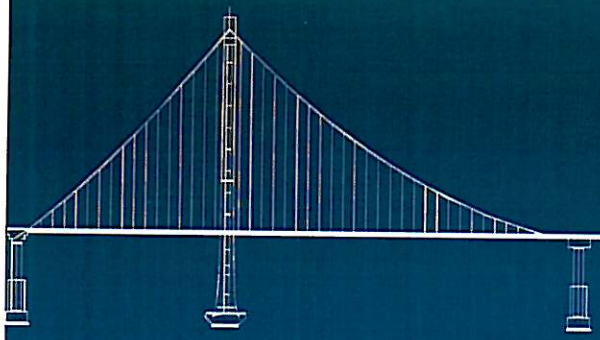
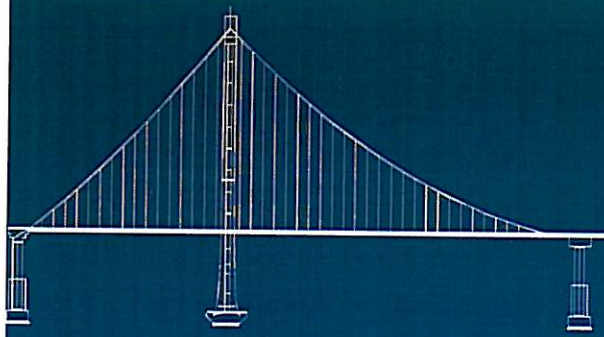


NOPC 8

Weekly Statement of Working Day Report #112 Protest

RECD 02 MAY 07 #0094438

Contract 04-0120F4



Background

July 2, 2008	Power outage on Changxing Island
July 3, 2008	ABF letter No. 580 notified the Department of a power outage on Changxing Island shutting down ZPMC's fabrication
July 3, 2008	Power restored on Changxing island in the evening

July 2, 2008 Inspector Diary

STATE OF CALIFORNIA--BUSINESS,TRANSPORTACTION AND HOUSING AGENCY Arnold Schwarzenegger, Governor

RESIDENT ENGINEER'S DAILY REPORT
ASST. RESIDENT ENGINEER'S DAILY REPORT

☐ RESIDENT ENGINEER'S SUMMARY REPORT
☐ RESIDENT ENGINEER'S DAILY REPORT
☑ ASST. RESIDENT ENGINEER'S DAILY REPORT

Contract #: 04-0120F4
SAS Superstructure
04-SF-80-13.2 / 13.9

Report No: DR-000823 **Working Day Calendar:** 567 **Date:** 02-Jul-2008
Fabricator: Zhenhua Port Machinery Company, Ltd (ZPMC), Changxing Island **Fabricator Shift Hour:** 0:00 to 1
Location: Shanghai, China **RE Shift Hour:** 05:45 to 16:15
Weather: Partly Cloud
Material Decription: SAS

Summary:
Left the Marriott at 05:45 fc

Jim is on vacation, so I was
information gathered from t

In the Tower Heavy shop, th
- aligning and tack welding
- butt welding of skin plate
- milling of the beveled edg
- Drilling splice bolt holes
- fitting the final segment jo

On the East shaft, Skin A, st
adjusting of the stiffeners.
stiffeners, as well as heat str
still ongoing.

On the South shaft, Skin A, stiffener-to-skin tacking: Last night, they added 2 more aligning jigs at the top of the stiffeners. This brings the total number of jigs to 16. At the beginning of the shift, it appeared as if all of the set screws on the jigs had been engaged, and are in their final position. They continued to tack weld all morning. The tacks are spaced at intervals of as low as 200mm.

On the CNC tables, the one in Heavy shop Bay 1 was performing layout and etching of stiffener locations on South shaft, Skin E. The CNC table in Heavy shop Bay 2 was performing final cuts/copes of diaphragms.

The work shift for ZPMC was cut short today due to a power outage at 10:20. The power did not return until after the end of the shift. During the power outage, I got caught up on paperwork, and had a meeting with ABF regarding surveying and dimensional verification.

The meeting with ABF regarding surveying and dimensional verification was from about 13:00 until 14:00. Present were Scott Kennedy, Ken Lee, and myself of CT, and Gene Rosamilia, Tom Lee, Song, and Levi of ABF. ABF went over in detail how they perform their checks and at what times.

On the CNC tables, the one in Heavy shop Bay 1 was performing layout and etching of stiffener locations on South shaft, Skin E. The CNC table in Heavy shop Bay 2 was performing final cuts/copes of diaphragms.

The work shift for ZPMC was cut short today due to a power outage at 10:20. The power did not return until after the end of the shift. During the power outage, I got caught up on paperwork, and had a meeting with ABF regarding surveying and dimensional verification.

The meeting with ABF regarding surveying and dimensional verification was from about 13:00 until 14:00. Present were Scott Kennedy, Ken Lee, and myself of CT, and Gene Rosamilia, Tom Lee, Song, and Levi of ABF. ABF went over in detail how they perform their checks and at what times.

Power Outage

Began at 10:20 am

Exhibit B.9

July 3, 2008 Inspector Diary

STATE OF CALIFORNIA–BUSINESS,TRANSPORTACTION AND HOUSING AGENCY Arnold Schwarzenegger, Governor

RESIDENT ENGINEER'S DAILY REPORT
ASST. RESIDENT ENGINEER'S DAILY REPORT

☐ RESIDENT ENGINEER'S SUMMARY REPORT
☐ RESIDENT ENGINEER'S DAILY REPORT
☑ ASST. RESIDENT ENGINEER'S DAILY REPORT

Contract #: 04-0120F4
SAS Superstructure
04-SF-80-13.2 / 13.9

Report No: DR-000824 **Working Day Calendar:** 568 **Date:** 03-Jul-2008
Fabricator: Zhenhua Port Machinery Company, Ltd (ZPMC), Changxing Island **Fabricator Shift Hour:** 0:00 to 24:00
Location: Shanghai, China **RE Shift Hour:** 05:45 to 16:15
Weather: Partly Cloud **Temperature:** 78 F/ 90 F
Material Decription: SAS Tower

Summary:
Left the Marriott at 05:45 for Changxing Island.

Before leaving the Marriott, we received information that there was no power on the island, but the ferries were still running. Most people stayed and worked at room 602, but management wanted a couple of CT personnel on the island just in case they did start to do any work. So I came to the island for the Tower group.

I made 2 rounds throughout Tower Heavy shop bays, as well as Bays 1 thru 8, looking to see if any work was ongoing.

The only Tower related work ongoing was some checking, adjusting, and straightening of the longitudinal stiffeners on East shaft, Skin A.

The only other work ongoing was routine cleaning and maintenance.

I reviewed and upda
responses to NPRs t
and NPRs were revi
- NCR-0060, NPR-
METS.
- NCR-0044, we ha
ABF. I put it on the

I was able to connec
Salvador and Mark S
e-mails and sending

By the end of the shi

Arrived back at the
and other misc paperwork.

Shift hours: 8 regular & 2 OT

Daily Report Page 1 of 2

I made 2 rounds throughout Tower Heavy shop bays, as well as Bays 1 thru 8, looking to see if any work was ongoing.

The only Tower related work ongoing was some checking, adjusting, and straightening of the longitudinal stiffeners on East shaft, Skin A.

The only other work ongoing was routine cleaning and maintenance.

Tower work included checking, adjusting and straightening of longitudinal Stiffeners

Exhibit B.9

Power Outage Documented in Shanghai Daily News

ShanghaiDaily.com

Published on ShanghaiDaily.com (http://www.shanghaidaily.com/)
http://www.shanghaidaily.com/sp/article/2008/200807/20080704/article_365624.htm

Power restored to Changxing Island

Created: 2008-7-4 9:14:15
Author:Yang Lifei

SHANGHAI'S power authority restored power to homes and businesses on Changxing Island late yesterday evening after a cable connecting Chongming Island was short circuited, Eastday.com reported today.

The Shanghai Municipal Electric Company confirmed the blackout that occurred on Wednesday morning was caused by ``external factors.''

The company officials said they found paint had dropped onto the cable and this melted two 110-kilovolt cables above the Yangtze River, 2.5 kilometers from the island's southern coast

Rough waters and bad weather hampered efforts to reach the wires, but the company succeeded in completing the rush repairs after more than 30 hours.

"About 150 experienced repair staff and seven boats were dispatched to the scene," an official told the Website. ``We started to provide electricity at 8pm and the power supply to all island users was restored at 10:43pm."

- Power restored to island on July 3 at 10:43pm
- Power outage effected electrical supplies from July 2 at 10:20am till July 3 at 10:43pm (~36 hours)
- TIA Claims 6 days

Exhibit B12

STATE OF CALIFORNIA–BUSINESS,TRANSPORTACTION AND HOUSING AGENCY Arnold Schwarzenegger, Governor

RESIDENT ENGINEER'S DAILY REPORT
ASST. RESIDENT ENGINEER'S DAILY REPORT

☐ RESIDENT ENGINEER'S SUMMARY REPORT
☐ RESIDENT ENGINEER'S DAILY REPORT
☑ ASST. RESIDENT ENGINEER'S DAILY REPORT

Contract #: 04-0120F4
SAS Superstructure
04-SF-80-13.2 / 13.9

Report No: DR-000825 **Working Day Calendar:** 569 **Date:** 04-Jul-2008
Fabricator: Zhenhua Port Machinery Company, Ltd (ZPMC), Changxing Island **Fabricator Shift Hour:** 0:00 to 24:00
Location: Shanghai, China **RE Shift Hour:** 05:45 to 16:15
Weather: Partly Cloud **Temperature:** F/ F
Material Decription: SAS Tower

Summary:
Left the Marriott at 05:45 for Changxing Island.

