

16-Oct-2008

ABF-CAL-LTR-000716

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: Notice of Potential Claim #009 – Protest of Approved CCO #036

Gentlemen:

American Bridge/Fluor Enterprises, Inc., A Joint Venture (ABFJV) received Department Letter No. 05.03.01-002762 dated October 01, 2008 provided in response ABFJV letter ABF-CAL-LTR-000664, Supplemental Notice of Potential Claim No. 9 dated September 12, 2008. 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, its written reply objecting to that response.

The Department, in its October 1, 2008 response determined that ABFJV's claim has no basis under the Contract because ABFJV failed to provide any potential claim or other documentation from ZPMC supporting their position and failed to provide a Time Impact Analysis as required by Special Provision Section 10-1.13, Progress Schedule, which states "...if the Contractor or the Engineer considers that an approved or anticipated change will impact the critical path or contract progress, the contractor shall submit to the Engineer a written time impact analysis."

ABFJV disagrees with the Department's determination that in order for ABFJV to preserve its right to claim for a future time adjustment caused by the Work ordered to be performed in a particular CCO, that ABFJV must submit a Time Impact Analysis prior to the execution of the CCO and in the event ABFJV refuses to execute the CCO and does not provide a Time Impact Analysis, on or before the date of the refusal to execute the CCO, that the Department may unilaterally issue the CCO, and by doing so, circumvent ABFJV's right to claim for a future time adjustment.

Special Provisions Section 10-1.13 states in pertinent part; "*When the Contractor request a time adjustment due to **contract change orders or delayed activities** (emphasis ours)...the Contractor shall submit to the Engineer a written Time Impact Analysis...Time Impact Analysis shall be submitted within 15 days **after the delay occurs** (emphasis ours) or after initiation of the contract change order...*" This Special Provisions Section clearly and unconditionally provides, at ABFJV's option, ABFJV has the right to request a time adjustment after the initiation of a CCO by the Department or within 15 days after the delay occurs by submitting a Time Impact Analysis.

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The relevant Contract provisions are listed as follows:

Applicable Contract provisions:

- Section 4-1.03, Changes, Standard Specifications
- Section 4-1.03A, Procedure and Protest, Standard Specifications
- Section 10-1.13, Progress Schedule (Critical Path Method), Special Provisions

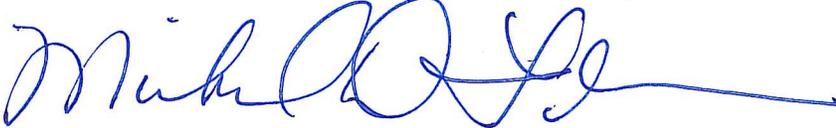
Estimated Costs: Unknown at this time.

Time Impact Analysis: Unknown at this time.

If you disagree with, have any questions about, or require any additional information regarding this matter, please contact our project office.

Sincerely,

AMERICAN BRIDGE/FLUOR ENTERPRISES, INC. A JOINT VENTURE



Michael D. Flowers
Project Director

File: 01.05.0036
01.07.9
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