

01-Dec-2009

02.14-000016

Mr. Robert Smith

**Dispute Review Board**

222 West Washington Avenue, Suite 380  
Madison, WI 53703

**PROJECT: San Francisco Oakland Bay SAS Bridge Superstructure  
Caltrans Contract No. 04-0120F4  
ABF Job No. 660110**

**SUBJECT: Submittal of Request for Change Order No. 63 –Critical Weld Report (CWR)  
Notice of Potential Claim (NOPC) No. 13 to the Dispute Review Board**

Gentlemen:

On August 3, 2009 American Bridge/Fluor Enterprises, Inc. A Joint Venture (ABFJV) presented Request for Change Order (RFCO) No. 63 to the Department via ABFJV Letter ABF-CAL-LTR-001000, dated August 3, 2009. The reason for the request was brought about by the Department's alteration of Submittal No. ABF-SUB-000200 Rev 2 – Update, "Methods to Repair elements that Exceed Specified Tolerances," that was "Approved as Noted" by the Department on February 12, 2009 in Letter No. 05.03.01-003474.

The Department, in Letter No. 05.03.01-004548, dated July 1, 2009, changed the "Approved as Noted" Submittal No. ABF-SUB-000200 Rev 2 comment under Category A, item 1 provided in Letter No. 05.03.01-003474 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."

The alteration of Working Drawing Submittal No. ABF-SUB-000200R02, Fabrication Procedures – Methods to Repair Elements that Exceed Specified Tolerances by the Department is a Contract Change that requires the issuance of a Contract Change Order.

**DISPUTE**

There is an ongoing history of Department Changes on the Project. In an effort to rectify design deficiencies on the Project, the Department has issued thousands of Contract Changes in the form of RFI responses, redline changes to Working Drawings, sketches, Plan Sheet revisions, and other written direction.

Standard Specifications, Section 4-1.03 provides that the Department may alter the Plans and Specifications as it deems necessary for the proper construction of the Work and that these alterations will be set forth in a Contract Change Order. Further, if ordered in writing by the Department, ABFJV shall proceed with the work so ordered prior to actual receipt of an approved Contract Change Order. In those cases, the Department will issue an approved Contract Change Order for the ordered Work as soon as practicable.

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In a matter unassociated with RFCO 63, the Department in response to ABFJV's request to provide "written authority" for the performance of additional Work responded as follows, "As previously acknowledged by both ABF and the Department, RFI responses, submittal redlines, and previously transmitted listings are, in themselves, written direction to proceed with changes under the contract" (Department Letter No. 05.03.01-002717, dated September 22, 2008)

Notwithstanding Contract Specifications that require the Department to issue Change Orders to ABFJV when the Contract Plans are altered by the Department as well as the understanding of the parties set forth in Department Letter No. 05.03.01-002717, the Department has refused to issue a Contract Change Order in accordance with the terms and conditions of the Contract.

### ISSUES

The DRB is requested to address the following issue.

- 1 Must the Department issue a Contract Change Order to ABFJV when RFI responses, redline changes, additional sketches and other written directives issued by the Department alter the Contract Plans and Specifications?

### CONTRACT PROVISIONS

The following provisions of the Contract and the California Civil Code support ABFJV's claim and provide the basis for ABFJV's entitlement to a Contract Change Order.

### STANDARD SPECIFICATIONS

#### **1-1.29 Plans**

*. 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 Plans***

- . The Standard Plans of the Department of Transportation.*

#### ***Project Plans***

- . The project plans are specific details and dimensions peculiar to the work and are supplemented by the Standard Plans insofar as the same may apply.*

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#### **4-1.03 Changes**

*. 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. Those changes will be set forth in a contract change order which will specify, in addition to the work to be done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for that work. A contract change order will not become effective until approved by the Engineer.*