Jim is on vacation, so I was tracking production on skins, stiffeners, and assembly in the Heavy Tower shop. The information gathered from the production tracking was tabulated in the spreadsheets previously created.

The power was restored at about midnight this morning.

In the Tower Heavy shop, the following work was ongoing:
- aligning and tack welding of stiffeners to skin plates (see note below for more detail)
- butt welding of longitudinal stiffeners, no butt welding of skins today
- milling of the beveled edges of skin plates and longitudinal stiffeners
- Drilling splice bolt holes in longitudinal stiffeners

On the East shaft, Skin A, stiffener-to-skin tacking: They continued to tack weld, check for plumb, and do some adjusting of the stiffeners. Adjusting was being done by mechanical means with a small hand jack between the stiffeners, as well as heat straightening. By the end of the shift, initial tack welding and adjusting was still ongoing. The straightening and adjusting of the East Skin A is more extensive and is going much more slowly than when they did the South Skin A.

On the South shaft, Skin A
the shift, they were approx

On the CNC tables, the on
South shaft, Skin E. The C

I finalized the update of th
weekly update.

Arrived back at the Marric

Shift hours: 10 OT

Daily Report

July 4, 2008 Inspector Diary

Power restored late July 3, 2009

Tower work included:

- Welding stiffeners to skin plates
- Welding longitudinal stiffeners
- Milling plates and stiffeners
- Drilling splice bolt holes in stiffeners

The power was restored at about midnight this morning.

In the Tower Heavy shop, the following work was ongoing:
- aligning and tack welding of stiffeners to skin plates (see note below for more detail)
- butt welding of longitudinal stiffeners, no butt welding of skins today
- milling of the beveled edges of skin plates and longitudinal stiffeners
- Drilling splice bolt holes in longitudinal stiffeners

Exhibit B.9

ABF Claims No Work on Controlling Operation for 3 days

American Bridge / FLUOR
A JOINT VENTURE

375 Burma Road
Oakland, CA 94607 USA
Phone 510-808-4600
Fax 510-808-4601

03-Oct-2008

ABF-CAL-LTR-000700

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: **Protest of WSWD Report No. 112 - Notice of Potential Claim # 8**

REFERENCE: **Department Letter No. 05.03.01-002698 Dated September 18, 2008**

Gentlemen:

American Bridge/Fluor Enterprises, Inc., A Joint Venture (ABFJV) hereby submits, pursuant to Section 9-1.04, Notice of Potential Claim, of the Standard Specifications as modified by the Special Provisions and Section 5-1.12, Dispute Review Board, of the Special Provisions, ABFJV's written reply to Department Letter No. 05.03.01-002698 dated September 18, 2008 provided by the Department in response to ABFJV letter ABF-CAL-LTR-000648, Supplemental Notice of Potential Claim No. 8 dated August 29, 2008.

The Department, in its latest response, determined that ABFJV's claim has no basis under the Contract.

ABFJV disagrees.

The Issue

Is American Bridge/Fluor Enterprises, Inc., Joint Venture entitled to a non-compensable time adjustment due to delayed Work activities that arose from an unforeseeable event that completely halted the work of Shanghai Zhenhua Port Machinery Company Ltd, (ZPMC), ABFJV's steel fabricator?

The Event

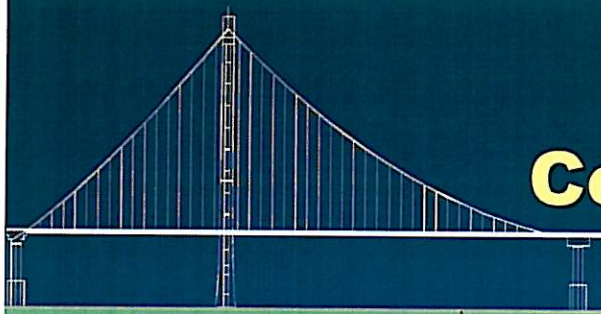
On July 02, 2008 the anchor of an unknown vessel, navigating the Yangtze River struck and severed a submerged power cable that carries primary electrical service to Changxing Island, China. As a result thereof, a power outage occurred throughout Changxing Island from July 02, 2008 through July 04, 2008. This power outage resulted in a three (3) day delay, during which time ZPMC was shut down and unable to progress the Work.

This event was beyond the control and without the fault or negligence of ABFJV or ZPMC, or any ABFJV or ZPMC subcontractors or suppliers, at any tier.

"This Power Outage resulted in a three (3) day Delay, during which time ZPMC was shut down and unable to progress the Work."

Exhibit A.9

SAS Project
Controlling Operation



2006: May Jun Jul Aug Sep Oct Nov Dec
2007: Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec
2008: Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan Feb

Submittal Preparation (May 15 to Oct 21, 2006)

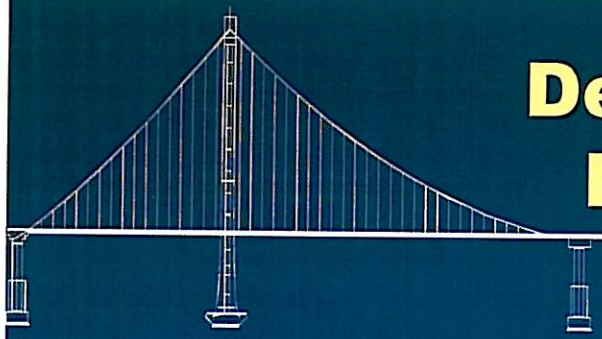
Shear Leg Barge & Crane
(Oct 22, 2006 to Dec 15, 2007)

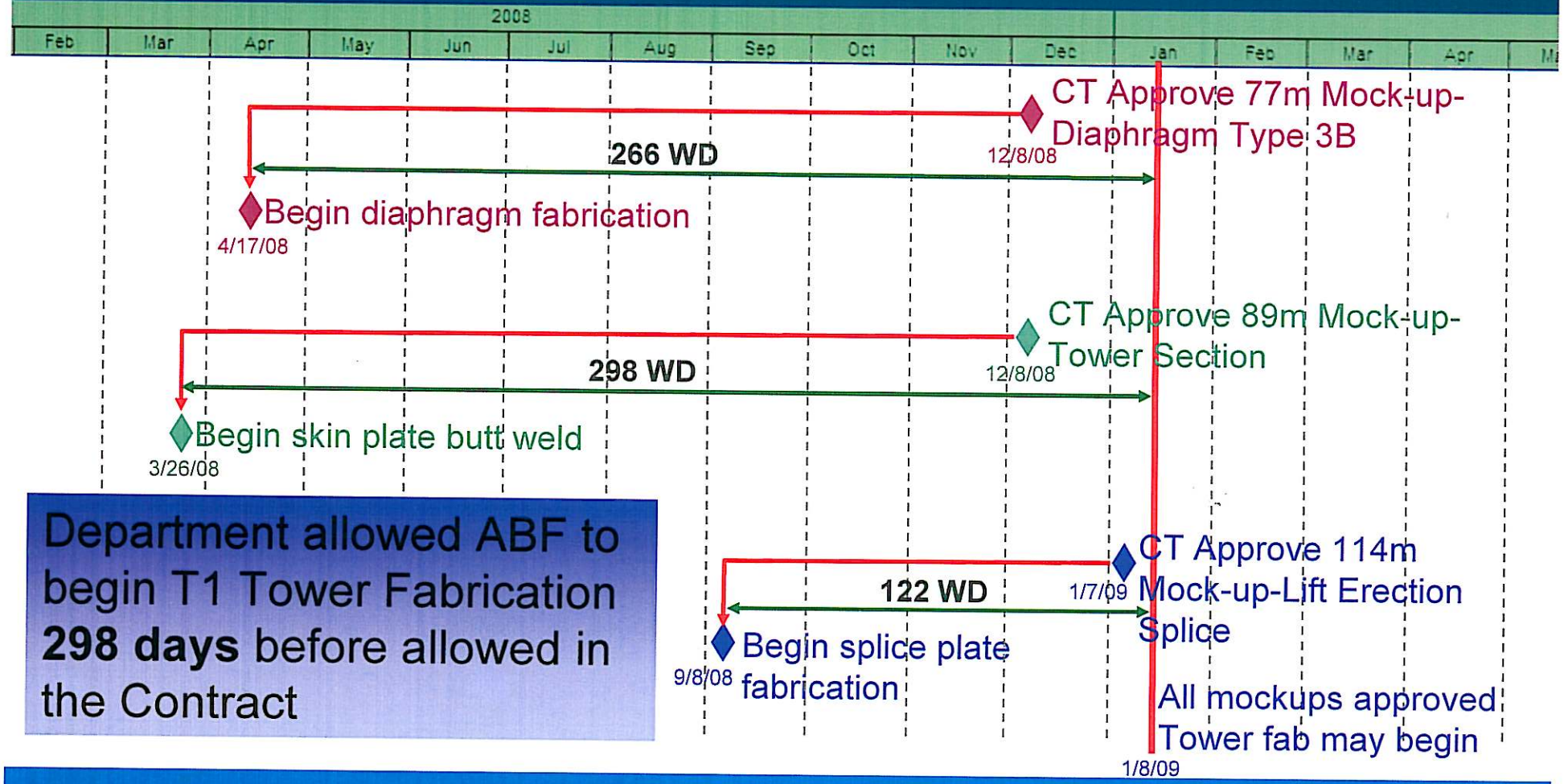
OBG & T1 Fabrication
(Dec 16 to Jan 19, 2008)

