

16-Apr-2009

ABF-CAL-LTR-000891

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: Potential Claim Number 012
Submission of Initial Notice of Potential Claim

Gentlemen:

Pursuant to the Agreement, including Standard Specifications, Article 9-1.04, Notice of Potential Claim, American Bridge / Fluor, JV (ABFJV) hereby submits the enclosed certified Form CEM 6201A, Initial Notice of Potential Claim, identified by the above number.

This Initial Notice of Potential Claim will be followed-up with a Supplemental Notice of Potential Claim.

We look forward to receiving your prompt approval of the above identified Initial Potential Claim and the requested adjustment to the Contract Compensation and issuance of an appropriate Change Order.

If you have any questions, please contact our office.

Sincerely,

AMERICAN BRIDGE/FLUOR ENTERPRISES, INC. A JOINT VENTURE



Michael D. Flowers
Project Director

Encl: Form CEM 6201A

File: 01.07.12
02.01

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION		FOR STATE USE ONLY	
INITIAL NOTICE OF POTENTIAL CLAIM		Received by	Date
CEM-6201A (NEW 9/2002)		(For resident engineer)	
TO	CONTRACT NUMBER	DATE	IDENTIFICATION NUMBER
Gary Pursell (resident engineer)	04-0120F4 04-SF-80-13.2/13.9	4/16/2009	012

This is an Initial Notice 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: April 10, 2009 by Caltrans response on RFCO No. 46

The particular nature and circumstances of this potential claim are described as follows:

In late February, 2009 the State of California passed Assembly Bill 3 (AB3) into law. AB3 mandated a one percent (1%) increase to the State Sales and Use Tax for all purchases and payments made after April 1, 2009. In response, American Bridge / Fluor Enterprises, Inc. A Joint Venture (ABFJV) sent to the Department letter ABF-CAL-LTR-000854, dated March 12, 2009, requesting a Change Order to reimburse ABFJV for the cost of the Tax increase for all purchases and payments for the Project after April 1, 2009 caused by Assembly Bill 3 (AB 3). The Engineer's response in the Department's Letter No. 05.03.01-003827, dated April 10, 2009 rejected ABFJV's request. In our Request for Change Order (RFCO) letter ABF-CAL-LTR-000854, ABFJV requested that a Change Order be issued adjusting Contract compensation pursuant to the Contract Documents, including Standard Specifications, Article 2-1.03 Examination of Plans, Specifications, Contract, and Site of Work, Article 7-1.01, Laws to be Observed, and Article 4-1.03 C, Changes in Character of Work. At the time of bid (March 22, 2006), ABFJV carefully examined the Plans and Specifications and the general and local conditions, including all existing and anticipated future taxes, imposed or contemplated at that time, by Federal, State or local government bodies, to be encountered in the performance of the Project. On the date the Contract Prices were established and agreed by ABFJV and the Department, April 18, 2006, the April 1, 2009 one (1) percent California's Sales and Use Tax rate increase did not exist, was not contemplated by the parties, and a reasonable and prudent contractor could not have foreseen the implementation of the future tax increase.

Subsequent to the award of the Contract, ABFJV has been "ordered" to pay an additional one (1) percent increase in the California State Sales and Use Tax rate. As a result of this order, and compliance with Standard Specification Article 7-1.01, Laws to Be Observed, the actual unit cost of the Contract Items has changed. For this reason, pursuant to Standard Specification 4-1.03 C, Changes in Character of Work, the issuance of a Change Order by the Department is required.

The Department denied our request for additional compensation to compensate the additional cost caused by the increase of the Sale and Use Tax on April 10, 2009.

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 of 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)