakland, CA 94607

Attn: Mr. Lee Zink  
Project Director

April 27, 2007

Contract No. 04-0120E4  
04-SF-80-13.4, 13.8  
SAS T1 & E2 Foundations  
SFOBB-ESSSP

Letter No. 05.003.01-003063

Subject: Response to Transmittal No. 519, Revision No. 00 (Notice of Potential Claim #04-012207 - Final Notice)

Dear Lee,

The Department has reviewed Kiewit-FCI-Manson (KFM) Transmittal No. 519, Revision No. 00, dated March 26, 2007, which provided the Contractor's final notice of potential claim (NOPC) No. 04 regarding additional payment for work performed to incorporate a series of conflict resolutions resolved via the RFI process into the Integrated Shop Drawings (ISD).

The Department understands your position to be that "Section 5-1.0105 of the Special Provisions, which governs the Integrated shop Drawing (ISD) process, is ambiguous, vague and incomplete in terms of the required magnitude and scope of effort necessary for implementation of this work into the project", and that "During the development of the ISDs, numerous reinforcing steel conflicts were encountered that could not be resolved by the Contractor within the guidelines provided by the Special Provisions. Such design changes were directed by the Engineer at the working drawing campus and were documented through KFM RFI's # 100, 102, 105, 106, 119, 120, 121, 147, 112, 113, 114, 122, 123, 124, 125, 130, 131R1, 132, 133, 136, 137, 138, 140, etc." and that "This additional work is beyond the scope of work defined in the Special Provisions, as the nature of the conflicts and the subsequent design changes could not have been reasonably contemplated by a bidder at bid time".

Regarding the timeline of events submitted with this final notice of potential claim, the Department agrees with the Contractor that all the RFIs -except RFI No. 131, Revision No. 01- were issued and responded to between November 18, 2004 and August 4, 2005. On September 10, 2005, and included in KFM's "Restart Change: Estimate Summary", Norcal Structural (at that time AGCE) submitted an estimate for "Contract Restart: Cost to Completion". Included in this estimate, under the "Costs to Completion" heading, was a request for compensation for \$201,400 that "includes Costs for Restart, Incorporation of CT responses to RFI's 100, 101, 104, 102, 120, 106, 119, 121, 105, 103, 122, 123, 124, 125, 133, 130, 139, 140, 126, 131, 112, 114, 132, 136, 137, 135, in the ISD Models, Conflict Documentation and ISD Submittal". On December 2, 2005 KFM signed Contract Change Order (CCO) No. 29, compensating the Contractor with \$ 81,000,000.00 and providing a time extension of 310 days as full and complete compensation to resolve all issues related to restarting the contract and establish a new contract price for the completion of the contract.

Since all the issues related to this request for compensation were known by August 4, 2005, any additional compensation for work performed to incorporate a series of conflict resolutions resolved via the RFIs into the ISD model was provided in CCO No. 29.

KFM RFI No. 131, Revision No. 01 (RFI 131R01), dated February 7, 2006 and included in this request for additional compensation, was responded to after the signing of CCO No. 29. RFI 131R01 is a Contractor proposed solution utilizing the A-F procedures defined in Section 5-1.0105 of the Special Provisions. Therefore in accordance to Section 5-1.105 "Integrated Shop Drawings," of the Special Provisions and the agreements reached by the Contractor and the Department on the meeting of August 17, 2004, the incorporation of RFI 131R01 into the ISD model is contract work and no additional compensation is warranted.

Based upon the Department's investigation and the information you provided, the Department finds no contractual basis to support your claim.

Please provide a response that supports agreement or disagreement with the Department's analysis of the claim. The Contractor's attention is directed to Section 9-1.04 "Notice of Potential Claim" of the Special Provisions if he wishes to further pursue this potential claim.

If you have any question or need additional information, please contact this office.

Sincerely,

Pedro J. Sanchez  
Resident Engineer

cc: R. Morrow  
P. Sanchez  
M. Woods  
M. Vilcheck

file: 05.003.01, 62.001.04