Tower Fabrication and
Mock-ups (Jan 20, to Present)

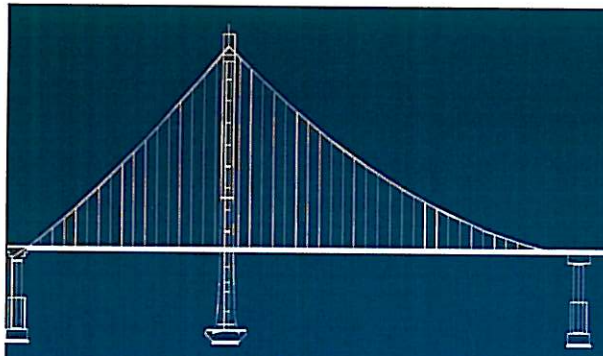
Protested WSWDs
-Week Ending June 2 to July 20th, 2007
-Week Ending July 8, 2008 (due to power outage)
-Week Ending Dec 27 to Present

Department's Waiver Allowing Early T1 Tower Fabrication





Department allowed ABF to begin T1 Tower Fabrication **298 days** before allowed in the Contract



Background

July 2, 2008	Power outage on Changxing Island
July 3, 2008	ABF letter No. 580 notified the Department of a power outage on Changxing Island shutting down ZPMC's fabrication
July 3, 2008	Power restored on Changxing island in the evening
July 21, 2008	ABF Letter No. 597 protested WSWD #112 requesting that July 2-4, 2008 not be charged as working days

Weekly Statement of Working Days #112

State of California - Department of Transportation

WEEKLY STATEMENT OF WORKING & OVERHEAD DAYS - TOLL BRIDGE
7-DAY Work Week

File Index No. 27

CONTRACT: 04-0120F4
SF-80-8.2/8.7

REPORT NUMBER 112

Contractor
AMERICAN BRIDGE FLUOR ENTERPRISES INC A JOINT VENTURE

WEEK ENDING 5-Jul-08

Date	Day	Weather OAKLAND	Weather SHANGHAI	Working Days Phase 1	Working Days Phase 2	Working Days Phase 3	No Work on Controlling Operation(s)
29-Jun-08	Sunday	Fair	Fair	1	1	1	0
30-Jun-08	Monday	Fair	Fair	1	1	1	0
1-Jul-08	Tuesday	Fair	Fair	1	1	1	0
2-Jul-08	Wednesday	Fair	Fair	1	1	1	0
3-Jul-08	Thursday	Fair	Fair	1	1	1	0
4-Jul-08	Friday	Fair	Fair	1	1	1	0
5-Jul-08	Saturday	Fair	Fair	1	1	1	0
Days this week				7	7	7	0
Days previously reported				773	773	773	0
Total days to date				780	780	780	0

Time Adjustments	CCO Numbers No. of Time Extension CCO's to date	Days Approved Phase 1 CCO	Days Approved Phase 1 Other	Days Approved Phase 2 CCO	Days Approved Phase 2 Other	Days Approved Phase 3 CCO	Days Approved Phase 3 Other
Days this report	None	0	0	0	0	0	0
Previously	#10	30	0	30	0	30	0
Totals days to date		30	0	30	0	30	0

COMPUTATION OF EXTENDED DATE FOR COMPLETION	Phase 1 Number of Days	Phase 1 Numbered Day	Phase 1 Date	Phase 2 Number of Days	Phase 2 Numbered Day	Phase 2 Date	Phase 3 Number of Days	Phase 3 Numbered Day	Phase 3 Date
1. First Working Day (15 days after approval)		791	18-May-06		791	18-May-06		791	18-May-06
2. Working days specified in Contract	2130			2310			2490		
3. Computed Date for Completion		2920	16-Mar-12		3100	12-Sep-12		3280	11-Mar-13
4. Days Contract Suspended to date	0			0			0		
5. Total time adjustment days approved to date (CCO plus others)	30			30			30		
6. Subtotal (Line 4 + Line 5)	30			30			30		
7. EXTENDED DATE FOR COMPLETION (Line 3 plus Line 6)		2950	15-Apr-12		3130	12-Oct-12		3310	10-Apr-13
8. Revised working days for contract (Line 2 plus Line 6)	2160			2340			2520		
9. Total working days to date	780			780			780		
10. WORKING DAYS REMAINING (Line 8 minus Line 9)	1380			1560			1740		
11. ACTUAL PHASE COMPLETION (to be entered upon completion)									

Controlling Operation(s): TI TOWER FABRICATION

RESIDENT ENGINEER'S SIGNATURE: Gary Russell

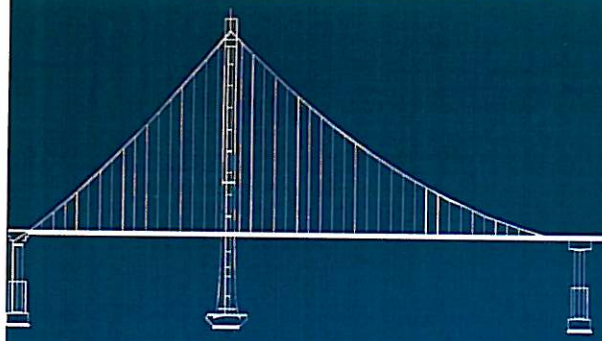
DATE: 7/14/08

Remarks: Phase 3 Time Complete 31.0%

Contract awarded on April 18, 2006. Contract Approved May 3, 2006.
First working day is May 18, 2006.

The Contractor will be allowed fifteen (15) days in which to protest in writing the correctness of the Statement; otherwise, the settlement shall be deemed to have been accepted by the Contractor as corrected.

Exhibit A.2



Background

July 2, 2008	Power outage on Changxing Island
July 3, 2008	ABF letter No. 580 notified the Department of a power outage on Changxing Island shutting down ZPMC's fabrication
July 3, 2008	Power restored on Changxing island in the evening
July 21, 2008	ABF Letter No. 597 protested WSWD #112 requesting that July 2-4, 2008 not be charged as working days
July 29, 2008	State Letter No. 2451 rejected ABF's request to consider the power outage days as non-working days
August 4, 2008	ABF Letter No. 612 declared the power outage at ZPMC an Act of God and therefore in accordance with Section 8-1.06, Time of completion" the three days of shut down should not be considered working days.
August 8, 2008	State Letter No. 2523 rejected the notion that the power outage constituted and Act of God since the power outage was caused by human actions.
August 15, 2008	ABF Letter No. 629 includes NOPC 8 for protest of WSWD Report No 12

NOPC 8
ABF-LET-629

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

INITIAL NOTICE OF POTENTIAL CLAIM

CEM-6201A (NEW 9/2002)

FOR STATE USE ONLY

Received by (For resident engineer) Date

TO	CONTRACT NUMBER	DATE	IDENTIFICATION NUMBER
Mr. Gary Pursell	04-0120F4	08/15/08	008

2. When it is prevented or delayed by an irresistible, superhuman cause…"

Equitably, ABFJV is entitled to a time extension pursuant to Section 8-1.07, Liquidated Damages, of the Standard Specifications because the shutdown

The Department advises that "…the Special Provis
with no exceptions. Non working days do not app
weather, traffic, unfavorable conditions, or tempo
Department's purpose for providing this statement
the Contract defines "working days' as calendar
and holidays. The Contract clearly allows Contra
"working days" to the Time of Completion. Wh
parties, the applicable number of working days
working days remaining and this revised total will
days remaining provided in the Weekly Statement of Working Days, provided each week by the Department.

For the reasons set forth above, ABFJV is entitled to an excusable delay of three (3) days, for the breakage of the submarine electrical cable and subsequent loss of power at ZPMC's fabrication facility located on Changxing Island, China that from July 2, 2008 through July 4, 2008.

"… ABFJV is entitled to an excusable delay of three (3) days, for the breakage of the submarine electrical cable and subsequent loss of power…"

(attach additional sheets as needed)

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 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.

