KFM
E2 / T1 PROJECT
KIEWIT / FCI / MANSON, A JV

P.O. BOX 23223 Oakland, CA 94623
Phone (510) 419-0120 / Fax (510) 832-1456

LETTER OF TRANSMITTAL
SAS Foundations E2/T1 Project

Run Date 15-Feb-08
Time 2:30 PM

Dated:

TRANSMITTAL No: **KFM-TRN-000725** **Rev:** **00**

To: **Pedro Sanchez**
Caltrans - SAS E2/T1 Foundation Project
333 Burma Road
Oakland CA 94607
Phone: 510-286-0538 Fax:

Co/Job # **364-4347**
Contract # **04-0120E4**
Sub/Supplier:
Sub/Supplier No:

Subject: NOPC 22-011808 Final NOPC

Special Provis. (SP) REF:
Standard Spec. (SS) REF:
RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items: ☑ Attached ☐ Via Fax

- ☐ Contract Plans/Specs
- ☐ Drawings/Calculations
- ☐ Change Order
- ☐ Copy of Letter
- ☐ Certs of Compl./Samples
- ☐ Schedule
- ☐ Progress Estimate Request
- ☐ Payroll Information
- ☐ Working Drawings
- ☐ WQCP and/or Addenda
- ☐ Weekly Welding Reports
- ☐ CWR Procedure

Item	Date	Copies	Description	Pages
01	15-Feb-2008	1	NOPC 22-011808 Form CEM-6201c	

These are transmitted as checked below:

- ☐ For Approval
- ☑ For Your Use
- ☐ For Review/Comment
- ☐ As Requested
- ☐ Return For Correction
- ☐ For Information

Remarks:

CC:

Submitted By: **George Atkinson**
(KFM Staff Member – Originator of Transmittal)

Checked & Sent By:

Contract Admin/DCS Staff

Copy To: Job Office Files

An Equal Opportunity Employer

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

FULL AND FINAL DOCUMENTATION OF POTENTIAL CLAIM

CEM-6201C (NEW 9/2002)

FOR STATE USE ONLY		
Received By	(For resident engineer)	Date

TO	CONTRACT NUMBER	DATE	IDENTIFICATION NUMBER
Pedro Sanchez (resident engineer)	04-0120E4	February 15, 2008	22-011808

This is the Full and Final Documentation 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: January 18, 2008

The complete and factual narration of events which fully describe the nature and circumstances that caused the dispute or disagreement and potential claim are attached hereto.

See attached "NOPC 22-011808 -- Final Notice of Potential Claim"

(attach sheets as required for full and final documentation)

The basis of this claim including all relevant contract provisions and a statement of the reasons these provisions support and provide basis for entitlement of the potential claim are attached hereto.

See attached "NOPC 22-011808 -- Final Notice of Potential Claim"

(attach sheets as required for full and final documentation)

The identification and copies of any documents and substance of any oral communication that support the potential claim are attached hereto.

See attached "NOPC 22-011808 -- Final Notice of Potential Claim"

(attach sheets as required for full and final documentation)

The exact dollar amount requested and an itemized breakdown of individual costs segregated by labor, materials, equipment and other are attached hereto.

See attached "NOPC 22-011808 -- Final Notice of Potential Claim"

(attach sheets as required for full and final documentation)

The exact amount of any time adjustment requested including justification thereof and time impact analysis are attached hereto.

See attached "NOPC 22-011808 -- Final Notice of Potential Claim"

(attach sheets as required for full and final documentation)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documentation are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. 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.

Kiewit / FCI / Manson AJV

SUBCONTRACTOR or CONTRACTOR

(Circle One)

(Authorized Representative)

For a subcontractor potential claim

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

PRIME CONTRACTOR

(Authorized Representative)

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Kiewit/FCI/Manson AJV
Contract 04-0120E4

NOPC 22-011808 – Final Notice of Potential Claim

Nature and Circumstances of Potential Claim

Initial Notice of Potential Claim #22-011808 outlined three items considered by Kiewit/FCI/Manson ("KFM") to be administrative disputes and one item as a potential administrative dispute at the time of Contract Acceptance on January 18, 2008. They were:

Administrative Disputes
1) Labor compliance violation with respect to Inspection Services, Inc.
2) Bid Items #18 and 20 concrete temperature exceedence deduction
3) Bid Item #41 overbid deduction

Potential Administrative Disputes
1) Foreign Steel Incorporation

Of the three Administrative Disputes listed above, only Item #2, concrete temperature exceedence deduction remains in dispute. Items #1 and 3 have been resolved as of the filing date of this final package.

The potential administrative dispute, Foreign Steel Incorporation, remains unresolved and will be further documented in this final package.

Administrative Dispute Item #1, Labor Compliance deduction, has been resolved in Progress Estimate #46 dated January 25, 2008. The State released the compliance deduction after labor compliance documentation had been submitted by KFM to the State.

Administrative Dispute Item #2, Concrete Temperature Exceedance deduction has not been resolved. However, the scope of the dispute has been reduced. The deduction made relative to the E2 CJ3 pour in which the temperature recorded exceeded the maximum temperature by 0.25 degrees C is the only outstanding deduction still in dispute. KFM rescinds this Notice of Potential Claim relative to the deductions taken as a result of the temperature exceedence during the E2 CJ2 and E2 E2PL1 pours.

KFM's letter #366, dated January 17, 2008 details our position regarding the temperature exceedance. KFM has complied with the intent of the contract specifications by developing and implementing thermal control plans to best ensure that the concrete temperature would be maintained below the required 65 degrees C. As demonstrated, the maximum recorded variation over 65 degrees C is only 0.25 degrees C. This is an insignificant variation from the allowed temperature and is well within the tolerance limits of the measuring devices and predictive models.

