

**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 19, 2007

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

Letter No. 05.003.01-003053

Subject: Response to Transmittal No. 523, Revision No. 00 (Supplemental Notice of Potential Claim #05-031707)

Dear Lee,

The Department has reviewed Kiewit-FCI-Manson (KFM) Transmittal No. 523, Revision No. 00, dated March 30, 2007, which provided the Contractor's Supplemental Notice of Potential Claim (NOPC) No. 05 regarding a request by the Contractor for additional compensation for changes to the contract plans as a result of Integrated Shop Drawing (ISD) process.

KFM's Transmittal No. 523, Revision No. 00 Supplemental Notice of Potential Claim #05-031707 has inappropriately added issues related to CCO No. 41 to the issues related to CCO Nos. 17 and 18 included in your Initial Notice of Potential Claim submitted on March 16, 2007. A Draft CCO No. 41 has been submitted for your review on April 16, 2007.

The Contractor is advised that this Supplemental Notice of Potential Claim fails to provide, 1) an itemized breakdown of individual costs and how the estimate was determined; and 2) 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 as required by Section 9-1.04 "Notice of Potential Claim" of the Special Provisions. If the Contractor elects to further pursue this potential claim, please remove the issues related to CCO No. 41, and include an itemized breakdown of individual costs and a time impact analysis of the project schedule in the Final Notice of Potential Claim.

The Department understands the Contractor's position to be that "The work of incorporating the details described in CCO #17/18 draft contract plans into the final construction fell outside of the base contract scope as indicated by State Letters #150 and #180. Compensation for those detail changes was not addressed on any CCOs executed prior to the execution of CCO #29 on December 2, 2005". In addition, the Department understands that the Contractor's position to be that "CCOs #17 and 18 were executed prior to Contract restart and the amount of compensation agreed by KFM and the State was based only upon this scope of work and the accounting of this amount agrees with this scope", and that "The amount of compensation for CCO #29 was agreed upon by KFM and the State based on this scope of work and the accounting of this amount agrees with this scope. KFM was not compensated for any changes other than those describe in this scope."

Regarding CCO Nos. 17 and 18, the Department's Letters No. 150, dated August 17, 2004, and No. 180, dated September 6, 2004 directed KFM to proceed with the work to modify the footing at Pier T1 in accordance with the attached drawings. These modifications included revisions to the fender, the top plate, the pile sleeves, the wall bar reinforcement, and the concrete limits of the footing. These drawings either superseded (35R1, 36R1, etc.) or supplemented (74S1, 74S2, etc.) their corresponding sheets in the Project Plans.

Plan sheets issued with CCO Nos. 17 and 18 described the nature of the details for construction of the modified Pier T1 and stated that CCO Nos. 17 and 18 plan sheets either superseded or supplemented their corresponding sheets in the Project Plans. The Contractor agreed that the additional plan sheets provided by CCO Nos. 17 and 18 were part of the contract plans when KFM signed CCO Nos. 17 and 18 on August 1, 2005.

At the time that CCO Nos. 17 and 18 were signed the contract was being terminated. Therefore, as the Pier T1 was not currently under construction, the Department limited the payment provided for CCO Nos. 17 and 18 to work already performed by the Contractor's ISD subcontractor.

On December 2, 2006 the Contractor signed CCO No. 29 which compensated "the Contractor for direct labor, indirect labor, equipment, material, home office, G & A costs, onsite yard costs, fuel costs, equipment breakdown, escalation of equipment, materials, labor, loss of productivity, inefficiencies, and Time Related Overhead to complete the work described in the base contract, previous CCOs and this CCO." Although the Contractor was not compensated by a separate set of change orders for the work in constructing the work described in CCO Nos. 17 and 18, CCO Nos. 17 and 18 added new sheets and amended others to the contract plans. Therefore, full and final compensation for completing the work described in the base contract (which by August 1, 2005 included plan sheets provided by CCO Nos. 17 and 18) was (along with the base contract and all CCOs written prior to December 2, 2006) provided in CCO No. 29.

Based on our 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 regarding any further pursuit of this matter by the Contractor.

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, 62.001.05