SUBCONTRACTOR or CONTRACTOR (Circle one)

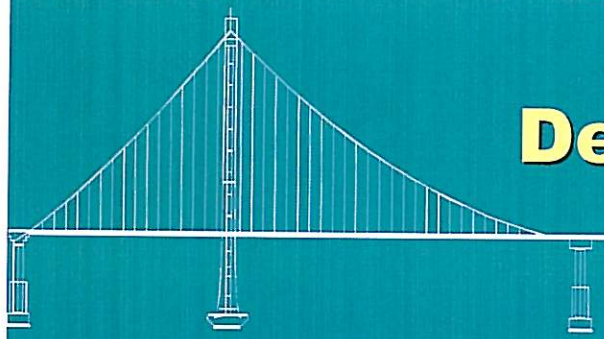
(Authorized Representative)

For a subcontractor Potential claim

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

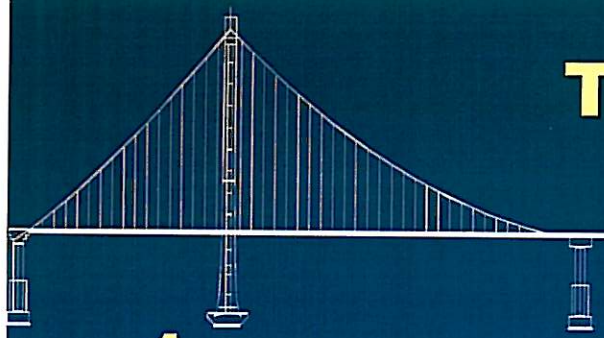
PRIME CONTRACTOR

Exhibit A.6



Department's Position

The power outage does not meet contract criteria for consideration of a time extension



Typical Caltrans Contract Time Management

1. Non-Working Days
   - Weekends/Holidays
   - Weather
   - Traffic Restrictions
   - Suspension of Work

2. Contract Time Extensions
   - Must satisfy Section 8-1.07, "Liquidated Damages," of Std. Specs.

Time Management on SAS Contract

Exhibit B.5

IMPORTANT SPECIAL NOTICES

****

The bidder's attention is directed to Section 2-1.03, "DVBE Goal for This Project." of these special provisions. The Department is evaluating opportunities for potential DVBE participation to establish an appropriate goal for this project.

The Department is also evaluating opportunities for potential Small Business participation to establish appropriate provisions and participation level for this project.

The bidder's attention is directed to Section 2-1.07, "Pre-Award Information/Questionnaire," Section 3, "Award and Execution of Contract," and Section 8-4.01, "Audits," of these special provisions.

Attention is directed to "**Pre-Bid Manufacturing/Fabrication Facility Audit Review Request Guidelines**" available to interested bidders and subcontractors on the Internet at http://www.dot.ca.gov/hq/esc/tollbridge/SFOBB/Sfobb.html#04-0120F4. Requests for the pre-bid audit review shall be submitted in writing with a completed Manufacturing and Fabrication Self Qualification Audit (MFSQA) form to the Duty Senior at the District 4 Office, 111 Grand Avenue, Oakland, California 94612, telephone: (510) 286-5209.

Responses to the **"Pre-Award Information/Questionnaire"** and **"Manufacturing and Fabrication Self-Qualification Audit"** included in the Proposal must be **submitted with the bid**.

The anticipated period of time within which the contract may be awarded has been extended for this project. See Section 3, "Award and Execution of Contract," of these Special Provisions.

Attention is directed to the pre-award qualifications meeting in Section 3-1.01A "Pre-Award Qualifications Meeting" of these special provisions.

Establishing to the satisfaction of the Department, the bidder's qualifications and ability to complete the bridge construction work in a safe and timely manner is a condition for being eligible for award of the contract.

- The definition of a working day has been re-defined for this project. (See Section 4 of these special provisions.)
- The time limit specified in the special provisions for the completion of work contemplated herein is considered insufficient to permit completion of the work by the Contractor working a normal number of hours per day or week on a single shift basis. It is expected that additional shifts will be required throughout the life of the contract to the extent deemed necessary to ensure that the work will be completed within the time limit specified. (See Section 4 of these special provisions.)

Beginning of Work, Time of Completion and Liquidated Damages, SP 4

The contract provisions described herein shall be considered part of the cost of preparing bids and no separate payment will be made therefor.

3-1.01B AWARD AND EXECUTION OF CONTRACT

The award of the contract, if it be awarded, will be made within 30 day
will be subject to extension for such further period as may be agreed upon
concerned. The award, if made, will be to the lowest responsible bidder wh
prescribed and who has met the goal for DVBE participation or has dem
adequate good faith efforts to do so. Meeting the goal for DVBE particip
Department, adequate good faith efforts to do so is a condition for being elig
The contract shall be executed by the successful bidder and shall be r
Department so that it is received within 10 days, not including Saturdays,
received the contract for execution. Failure to do so shall be just cause for f
contract documents shall be delivered to the following address: Department
1727 30th Street, Sacramento, CA 95816
A "Payee Data Record" form will be included in the contract documen
purpose of the form is to facilitate the collection of taxpayer identification d
the Department by the successful bidder with the executed contract and con
shall be deemed to mean the successful bidder. The form is not to be com
complete and return the "Payee Data Record" form to the Department as p
percent of payments due the contractor and penalties of up to $20,000. This
"Payee Data Record" form is in addition to any other retention of payments d
Attention is directed to "California Company Preference" of these special provisions.
The amount of the California company reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor with the lowest responsive bid, except where the "California company" is eligible for a California Small Business Preference, in which case the preference applied shall be the greater of the two, but not both.
If the bidder submitting the lowest responsive bid is not a "California company" and with the benefit of the reciprocal preference, a "California company's" responsive bid is equal to or less than the original lowest responsive bid, the "California company" will be awarded the contract at its submitted bid price except as provided below.

SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES

Attention is directed to the provisions in "Order of Work," of these special provisions, Section 8-1.03, "Beginning of Work," Section 8-1.06, "Time of Completion," and Section 8-1.07, "Liquidated Damages," of the Standard Specifications, and these special provisions.
The Contractor shall begin work within 15 calendar days after the contract has been approved by the Attorney General or the attorney appointed and authorized to represent the Department of Transportation.

The second through fourth paragraphs, inclusive, and the first sentence of the fifth paragraph of Section 8-1.06, "Time of Completion," of the Standard Specifications shall not apply. A working day is defined as any day, with no exceptions.

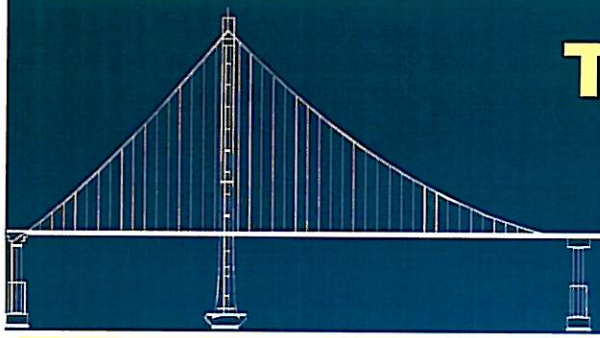
The work shall be completed in phases as described in Section 10-1.01 "Order of Work" of these special provisions.
Phase 1 work shall be diligently prosecuted to completion before the expiration of **2130 WORKING DAYS** beginning on the fifteenth day after approval of the contract.
The Contractor shall pay to the State of California the sum of $100,000 per day as liquidated damages, for each and every day's delay in completing Phase 1 work in excess of the number of working days prescribed above for Phase 1. For each and every working day less than the number of working days prescribed above for Phase 1, the Contractor will receive an incentive payment of $50,000. Should the incentive apply concurrently with other incentives specified elsewhere in these special provisions, both will be earned. The total incentive for Phase 1 work will not exceed $9,000,000.
Phase 2 work shall be diligently prosecuted to completion before the expiration of 180 working days after completion of Phase 1 or **2310 WORKING DAYS** beginning on the fifteenth day after approval of the contract, whichever is earlier.
The Contractor shall pay to the State of California the sum of $100,000 per day as liquidated damages, for each and every day's delay in completing Phase 2 work in excess of the earliest completion date for Phase 2 as prescribed above.
Phase 3 work shall be diligently prosecuted to completion before the expiration of 360 working days after completion of Phase 1 or **2490 WORKING DAYS** beginning on the fifteenth day after approval of the contract, whichever is earlier.
The Contractor shall pay to the State of California the sum of $100,000 per day as liquidated damages, for each and every day's delay in completing Phase 3 work in excess of the earliest completion date for Phase 3 as prescribed above.
Should two or more liquidated damages accrue concurrently, no more than $100,000 per day will be assessed. Total liquidated damages for the project will not exceed $125,000,000.

"The second through fourth paragraphs, inclusive, and the first sentence of the fifth paragraph of Section 8-1.06, "Time of Completion," of the Standard Specifications shall not apply. ***A working day is defined as any day, with no exceptions."***

- Every day is a working day, no exceptions.

Exhibit B.6

Time Of Completion
SS 8-1.06



8-1.06 TIME OF COMPLETION

The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within the time set forth in the special provisions.

A working day is defined as any day, except as follows:

(a) Saturdays, Sundays and legal holidays;

(b) Days on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to the current controlling operation or operations, as determined by the Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on that operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations; or

(c) Days on which the Contractor is prevented, by reason of requirements in "Maintaining Traffic" of the special provisions, from working on the controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations.

Should the Contractor prepare to begin work at the regular starting time of any day on which inclement weather, or the conditions resulting from the weather, or the condition of the work, prevents the work from beginning at the usual starting

time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter during that day and the major portion of the day could be considered to be suitable for those construction operations.

The current controlling operation or operations is to be construed to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Engineer and the Contractor, which, if delayed or prolonged, will delay the time of completion of the contract.

Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom shall be made by the Engineer. The Contractor will be allowed 15 days from the issuance of the weekly statement of working days in which to file a written protest setting forth in what respects the Contractor differs from the Engineer; otherwise, the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct. The Engineer will furnish the Contractor a weekly statement showing the number of working days charged to the contract for the preceding week, the number of working days of time extensions being considered or approved, the number of working days originally specified for the completion of the contract and the number of working days remaining to complete the contract and the extended date for completion thereof, except when working days are not being charged in conformance with the provisions in Section 8-1.05, "Temporary Suspension of Work."

