

21-Aug-2007

ABF-CAL-LTR-000266

Mr. Gary Pursell
Resident Engineer
California Department of Transportation
333 Burma Road,
Oakland, CA 94607, USA

PROJECT: San Francisco Oakland Bay SAS Bridge Superstructure
Caltrans Contract No. 04-0120F4
ABF Job No. 660110

SUBJECT: CCO 38 PROTEST
Letter No. 05-03.01-000457

Gentlemen:

American Bridge / Fluor, JV (ABF) is in receipt of the referenced Engineer's letter dated August 14, 2007 wherein ABF is requested to either accept the CCO as is and withdraw the protest letter, or submit a Notice of Potential Claim in accordance with the provisions and time lines defined in the Special Provisions.

In the second paragraph of the Department's letter it states "It is the Department's understanding that ABF does not dispute that CCO 38 provides full and complete compensation for performing the additional detailing defined by the CCO. Instead, ABF-CAL-LTR-000224 returned CCO 38 unsigned in order to "reserve our rights to time."

ABF agrees that CCO 38 provides direct cost compensation to perform the additional detailing specifically identified in CCO 38. ABF disagrees that CCO 38 provides "full and complete compensation for performing the additional detailing defined by the CCO". ABF returned CCO 38, not only to reserve our rights to time as stated, but also to reserve our rights to future claims for direct and/or indirect cost impacts.

For example, the additional detailing work identified in CCO 38 does not currently affect the Contract Scheduled Completion Date however it does impact the scheduled completion date of our detailing subcontractor, Candraft Tensor LLC (CTLLC). Additionally, CTLLC's CCO 38 schedule impacts are compounded when entangled with similar Department directives. For example, see ABF-CAL-LTR-000247 and ABF-RFI-000317R00/R01/NOPC 2. ABF anticipates that claims for additional compensation in excess of the direct cost of performance will be submitted by CTLLC and ABF does not want to be precluded from passing these claims through to the Department, if the Department is responsible for the additional time and cost impacts to CTLLC.

The third paragraph of the referenced letter advises that the "contract does not provide for broad, undefined, reservation of rights related to the issuance of a CCO." The fact that the Contract does not specifically address the provision of a reservation of rights statement in a CCO does not preclude the inclusion of reservation of rights language in a CCO when it reflects the agreement of the parties. ABF believes that a CCO should expressly reflect the entire understanding and agreement of the parties.

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ABF does not agree that the suggested language is broad or undefined. The suggested reservation of rights language is as follows:

“This Contract Change Order does not surrender any right the Contractor may have under any clause or provision of the Contract documents for entitlements to additional cost reimbursements and time extensions (damages) this Contract Change Order and its specified work may cause to any and all work not specifically described and set forth in this Contract Change Order.”

The statement “This Contract Change Order does not surrender any right the Contractor may have under any clause or provision of the Contract documents for entitlements to additional cost reimbursements and time extensions (damages)” is not ambiguous, broad or undefined. If, in the opinion of the Department, ABF is surrendering future Contract rights by executing CCO 38, the Department is requested to identify the particular Contract provisions surrendered, so that they may be addressed specifically by the parties.

The statement that the Contract Change Order does not surrender the Contractor’s rights regarding all work not specifically described in the Contract Change Order has, in regard to RFIs, been previously addressed and the Department agreed to this understanding. The statement merely memorializes the Department’s previous agreement.

ABF believes that the incorporation of a reservation of rights into the “work to be done” section of the CCO addresses the exception requirement contained in the language of the CCO and promotes the equitable resolution of CCO issues, e.g. the cumulative impact to ABF’s global detailing effort resulting from RFIs, in a fair and equitable manner. If the Department has acceptable reservation of rights language, reflecting the understanding of the party’s, please provide a copy to ABF for our review and consideration.

ABF will not withdraw its protest at this time. Once we receive the Department’s response to the issues addressed herein, ABF will reconsider its options at that time.

Sincerely,

AMERICAN BRIDGE/FLUOR ENTERPRISES, INC. A JOINT VENTURE

<<< ORIGINAL SIGNED >>>

Michael Flowers
Project Director
MF/pw/rt

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02.01