

05-Jun-2009

ABF-CAL-LTR-000933

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 (NOPC) No. 12 – Sales Tax Increase

REFERENCE: Caltrans Letter No. 05.03.01-004206 Dated May 26, 2009.

Gentlemen:

American Bridge / Fluor Enterprises, Inc., A Joint Venture (ABFJV) is in receipt of the Department's letter No. 05.03.01-004206 dated May 26, 2009 provided in response to ABF-CAL-LTR-000910 "Supplemental Notice of Potential Claim Number 012, Form CEM-6201 B" dated May 01, 2009, regarding the recent Sales and Use Tax increase brought on by Assembly Bill 3. The Department in its response advises, "The Department's decision regarding NOPC 12 remains unchanged as outlined in State Letter 05.03.01-003827, dated April 10, 2009."

As the Department is aware, on February 27, 2007, Assembly Bill 1523 (AB 1523) was introduced. This Bill would exempt from the one percent statewide Sales and Use Tax increase operative April 1, 2009 fixed price contracts entered into prior to the rate increase. AB 1523, if approved will add Section 6376.3 to the Revenue and Taxation Code to provide that during the period of the 1% Sales and Use Tax rate increase, sales and purchases of the following, in pertinent part, are exempt from the 1% increase:

- Tangible personal property, if the seller is obligated to furnish or the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of the increase.
- Materials and fixtures obligated pursuant to an engineering construction contract or a building construction contract entered into for a fixed price prior to the operative date of the rate increase.

Special Provision Section 5-1.12, Dispute Review Board, regarding Contractor's provision of its Supplemental Notice of Potential Claims to the Engineer, provides in pertinent part: *"within 15 days after receipt of the Engineer's written response, the Contractor shall, if the Contractor still objects, file a written reply with the Engineer, stating clearly and in detail the basis of the objection. Following an objection to the Engineer's written response, the Contractor shall refer the dispute to the DRB if the Contractor wishes to further pursue the objection to the Engineer's decision. The Contractor shall make the referral in writing to the DRB, simultaneously copied to the State, within 21 days after receipt of the written response from the Engineer."*

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ABFJV (Brian Petersen) has discussed this matter with the Department (Gary Pursell) and the parties have agreed to stay the Contract administrative procedures, including but not limited to the Special Provision Section 5-1.12, Dispute Review Board requirements set forth above, in regard to Notice of Potential Claim (NOPC) No. 12 – Sales Tax Increase until final disposition of AB 1523. It is understood that this matter will remain deferred and no further action will be required until such time notified otherwise by either party.

If you have any questions or disagree with the information provided herein, please contact our office.

Sincerely,

AMERICAN BRIDGE/FLUOR ENTERPRISES, INC. A JOINT VENTURE



Michael D. Flowers
Project Director

File: 01.07.12
02.01