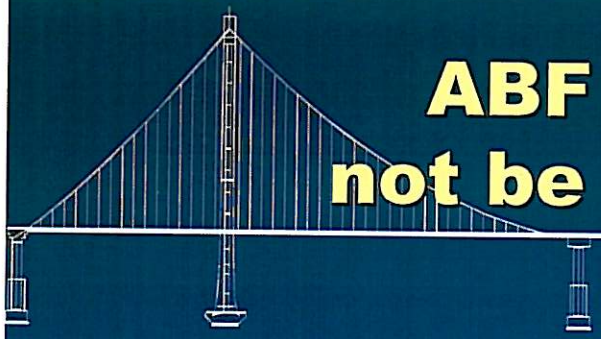
Exhibit B.2

Time Management on SAS Contract

1. Non-Working Days
   - —Wekends/Holidays
   - —Weather
   - —Traffic Restrictions
   - —Suspension of Work

SAS Contract

2. Time Extensions
   - —Must satisfy Section 8-1.07, "Liquidated Damages," of Std. Specs.



ABF requested that 3 days not be charged as working days

This power outage halted all work related to the controlling operation of the above referenced project at ZPMC's fabrication facility on Changxing Island, China from July 02, 2008 through and including July 04, 2008. Therefore, ABFJV requests that the affected three (3) days not be charged as working days in accordance with Section 8-1.07 of the Standard Specifications.

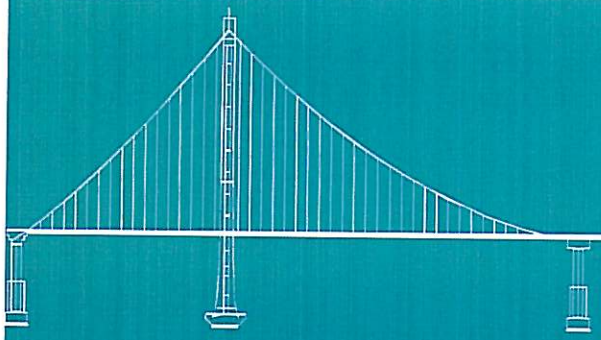
ABF-LET-597 July 21, 2008 Exhibit A.2

ABFJV requests that the Department reconsider its contractual determination, provided in Department Letter No. 05.03.01-002451 regarding the three (3) day work stoppage. This determination should be based on the fact that the conditions (no electricity) brought by an outside influence, beyond the control of ZPMC or ABFJV, created a condition unfavorable for the suitable prosecution of the work and therefore, in accordance with Section 8-1.06, "Time of Completion" of the Standard Specifications, the three (3) days of shut down and lost production should not be considered working days.

ABF-LET-612 August 4, 2008 Exhibit A.4

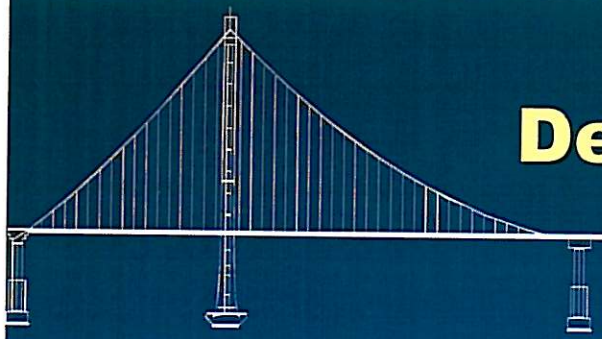
For the reasons set forth above, ABFJV is entitled to an excusable delay of three (3) days, for the breakage of the submarine electrical cable and subsequent loss of power at ZPMC's fabrication facility located on Changxing Island, China that from July 2, 2008 through July 4, 2008.

NOPC 8 ABF-LET-629 August 15, 2008 Exhibit A.6



ABF's Position Paper Now States They Are Not Requesting Non-Working Days

Rather, ABF Requests a Time Extension



Department's Position

The power outage does not meet contract criteria for consideration of a time extension

Time Extension Flowchart

Standard Specification 8-1.07

Liquidated Damages

*"It is the intention of the above provisions that the Contractor **shall not be relieved of liability for liquidated damages** or engineering and inspection charges for any period of delay in completion of the work **in excess of that expressly provided for in this Section 8-1.07."***

Merit

…caused by acts of God or of the public enemy, fire, floods, tsunamis, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes…

SS 4-1.03 Changes
SS 8-1.09 Right of Way Delay
Moving the Contractor's Plant
Acts by Engineer or Department

Liquidated Damages
SS 8-1.07 – Paragraph 3

SECTION 8 PROSECUTION AND PROGRESS

the Contractor has made ev
within reasonable reach of
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8-1.04, "Progress Schedu
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orders will not constitute a
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or clear right of way, or
6-2.03, "Mandatory Local
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• It is the intention of
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for any period of delay i
provided for in this Section

8-1.08 TERMINATION

• Failure to supply an a
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is grounds for termination
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• If the Contractor's con
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the provisions in Section 9
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SECTION 8 PROSECUTION AND PROGRESS

Contractor will be allowed 15 days from the issuance of the weekly statement of
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8-1.07 LIQU

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of the delay in completion of the work beyond the time named in the special provisions for the completion of the work caused by acts of God or of the public enemy, fire, floods, tsunamis, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes, provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of that delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

• No extension of time will be granted for a delay caused by a shortage of materials unless the Contractor furnishes to the Engineer documentary proof that

"The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time named in the special provisions for the completion of the work ***caused by acts of God or of the public enemy, fire, floods, tsunamis, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes****, provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of that delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive."*

Exhibit B.3

Liquidated Damages
SS 8-1.07 – Paragraph 5

SECTION 8 PROSECUTION AND PROGRESS

the Contractor has made every effort to obtain the r
within reasonable reach of the work in a diligent
proof in the form of supplementary progress sc
8-1.04, "Progress Schedule," that the inability
originally planned, did in fact cause a delay in fin
which could not be compensated for by revising
operations. The term "shortage of materials," as
only to materials, articles, parts or equipment whi
be incorporated in the work. The term "shortage
materials, parts, articles or equipment which are
fabricated or manufactured to meet the specific req
the physical shortage of material will be conside
cause for extension of time. Delays in obtaining n
orders will not constitute a shortage of materials.

• If the Contractor is delayed in completion of
made under Section 4-1.03, "Changes," or by failu
or clear right of way, or by moving the Contra
6-2.03, "Mandatory Local Material Sources," or by
Department, not contemplated by the contract, an
with the delay in completion of the work thus
Contractor shall be relieved from any claim for liq
and inspection charges or other penalties for the pe
time; provided that the Contractor shall notify the
of delay within 15 days from the beginning of
ascertain the facts and the extent of the delay, and
shall be final and conclusive.

• Except for the additional compensation provid
of Way Delays," and except as provided in Public
Contractor shall have no claim for damage or
hindrance.

• It is the intention of the above provisions t
relieved of liability for liquidated damages or eng
for any period of delay in completion of the w
provided for in this Section 8-1.07.

8-1.08 TERMINATION OF CONTROL

• Failure to supply an adequate working force.
failure to comply with Section 10262 of the Stat
respect to prosecute the work with the diligence an
is grounds for termination of the Contractor's cont
over the work by the State as provided in the State

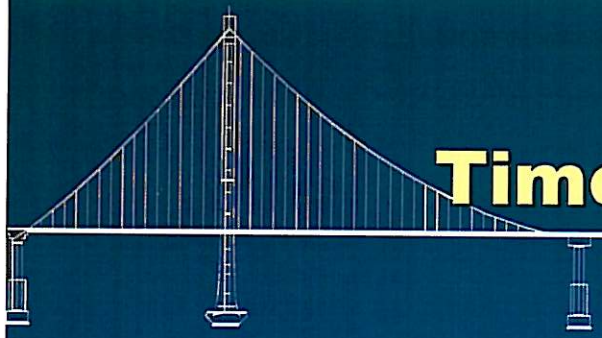
• If the Contractor's control of the work is termi
the work and the contract work is completed in co
Section 10255 of the State Contract Act, any disp
paid by the State to the Contractor or the Contrac
State by the Contractor or the Contractor's surety, under the provisions in Section
10258 of the State Contract Act, shall be subject to arbitration in conformance with
the provisions in Section 9-1.10, "Arbitration." The surety shall be bound by the
arbitration award and is entitled to participate in the arbitration proceedings.

reon shall be final and

aused by a shortage of
documentary proof that

*"If the Contractor is delayed in completion of the work by reason of **changes made under Section 4-1.03, "Changes,"** or by **failure of the Department to acquire or clear right of way, or by moving the Contractor's plant** pursuant to Section 6-2.03, "Mandatory Local Material Sources," **or by any act of the Engineer or of the Department, not contemplated by the contract**, an extension of time commensurate with the delay in completion of the work thus caused will be granted, and the Contractor shall be relieved from any claim for liquidated damages, or engineering and inspection charges or other penalties for the period covered by that extension of time; provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of the delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive."*

Exhibit B.3



SS 8-1.07 Only Allows Time Extensions for the Following

1. Acts of God
2. The public enemy
3. Fire
4. Floods
5. Tsunamis
6. Earthquakes
7. Epidemics
8. Quarantine restrictions
9. Strikes
10. Labor disputes
11. Shortage of materials
12. Freight embargos
13. Changes (SS 4-1.03)
14. Right of Way Delay (SS 8-1.09)
15. Moving Contractor's Plant
16. Act of Engineer not contemplated in the Contract

¶3 SS 8-1.07

¶5 SS 8-1.07

Liquidated Damages
SS 8-1.07 – Paragraph 7

the Contractor has made every effort to obtain the materials from all known sources within reasonable reach of the work in a diligent and timely manner, and further proof in the form of supplementary progress schedules, as
8-1.04, "Progress Schedule," that the inability to obtain
originally planned, did in fact cause a delay in final completio
which could not be compensated for by revising the sequence
operations. The term "shortage of materials," as used in this
only to materials, articles, parts or equipment which are standa
be incorporated in the work. The term "shortage of materials,
materials, parts, articles or equipment which are processed,
fabricated or manufactured to meet the specific requirements o
the physical shortage of material will be considered under th
cause for extension of time. Delays in obtaining materials due
orders will not constitute a shortage of materials.

