

25-Aug-2009

ABF-CAL-LTR-001095

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: Request for Change Order (RFCO) No. 063

REFERENCE: Department's Letter No. 05.03.01-004925 – Request for Change Order – RFCO 063
Dated August 11, 2009
Department's Letter No. 05.03.01-004548 - Submittal 200, Rev. 2 – Update 1 – Methods to Repair elements that Exceed Specified Tolerances Dated July 1, 2009
Department's Letter No. 05.03.01-003474 - Submittal 200, Rev. 2 – Methods to Repair Elements that Exceed Specified Tolerances Dated February 12, 2009

Gentlemen:

American Bridge/Fluor Enterprises, Inc., A Joint Venture (ABFJV) is in receipt of the Department Letter No. 05.03.01-004925 dated August 11, 2009 provided in response to ABF-CAL-LTR-001000, dated August 3, 2009 regarding ABFJV's Request for Change Order (RFCO) No. 063. In this letter, the Department advises a CCO is not warranted. ABFJV disagrees and requests that the Department reconsider its determination.

The Department in Letter No. 05.03.01-003474, dated February 12, 2009 advised, "The Department has completed review of Submittal ABF-SUB-000200R02, Fabrication Procedures – Methods to Repair Elements that Exceed Specified Tolerances, dated January 23, 2009. The submittal is Approved as Noted, as shown on the attached drawings and as outlined by the following comments." One of the following comments provided by the Department is Category A, 1. This comment states, "**Repair procedures require the Engineer to be notified for each case of repair.**" (Emphasis Ours)

The Department in Letter No. 05.03.01-004548, dated July 1, 2009 which purports to "update" Submittal ABF-SUB-000200R02, Fabrication Procedures – Methods to Repair Elements that Exceed Specified Tolerances, dated January 23, 2009 Category A, 1 provides, "**Repair procedures require the Engineer's approval prior to each case of repair.**" (Emphasis Ours)

The ABFJV Submittal ABF-SUB-000200R02 that received "Approved" status on February 12, 2009 from the Department only required that the "**Engineer be notified**" prior to each case of repair. This requirement was altered by the written direction of the Department in Letter No. 05.03.01-004548. The new requirement directed by the Department is that "**Engineer's approval**" must be obtained prior to each case of repair." There is a distinct difference between the two statements.

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Standard Specification 4-1.03, Changes, provides that the Department reserves the right to make such alterations (changes) of the plans (working drawings approved by the Engineer) and specifications as may be deemed necessary by the Engineer and to require Extra Work be performed by ABFJV. In the event the plans and specifications are altered by the Department, these alterations will be set forth in a Contract Change Order. Based upon this Contract condition, the Department is required to issue a Contract Change Order when an approved Working Drawing submittal is modified or updated.

In the event the Department requires ABFJV to request the Department's approval for each specific repair in lieu of notifying the Department of pending repairs, the Contract documents including Standard Specifications, Article 4-1.03, Changes, Article 4-1.03A, Procedure and Protest, and Article 4-1.03D Extra Work and Article 9-1.015, Final Pay Items, require that a Change Order be issued adjusting Contract Compensation and the Project Schedule, if necessary.

If you have any questions, please contact our office.

Sincerely,

AMERICAN BRIDGE/FLUOR ENTERPRISES, INC. A JOINT VENTURE

<<< ORIGINAL SIGNED >>>

Michael D. Flowers
Project Director

File: 01.06.0063
02.01