

**DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program**

333 Burma Rd.

Oakland, CA 94607

(510) 622-5660, (510) 286-0550 fax

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April 10, 2009

Contract No. 04-0120F4

04-SF-80-13.2 / 13.9

Self-Anchored Suspension Bridge

Letter No. 05.03.01-003827

Michael Flowers  
Project Executive  
American Bridge/Fluor, A JV  
375 Burma Road  
Oakland, CA 94607

Dear Michael Flowers,

**RFCO 52 - Regarding State Sales and Use Tax**

The Department has reviewed ABF-CAL-LTR-000854, dated March 12, 2008, regarding ABF's Request for Change Order (RFCO) No. 52. ABF has requested a change order for an increase in State sales and use tax recently initiated by Assembly Bill 3 (AB 3). RFCO 52 requests additional compensation for all purchases after April 1, 2009.

ABF cites Section 4-1.03C, "Change in Character of the Work," of the Standard Specifications as the contractual basis for RFCO 52. However, AB 3 is not an ordered change in the plans and specifications that materially changed the work. On the contrary, the contract provides under:

- Section 7-1.01, "Laws to be Observed," of the Standard Specifications, that the contractor shall observe and comply with all existing and future state and federal laws as well as county and municipal ordinances and regulations. This specification also requires the contractor to indemnify the State of California against any claim or liability arising from laws, ordinances and regulations.
- Section 7-1.03, "Payment of Taxes," of the Standard Specifications, that full compensation to the contractor for all taxes is included in the contract prices. Increased or decreased sales and use tax costs do not constitute a change in contract provisions.
- Section 9-1.02, "Scope of Payment," of the Standard Specifications, that the compensation provided in the contract is full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary for performing all work contemplated under the contract and for all risks of every description connected with the prosecution of the work. No compensation will be made for loss of anticipated profits.

Furthermore, the Department has no legal authority to pay for the increased costs resulting from the sales and use tax increase, as the California Constitution, Article 4, Section 17, states, "*The legislature has no power to grant, or to authorize a city, county, or other public body to grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or to authorize the payment of a claim against the State or a city, county, or other public body under an agreement made without authority of law.*"

Accordingly, there is no basis under the contract to issue a CCO for the increase in sales tax brought on by AB 3, and ABF's request for a change order cannot be granted. Please be advised, this determination is being applied consistently to other active contracts across the State.

Sincerely,



GARY PURSELL  
Resident Engineer

cc: Don Ross  
Darryl Schram  
file: 05.03.01, 50.054