- If the Contractor is delayed in completion of the work b
made under Section 4-1.03, "Changes," or by failure of the De
or clear right of way, or by moving the Contractor's plant
6-2.03, "Mandatory Local Material Sources," or by any act of th
Department, not contemplated by the contract, an extension of
with the delay in completion of the work thus caused will
Contractor shall be relieved from any claim for liquidated dam
and inspection charges or other penalties for the period covered
time; provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of the delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.
- Except for the additional compensation provided for in Section 8-1.09, "Right of Way Delays," and except as provided in Public Contract Code Section 7102, the Contractor shall have no claim for damage or compensation for any delay or

- It is the intention of the above provisions that the Contractor shall not be relieved of liability for liquidated damages or engineering and inspection charges for any period of delay in completion of the work in excess of that expressly provided for in this Section 8-1.07.

8-1.08 TERMINATION OF CONTROL

- Failure to supply an adequate working force, or material of proper quality, or failure to comply with Section 10262 of the State Contract Act, or in any other respect to prosecute the work with the diligence and force specified by the contract, is grounds for termination of the Contractor's control over the work and for taking over the work by the State as provided in the State Contract Act.
- If the Contractor's control of the work is terminated or the Contractor abandons the work and the contract work is completed in conformance with the provisions in Section 10255 of the State Contract Act, any dispute concerning the amount to be paid by the State to the Contractor or the Contractor's surety or to be paid to the State by the Contractor or the Contractor's surety, under the provisions in Section 10258 of the State Contract Act, shall be subject to arbitration in conformance with the provisions in Section 9-1.10, "Arbitration." The surety shall be bound by the arbitration award and is entitled to participate in the arbitration proceedings.

in finishing the work in
Contractor agrees to pay
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at may become due the

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days, the Director shall
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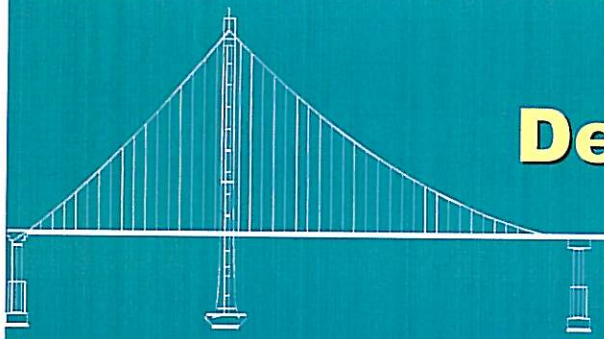
documentary proof that

*"It is the intention of the above provisions that the Contractor **shall not be relieved of liability for liquidated damages** or engineering and inspection charges for any period of delay in completion of the work **in excess of that expressly provided for in this Section 8-1.07."***

Exhibit B.3



Department's Position

Power outage caused by human actions does not constitute an "Act of God"

Act of God Definitions

- **West's Encyclopedia of American Law**

  A manifestation especially of a violent or destructive natural force, such as a lightning strike or earthquake, that is beyond human power to cause, prevent, or control.

- **Business Dictionary**

  Inevitable, unpredictable, and unreasonably severe event caused by natural forces without any human interference, and over which an insured party has no control, such as an earthquake, flood, hurricane, lightning, snowstorm. Acts of God are insurable accidents and valid excuses for non-performance of a contract. Also called act of nature. See also force majeure.

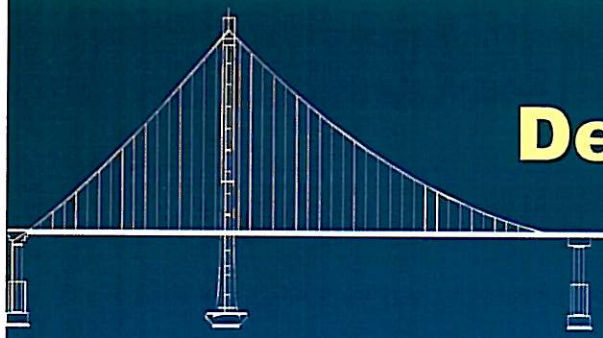
- **Merriam-Webster**

  An extraordinary interruption by a natural cause (as a flood or earthquake) of the usual course of events that experience, prescience, or care cannot reasonably foresee or prevent

- **NOLO Press**

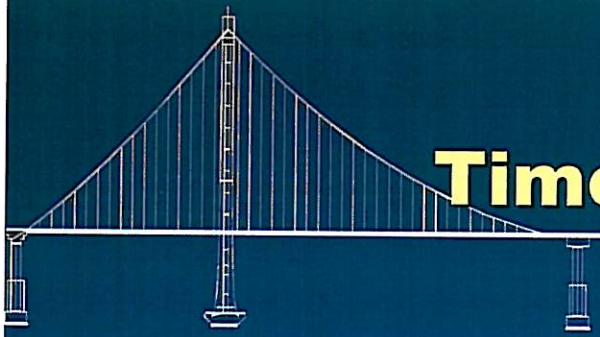
An extraordinary and unexpected natural event, such as a hurricane, tornado, earthquake or even the sudden death of a person.

Exhibit B.11



Department's Position

A power outage caused by human actions does not constitute an "Act of God," and does not otherwise meet the contract requirements for consideration of a time extension.

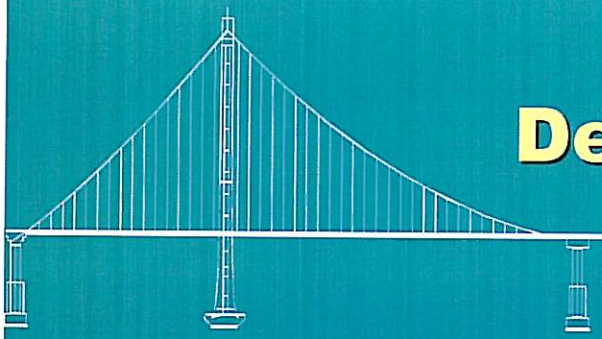


SS 8-1.07 Only Allows Time Extensions for the Following

1. Acts of God >>>>Power Outage ?
2. The public enemy
3. Fire
4. Floods
5. Tsunamis
6. Earthquakes
7. Epidemics
8. Quarantine restrictions
9. Strikes
10. Labor disputes
11. Shortage of materials
12. Freight embargos
13. Changes (SS 4-1.03)
14. Right of Way Delay (SS 8-1.09)
15. Moving Contractor's Plant
16. Act of Engineer not contemplated in the Contract

¶3 SS 8-1.07

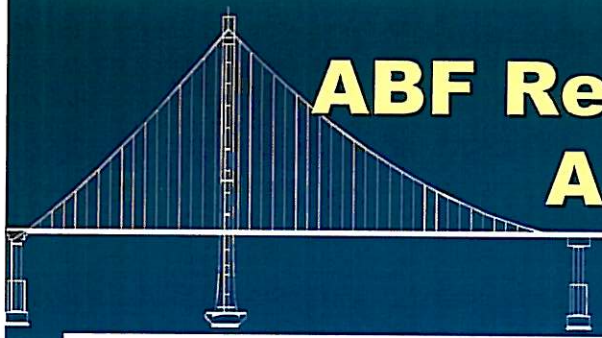
¶5 SS 8-1.07



Department's Position

ABF Has Not Established Merit for this Third Party Delay

ABF Requesting Time Extension
ABF-CAL-LTR-000700

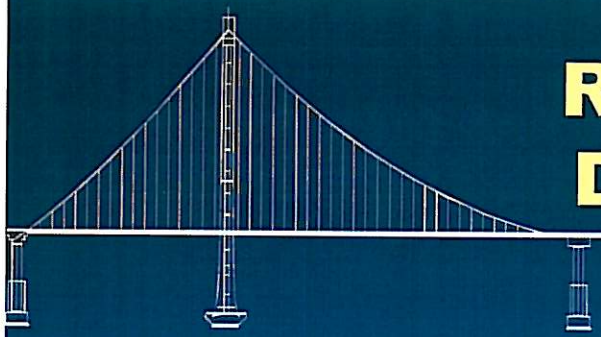


"There is no distinction between a power outage and a shortage of materials, or a freight embargo or a labor dispute or the discovery of asbestos and as such, there is no legitimate reason why a power outage, sustained as described herein, should be treated differently, than one of the events listed above, for Contract purposes."