*. Upon receipt of an approved contract change order, the Contractor shall proceed with the ordered work. If ordered in writing by the Engineer, the Contractor shall proceed with the work so ordered prior to actual receipt of an approved contract change order therefore. In those cases, the Engineer will, as soon as practicable, issue an approved contract change order for the ordered work and the provisions in Section 4-1.03A, "Procedure and Protest," shall be fully applicable to the subsequently issued contract change order.*

#### **5-1.02 Plans and Working Drawings**

*. The contract plans furnished consist of general drawings and show such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the contract plans shall be in writing.*

*. The contract plans shall be supplemented by such working drawings prepared by the Contractor as are necessary to adequately control the work. No change shall be made by the Contractor in any working drawing after it has been approved by the Engineer.*

*. 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.*

*. Working drawings for cribs, cofferdams, falsework, temporary support systems, haul bridges, centering and form work and for other temporary work and methods of construction the Contractor proposes to use, shall be submitted when required by the specifications or ordered by the Engineer. Working drawings shall be subject to approval insofar as the details affect the character of the finished work and for compliance with design requirements applicable to the construction when specified or called for, but details of design will be left to the Contractor who shall be responsible for the successful construction of the work.*

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*. Working drawings shall be approved by the Engineer before any work involving the drawings is performed. It is expressly understood that approval of the Contractor's working drawings shall not relieve the Contractor of any responsibility under the contract for the successful completion of the work in conformity with the requirements of the plans and specifications. Approval of working drawings shall not operate to waive any of the requirements of the plans and specifications or relieve the Contractor of any obligation thereunder, and defective work, materials and equipment may be rejected notwithstanding the approval.*

#### **5-1.04 Coordination and Interpretation of Plans, Standard Specifications, and Special Provisions**

*. These Standard Specifications, the Standard Plans, project plans, special provisions, contract change orders and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary, and to describe and provide for a complete work.*

*. Project plans shall govern over Standard Plans; Standard Plans and project plans shall govern over these Standard Specifications; and the special provisions shall govern over both these Standard Specifications and the plans.*

### **OTHER APPLICABLE STANDARD SPECIFICATIONS AND SPECIAL PROVISIONS**

#### **Standard Specifications**

- 4-1.03A Procedure and Protest**
- 4-1.03C Changes in Character of Work**
- 8-1.07 Liquidated Damages**

#### **Special Provisions**

- 9-1.04 Notice of Potential Claim**
- 5-1.12 Dispute Review Board**
- 10-1.59 Steel Structures**
- 10-1.13 Progress Schedule (Critical Path Method)**
- 10-1.17 Accelerated Working Drawings Submittal**

### **CONCLUSION**

The Department's arbitrary refusal to issue a Contract Change Order for modifications to the Contract Plans and Specifications brought about by RFI responses, redline changes, additional sketches and other written directives made necessary by Project design deficiencies is a breach of the Contract terms and conditions, previous agreements by the parties, and the California Public Contract Code Section 1104, which provides that no public entity shall require a bidder to assume responsibility for the completeness and accuracy of engineering plans and specifications on public works projects.

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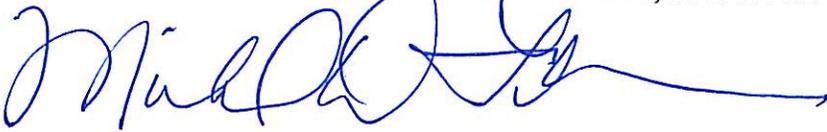
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As set forth in the "Issues" section of this letter, the DRB is requested to determine that a Contract Change Order must be issued by the Department when the Department changes the Contract Plans and Specifications.

Thank you for your assistance in this matter.

Sincerely,

**AMERICAN BRIDGE/FLUOR ENTERPRISES, INC. A JOINT VENTURE**



Michael D. Flowers  
Project Director

Cc: Mr. Warren M Bullock, DRB Member (*sent under separate transmittal*)  
Mr. Norman C. Anderson, DRB Member (*sent under separate transmittal*)  
Mr. Gary Pursell, Caltrans (*sent under separate transmittal*)

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