

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	10/09/2009	013

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: October 9, 2009 By Caltrans response to RFCO No. 63

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

Standard Specifications, 5-1.02, Plans and Working Drawings, provides, *"Working drawings for any part of the permanent work shall include, but not be limited to stress sheets, anchor bolt layouts, shop details, erection plans, equipment lists and any other information specifically required elsewhere in the specifications."*

Standard Specifications, 1-1.29, Plans, provides that *"The official project plans and Standard Plans, profiles, typical cross sections, working drawings and supplemental drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions and details of the work to be performed. These documents are to be considered as a part of the plans."*

Standard Specifications, 4-1.03, Changes, states, *"The Department reserves the right to make such alterations deviations, additions to or deletions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work or to delete any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated"* and that *"Those changes will be set forth in a contract change order."* Furthermore, the contract provides, if the Contractor is ordered in writing by the Engineer to perform work prior to the issuance of a change order, the Contractor shall proceed with the work so ordered.

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 is as follows, "Repair procedures require the Engineer to be notified for each case of repair."

The Department in Letter No. 05.03.01-004548, dated July 1, 2009 advised, The Department is hereby updating the response to Submittal ABF-SUB-000200R02, Fabrication Procedures – Methods to Repair Elements that Exceed Specified Tolerances." One of the updates presented by the Department modified Category A: 1, as follows, "Repair procedures require the Engineer's approval prior to each case of repair."

The Department, in Letter No. 05.03.01-005629 dated October 5, 2009 provided in response to ABF-CAL-LTR-001231, ABFJV's Request for Change Order (RFCO) No. 063 dated September 18, 2009, as follows, "The Department, therefore, sees no basis for considering requests for repair approval to be Extra Work and finds no justification for issuing a Contract Change Order.

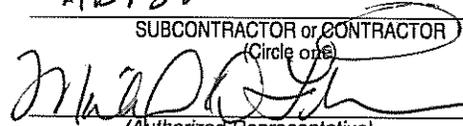
ABFJV disagrees with the Department's determination. Clearly, erection plans are considered working drawing. Working drawings, once they are approved by the Department become part of the official project plans. In the event the Department orders in writing, a change in the plans, the Contractor will proceed with the ordered work and the Department will, as soon as practicable issue a contract change order.

The Department updated (changed) the official project plans ("Approved as Noted" Submittal ABF-SUB-000200R02, Fabrication Procedures – Methods to Repair Elements that Exceed Specified Tolerances, dated February 12, 2009) in Letter No. 05.03.01-004548 dated July 1, 2009 by changing the language contained in comment Category A: 1 from "Repair procedures require the Engineer to be notified for each case of repair" to "Repair procedures require the Engineer's approval prior to each case of repair."

Although the Department changed the contract plans in Letter No. 05.03.01-004548 dated July 1, 2009 the Department, refuses to issue a contract change order in accordance with the contract. As a result of the Department's failure to act in accordance with the terms and conditions of the contract, ABFJV submits this Notice of Potential Claim No. 13.

needed)

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.

ABFJV
SUBCONTRACTOR or 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)

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