Exhibit A.9

Power Outage $\neq$

- Shortage of Materials – SS 8-1.07 (could not be compensated for by revising sequence) applies to raw material
- Freight Embargo – SS 8-1.07
- Asbestos Discovery – SS 8-1.09 (could not have been avoided by the judicious handling of forces equipment and plant)



Right of Way Delays Defined by Contract

Delays Due To:

- Asbestos or Hazardous Substances
- Department delays in Working Drawing reviews
- Double-Crested Cormorant, Western Gulls, California Least Tern, and California Brown Pelican
- Precast Concrete Quality Control Plan Review
- Audit Review
- Engineer directed early traffic opening
- Spawning herring
- SWPPP
- Welding Document Review

Merit

SS 8-1.09
Right of Way Delays

SS 8-1.07
Liquidated Damages

Right of Way Delays
SS 8-1.09

SECTION 8 **PROSECUTION AND PROGRESS**

8-1.09 RIGHT OF WAY DELAYS

If, through the failure of the State to acquire or clear right of way, the Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there shall be paid to the Contractor that amount that the Engineer may find to be a fair and reasonable compensation for that part of the Contractor's actual loss, that, in the opinion of the Engineer, was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in t
extra work paid for on a force account basis, as pr
9-1.03A(3), "Equipment Rental," with the following exceptio

(1) The right of way delay factor for each classification of
in the Department of Transportation publication entitle
And Equipment Rental Rates, which is a part of the
applied to that equipment rental rate.
(2) The time for which the compensation will be paid
normal working time during which the delay conditio
case will exceed 8 hours in any one day.
(3) The days for which compensation will be paid will be
excluding Saturdays, Sundays and legal holidays, duri
the delay, except that when rental of equipment is p
provisions in Section 9-1.03A (3b), "Equipment not
payment will be made for right of way delays in con
provisions in this Section 8-1.09.

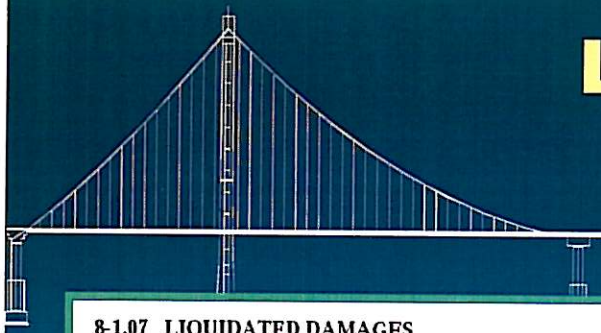
Actual loss shall be understood to include no items of expense other than idle time of equipment and necessary payments for idle time of workers, cost of extra moving of equipment and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this Section 8-1.09 and compensation for idle time of workers will be determined as provided in Section 9-1.03A(1), "Labor," and no markup will be added in either case for overhead and profit. The cost of extra moving of equipment and the cost of longer hauls will be paid for as extra work as provided in Section 4-1.03D.

If performance of the Contractor's work is delayed as the result of the failure of the Department to acquire or clear right of way, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," will be granted.

"If performance of the Contractor's work is delayed as the result of the failure of the Department to acquire or clear right of way, ***an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," will be granted."***

Exhibit B.4

Liquidated Damages
SS 8-1.07



8-1.07 LIQUIDATED DAMAGES

• It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements is not finished or completed within the number of working days as set forth in the special provisions, damage will be sustained by the State of California, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the State will sustain in the event of and by reason of the delay; and it is therefore agreed that the Contractor will pay to the State of California, the sum set forth in the special

SECTION 8 **PROSECUTION AND PROGRESS**

the Contractor has made every effort to obtain the materials from all known sources within reasonable reach of the work in a
proof in the form of supplementary
8-1.04, "Progress Schedule," that the
originally planned, did in fact cause a
which could not be compensated for by
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be incorporated in the work. The term
materials, parts, articles or equipment
fabricated or manufactured to meet the
the physical shortage of material will be
cause for extension of time. Delays in
orders will not constitute a shortage of
• If the Contractor is delayed in
made under Section 4-1.03, "Changes,"
or clear right of way, or by moving the
6-2.03, "Mandatory Local Material Sources."
Department, not contemplated by the
with the delay in completion of the work thus caused will be granted, and the Contractor shall be relieved from any claim for liquidated damages, or engineering and inspection charges or other penalties for the period covered by that extension of time; provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of the delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon

• Except for the additional compensation provided for in Section 8-1.09, "Right of Way Delays," and except as provided in Public Contract Code Section 7102, the Contractor shall have no claim for damage or compensation for any delay or hindrance.

• It is the intention of the above provisions that the Contractor shall not be relieved of liability for liquidated damages or engineering and inspection charges for any period of delay in completion of the work in excess of that expressly provided for in this Section 8-1.07.

8-1.08 TERMINATION OF CONTROL

*"Except for the additional compensation provided for in Section 8-1.09, "Right of Way Delays," and except as provided in Public Contract Code Section 7102, the **Contractor shall have no claim for damage or compensation for any delay or hindrance."***

Exhibit B.7

Time Extension Flowchart for ROW Delays

Delays Due To:

- Asbestos or Hazardous Substances
- Department delays in Working Drawing reviews
- Double-Crested Cormorant, Western Gulls, California Least Tern, and California Brown Pelican
- Precast Concrete Quality Control Plan Review
- Audit Review
- Engineer directed early traffic opening
- Spawning herring
- SWPPP
- Welding Document Review

Merit

SS 8-1.09
Right of Way Delays

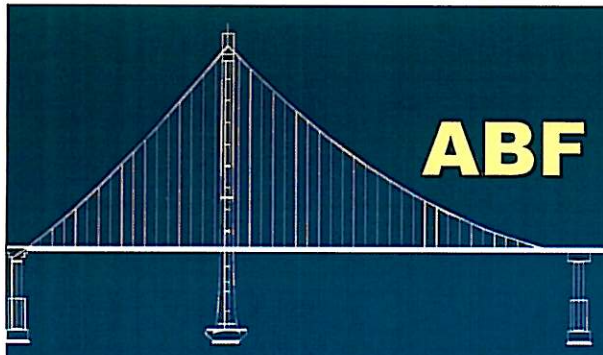
SS 8-1.07
Liquidated Damages

Measurement and Payment

SP 10-1.13
Progress Schedule
TIA required
w/ delay & cost mitigation

Contract Time Extension

ABF Has Not Established Merit



Merit

SS 8-1.09
Right of Way Delays

SS 8-1.07
Liquidated Damages

Delays due to Power Outage

SP 10-1.13
Progress Schedule
TIA required
w/ delay & cost mitigation

Measurement and Payment

Contract Time Extension

SP Section 10-1.13 "Progress Schedule"

Time extensions will be granted only to the extent that equitable time adjustments for the activity or activities affected exceed the total or remaining float along the critical path of activities from the time of actual delay, or from the time the contract change order work is performed. Mitigation measures shall be included in the analysis. T
shall also consider the use of State owned float as a mitigation measure. Time extensions will not
damages be paid unless:

A. The delay is beyond the control and without the fault or negligence of the Contractor
suppliers, at any tier; and
B. The delay extends the actual performance of the work beyond the currently approved contr
C. The delay impacts a fabrication or construction activity – delays to the Contractor's s
process must impact a successor fabrication or construction activity. The Time Impact A
the impact to fabrication or construction activities.

Time Impact Analyses shall be submitted within 15 days after the delay occurs or after initiati
order. The schedule files will be submitted on electronic medium along with the Time Impact Analy
narrative description of the delay, its impact on contract completion or milestone dates and propo
Mitigation measures utilized to minimize the impact of the change order or delay shall include bu
arounds, re-sequencing of work, alternate work calendars, increased resources, expedited procu
owned float.

A response to each Time Impact Analysis by the Engineer will be made within 15 days after r
Analysis. The Engineer's review shall utilize actual data unless it is appropriate to use estimated
Time Impact Analysis by the Engineer shall be completed after all effects of the disruption are
include mitigation measures. A copy of the Time Impact Analysis accepted by the Engineer
Contractor and the accepted schedule revisions illustrating the impact of the contract change
incorporated into the project schedule during the first update after acceptance. Until such time th
the analysis, the Engineer may, at his option, construct and utilize the project as-built schedule or
adjustments in contract time.

FINAL SCHEDULE UPDATE

Within 15 days after the acceptance of the contract by the Director, the Contractor shall sub
schedule with actual start and actual finish dates for all activities. This schedule submission sh
certification, signed by an officer of the company and the Contractor's Project Manager stat
knowledge, the enclosed final update of the project schedule reflects the actual start and complet
contained herein."