The State's rigid interpretation of the contract requirements regarding the maximum allowable concrete temperature led to the deduction under Bid Item #20. This interpretation does not consider the degree of severity of the exceedence nor does it consider the quality of the final product received.

The minor exceedance and the high quality of the final product accepted by the State on January 18, 2008 support KFM's argument that the intent of the specifications has been met and that KFM is entitled to full payment under Bid Item #20.

KFM requests release of the deduction taken in Progress Estimate #42 relative to this E2 CJ3 pour.

Administrative Dispute #3, Bid Item #41, Mobilization, overbid deduction has been resolved in Progress Estimate #47 dated February 5, 2008. The State paid BI #41, Mobilization, in full.

Potential Administrative Dispute #1, Incorporation of Foreign Steel. KFM has incorporated foreign steel into the work with the State's knowledge. The value of this steel is $ 271,993.00 representing 0.063% of the total estimated contract cost, less than the 1/10 of 1% as allowed by contract.

Requests for acceptance of this have not been fully answered. Removal of this material is not economically reasonable and would likely be deleterious to the as-built product. KFM is concerned that the product has remained in place without specific acceptance by the State exposing KFM to possible adverse actions by the State or other parties. The State indicated by State Letter #3858, dated February 6, 2008, that the T1 Anchor Rod Sleeve Extensions may remain in place and that a CCO for acceptance would be issued. KFM requests that the State immediately issue acceptance of all foreign steel incorporated into the project in accordance with Special Provision 5-1.075, "Buy America".

Contract Basis for Potential Claim

Imminent completion of all contract work by KFM and Contract Acceptance by the Department without resolution of these administrative disputes gave rise to this NOPC.

Amended Standard Specification 9-1.07B, "Final Payment and Claims", fifth paragraph, notes that claims made in response to the Proposed Final Estimate following Contract Acceptance will not be considered if the Contractor did not first comply with applicable notice or protest requirements of the contract including 9-1.04 "Notice of Potential Claim".

Since the disputed deductions remained as of the December 20, 2007 progress estimate, and could not be reasonably anticipated to be released prior to anticipated completion date of January 18, 2008, KFM made a Notice of Potential Claim to allow for claims associated with these administrative disputes in accordance with Amended Standard Specifications 9-1.04, "Notice of Potential Claim" and 9-1.07B, "Final Payment and Claims".

Cost Estimate for Potential Claim

Bid Item	Deduction
#20	($33,000.00)
Foreign Steel	Indeterminate

Time Impact Analysis

No adjustment to contract time of performance is proposed by this NOPC.

SAS Foundations Project #04-0120E4
Kiewit / FCI / Manson. A Joint Venture

BUY AMERICA - FOREIGN STEEL UTILIZATION

TOTAL ALLOWED $ 273,714.13

Executed CCOs $ 90,911,152.00 as of 2/14/08
Final Estimated CCO Amount $ 96,264,131.00

BI#	Bid Item Description	Foreign Matl. Used	Work Completed	From Sub/Supplier	Qty	U/M	$ Amount	Total Project $	Estimated Final Contract Amount Remaining $ Allowed
NA	Plastic Waler Connections at E2 Footing	1x11 7/8 bolt	11/21/2007	Portland Bolt	2,440	ea	$ 71,614.00	$ 71,614.00	$ 202,100.13
NA	Plastic Waler Connections at E2 Footing	1 5/8 coupler	11/21/2007	Portland Bolt	2,440	ea	$ 70,028.00	$ 141,642.00	$ 132,072.13
NA	Plastic Waler Connections at E2 Footing	1x10 7/8 bolt & washer	11/21/2007	Portland Bolt	2,440	ea	$ 67,334.00	$ 208,976.00	$ 64,738.13
NA	Plastic Waler Connections at E2 Footing	1/2 washers	11/21/2007	Portland Bolt	4,800	ea	$ 1,200.00	$ 210,176.00	$ 63,538.13
NA	Plastic Waler Connections at E2 Footing	1-1/8 washer	11/21/2007	Portland Bolt	1,000	ea	$ 1,300.00	$ 211,476.00	$ 62,238.13
NA	T1 Temporary Fender Connections	1/2x20 bolt	1/9/2008	Portland Bolt	70	ea	$ 689.50	$ 212,165.50	$ 61,548.63
NA	T1 Temporary Fender Connections	1/2x10 bolt	1/9/2008	Portland Bolt	385	ea	$ 3,619.00	$ 215,784.50	$ 57,929.63
NA	T1 Temporary Fender Connections	1x26-3/4 bolt	1/9/2008	Portland Bolt	88	ea	$ 5,196.40	$ 220,980.90	$ 52,733.23
NA	T1 Temporary Fender Connections	1x24-3/4 bolt	1/9/2008	Portland Bolt	88	ea	$ 5,187.60	$ 226,168.50	$ 47,545.63
NA	T1 Temporary Fender Connections	1/2 washers	1/9/2008	Portland Bolt	350	ea	$ 752.50	$ 226,921.00	$ 46,793.13
NA	T1 Temporary Fender Connections	1-1/8 washer	1/9/2008	Portland Bolt	420	ea	$ 2,352.00	$ 229,273.00	$ 44,441.13
NA	T1 Pipe Sleeves	6 5/8" pipe sleeve ext.	12/21/2007	KOS	388.00	ea	$ 42,720.00	$ 271,993.00	$ 1,721.13

TOTAL CONTRACT % 0.00063%