EQUIPMENT AND SOFTWARE

The Contractor shall provide for the State's exclusive possession and use a complete computer syste
creating, storing, updating and producing CPM schedules utilizing the latest hardware and softw
delivery and setup of the computer system, the Contractor shall submit to the Engineer for appr
computer hardware and software the Contractor proposes to furnish. The minimum computer sy
include the following:

A. Complete computer system, including keyboard, mouse, 530-mm color SVGA monitor (1
Intel Pentium IV micro processor chip, or equivalent or later;
B. Computer operating system software, compatible with the selected processing unit, fo
2000, equivalent;
C. Minimum one gigbyte (1000 MB) of random access memory (RAM);
D. A 20 gigabyte minimum hard disk drive, a 1.44 megabyte 90-mm floppy disk drive, 32x
drive, Ethernet card, two UBCUSB ports, and 56k modem;
E. A color-ink-jet plotter with a minimum 36 Megabytes RAM, capable of 300 dots per inch
monochrome, or equivalent. Capable of printing fully legible, time scaled charts, and n
colors, with a minimum size of 914-mm by 1219-mm (E size) and is compatible with th
paper and ink cartridges will be provided throughout the contract. HP Designjet 1055 CM,
F. CPM software shall be Primavera Project Planner, Version 3.1, or later;
G. Scheduler Analyzer Pro or equivalent – a suite of programs to assist in schedule analysis, the latest version for Windows NT/ Windows 2000, or later and,
H. Microsoft Office software, the latest version for Windows NT/Windows 2000, or later, and McAfee Virus software or equivalent.

*"**Mitigation measures** shall be included in the analysis….Time extensions **will not be** granted nor will delay damages be paid unless:*

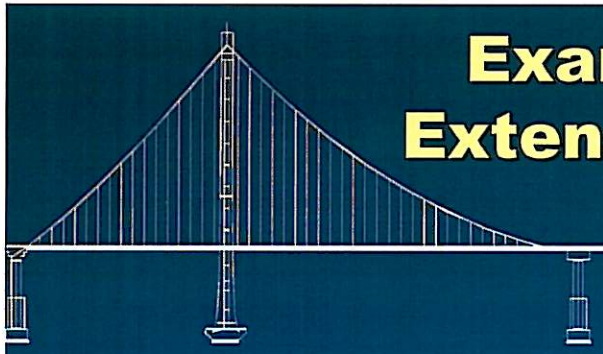
A. The delay is beyond the control and without the fault or negligence of the Contractor and its subcontractors or suppliers, at any tier; and

B. The delay extends the actual performance of the work beyond the currently approved contract completion date.

C. The delay impacts a fabrication or construction activity – delays to the Contractor's submittal or shop drawing process must impact a successor fabrication or construction activity. The Time Impact Analysis shall be based on the impact to fabrication or construction activities."

Exhibit B.7

Examples That Don't Warrant A Time Extension Although Conditions in 10-1.13 Are Satisfied



Delays Due To:

- Working Drawing Campus Set-up
- Weather
- Wind
- Tides
- Equipment Breakdown
- Plant Malfunction
- Shipping Delays
- 3rd Party Accident

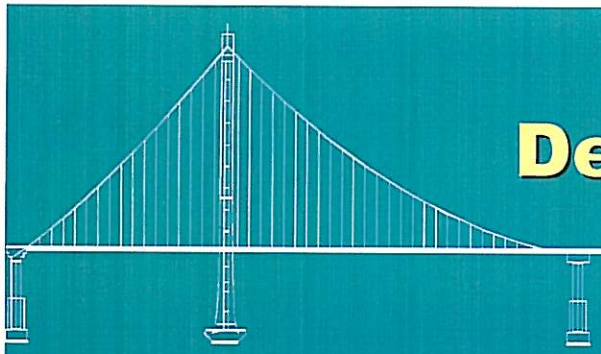
*"Time extensions **will not be** granted nor will delay damages be paid unless:*

A. The delay is beyond the control and without the fault or negligence of the Contractor and its subcontractors or suppliers, at any tier; and

B. The delay extends the actual performance of the work beyond the currently approved contract completion date.

C. The delay impacts a fabrication or construction activity – delays to the Contractor's submittal or shop drawing process must impact a successor fabrication or construction activity. The Time Impact Analysis shall be based on the impact to fabrication or construction activities."

Exhibit B.7



Department's Position

ABF and ZPMC are required to implement additional shifts to ensure progress conforms to the approved schedule

Time Management on SAS Contract

Exhibit B.5

IMPORTANT
SPECIAL NOTICES

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The bidder's attention is directed to Section 2-1.03, "DVBE Goal for This Project." of these special provisions. The Department is evaluating opportunities for potential DVBE participation to establish an appropriate goal for this project.

The Department is also evaluating opportunities for potential Small Business participation to establish appropriate provisions and participation level for this project.

The bidder's attention is directed to Section 2-1.07, "Pre-Award Information/Questionnaire," Section 3, "Award and Execution of Contract," and Section 8-4.01, "Audits," of these special provisions.

Attention is directed to "**Pre-Bid Manufacturing/Fabrication Facility Audit Review Request Guidelines**" available to interested bidders and subcontractors on the Internet at http://www.dot.ca.gov/hq/esc/tollbridge/SFOBB/Sfobb.html#04-0120F4. Requests for the pre-bid audit review shall be submitted in writing with a completed Manufacturing and Fabrication Self Qualification Audit (MFSQA) form to the Duty Senior at the District 4 Office, 111 Grand Avenue, Oakland, California 94612, telephone: (510) 286-5209.

Responses to the "**Pre-Award Information/Questionnaire**" and "**Manufacturing and Fabrication Self-Qualification Audit**" included in the Proposal must be **submitted with the bid**.

The anticipated period of time within which the contract may be awarded has been extended for this project. See Section 3, "Award and Execution of Contract," of these Special Provisions.

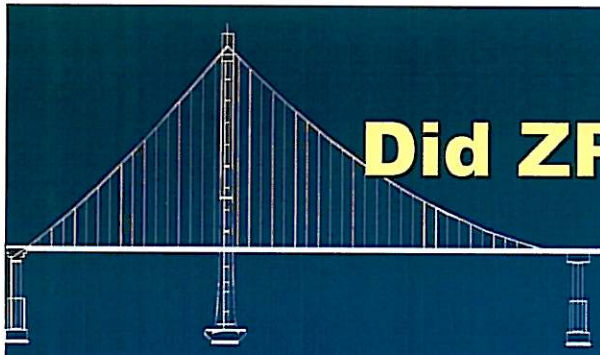
Attention is directed to the pre-award qualifications meeting in Section 3-1.01A "Pre-Award Qualifications Meeting" of these special provisions.

Establishing to the satisfaction of the Department, the bidder's qualifications and ability to complete the bridge construction work in a safe and timely manner is a condition for being eligible for award of the contract.

****

- The definition of a working day has been re-defined for this project. (See Section 4 of these special provisions.)

- The time limit specified in the special provisions for the completion of work contemplated herein is considered insufficient to permit completion of the work by the Contractor working a normal number of hours per day or week on a single shift basis. It is expected that additional shifts will be required throughout the life of the contract to the extent deemed necessary to ensure that the work will be completed within the time limit specified. (See Section 4 of these special provisions.)



Did ZPMC Mitigate the Delay?

Department has not received any correspondence from ZPMC regarding the impacts due to the power outage

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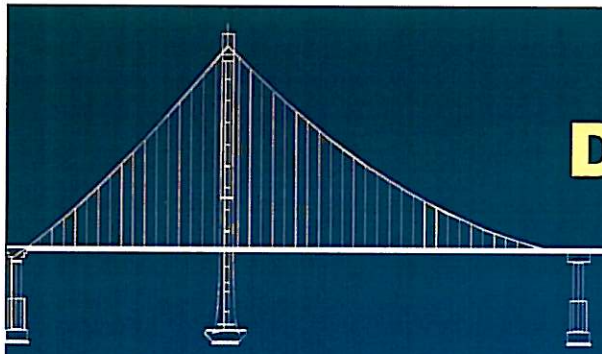
ABF has many times stated that ZPMC has what seems like an unlimited labor force

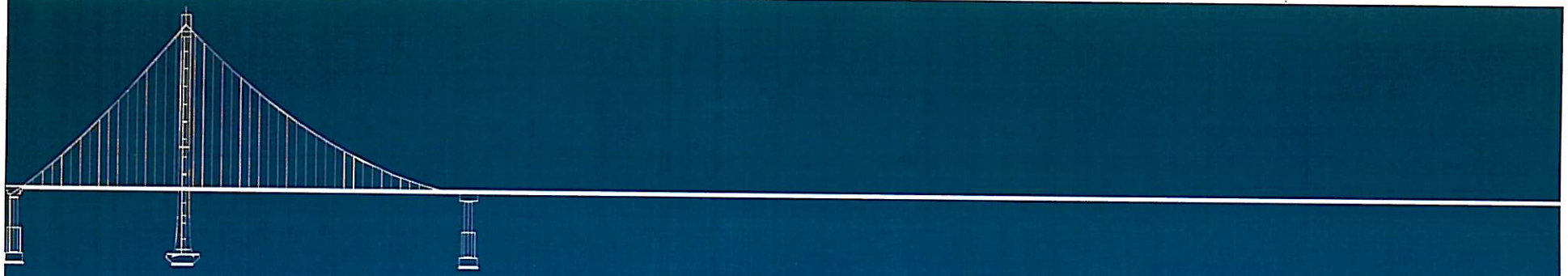
=

ZPMC has mitigated the impacts by adding additional shifts as required by the Contract



Department's Conclusions

- A working day is defined as any day, with no exceptions
- Power outage was not an "Act of God"
- SS 8-1.07 does not provide time extension for power outage
- Power outage does not conform to any delay provision *"expressly provided"* for in SS 8-1.07
- ZPMC is not claiming a delay for the 1½ days of minimal impact



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