

08-Dec-2009

02.14-000019

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,**  
**Notice of Potential Claim No. 13 to the Dispute Review Board**

**REFERENCE: Dispute Review Board Letter Dated December 4, 2009**

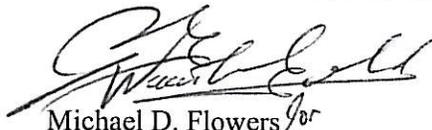
Gentlemen:

American Bridge/Fluor Enterprises, Inc. A Joint Venture (ABFJV) is in receipt of the December 4, 2009 Dispute Review Board (DRB) request for correspondence in regard to Request for Change Order (RFCO) No. 63 –Critical Weld Report (CWR) / Notice of Potential Claim (NOPC) No. 13.

Please find enclosed the requested correspondence. In the event the DRB has any questions or requires additional information, please contact this office. Once again, thank you for your assistance in this matter.

Sincerely,

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

  
Michael D. Flowers  
Project Director

Encl: Project Correspondence (22 pages)

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*)

File: 01.06.0063  
01.07.13  
02.01

03-Aug-2009

ABF-CAL-LTR-001000

Mr. Gary Pursell  
Resident Engineer  
**California Department of Transportation**  
333 Burma Road  
Oakland, CA 94607

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

**SUBJECT: REQUEST FOR CHANGE ORDER (RFCO) 063  
METHODS TO REPAIR ELEMENTS THAT EXCEED SPECIFIED TOLERANCES**

Gentlemen:

American Bridge/Fluor Enterprises, Inc., A Joint Venture (ABFJV) is in receipt of the Department Letter No. 05.03.01-004548 dated July 1, 2009 regarding Submittal 200 Rev 2 – Update, Methods to Repair elements that Exceed Specified Tolerances. In this letter the Department unilaterally modifies the referenced submittal and directs ABFJV to “Submit weld maps of all locations where ‘The out-of-tolerance of assembly gap of T-shaped joint’ procedure has been previously utilized for the Engineer to evaluate their suitability”.

Within the attached, ABFJV once again identifies for the Department the locations where “The out-of-tolerance of assembly gap of T-shaped joint” procedure has previously been utilized and repairs performed in accordance with the procedures set forth in Submittal 200, Rev 2. These records have been previously provided Department representatives on site and on several occasions, the information was discussed with Department representatives in Shanghai, China, as indicated in NCT 05.03.06-000302. Even though the Department was not provided formal written notification, the Department was aware and had knowledge of the repairs to be performed prior to the performance of the actual repairs. In the future, ABFJV will notify the Department in writing prior to performing similar repairs.

The current, “Approved” repair procedure, referenced above, does not provide restrictions on the length of the repairs or any limitations on the specific configuration of the repairs. ABFJV requests that the Department provide, in writing its criteria for evaluating the “suitability” of future out-of-tolerance of assembly gap of T-shaped joint repairs.

The Department is also requested to explain the purpose of the Category A, comment 1, Change that dictates that future “Repair procedures require the Engineer’s approval prior to each case of repair.” As the Department is aware, the repair procedure requirements are provided pursuant to Special Provision Section 10-1.59 Steel Structures, Working Drawings and the referenced Submittal. These documents describe various types of defects and identify the repairs necessary to correct each. Additional Department approval is not required prior to performing repairs. It is ABFJV’s opinion that the Department’s approval for each individual repair to be provided by ABFJV is not a Contract requirement and in the event, the Department Changes the Contract requirements that fabrication delays could possibly result. The Department is requested to confirm that the statement provided in Category A, comment 1, is in fact a written order by the Department.

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**Letter No. ABF-CAL-LTR-001000**

**Page 2**

In the event the Department requires ABFJV to request Department approval for each specific repair and treats each repair as a Critical Weld Repair; pursuant to 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, ABFJV hereby notifies the Department that the order is a Change that requires 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

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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ABF-CAL-LTR-001095

Page 2

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

18-Sep-2009

ABF-CAL-LTR-001231

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. 05.03.01-005384  
Request for Change Order – RFCO 063 Dated September 3, 2009

Gentlemen:

American Bridge/Fluor Enterprises, Inc., A Joint Venture (ABFJV) is in receipt of the Department Letter No. 05.03.01-005384 dated September 3, 2009 provided in response to ABF-CAL-LTR-001095, dated August 25, 2009 regarding ABFJV's Request for Change Order (RFCO) No. 063. In this letter, the Department advises that it sees no basis for considering requests for repair approval to be Extra Work and finds no justification for issuing a Contract Change Order.

The reason the Department provides for not issuing a Change Order is that Special Provision Section 8-3, "Welding," subsection "Welding Quality Control," states in part:

*The Engineer shall be notified immediately in writing when welding problems, deficiencies, base metal repairs, or any other type of repairs not submitted in the WQCP are discovered and also of the proposed repair procedures to correct them. For requests to perform repairs, the Contractor shall include an engineering evaluation of the proposed repair. The engineering evaluation, at a minimum, shall include what is causing the defects, why the repairs will not degrade the material properties, and what steps are being taken to prevent similar defects from happening again in the future. The Contractor shall allow the Engineer 5 days to review these procedures. No remedial work shall begin until the repair procedures are approved in writing by the Engineer.*

The above referenced paragraph describes the process for the Critical Weld Repair (CWR). ABFJV first questioned the use of the CWR process in our original RFCO 63 letter, ABF-CAL-LTR-001000 dated August 3, 2009 however the use of the CWR process is not the basis of ABFJV's request.

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ABF-CAL-LTR-001231

Page 2 of 2

The basis for ABFJV's RFCO 63 is that the Department "Approved" a repair procedure, namely Item 6.2 (the out-of-tolerance of assembly gap of T-shaped joint and the repair of the gap when the gap is more than 5mm) in Submittal ABF-SUB-000200R02 on February 12, 2009. Subsequently, On July 1, 2009 the Department unilaterally elected to change the repair procedure and implement a new procedure. In this new procedure, ABFJV was ordered, not only to notify the Department of each case of repair, ABFJV was ordered to obtain the approval of the Department, prior to each case of repair. In furtherance of the changed repair procedure, on September 16, 2009 ABFJV was provided via email from the Department's representative in Shanghai, a new form, "Notification for Engineer's Review and Approval", and was instructed that the new form will to be required to be completed for each weld repair performed for the types of welds identified in the above referenced Submittal. This new weld repair approval procedure is not stipulated in the Contract and for this reason, ABFJV, in accordance with the Contract, notified the Department that we are reserving our rights to recover any cost and time impacts caused by implementing this new procedure.

As a result of the Owner-caused Delay in the East End, the Department has urged ABFJV to assist the Department in mitigating the Delay. Incongruously, this newly directed procedure and the additional time required for the Department to review and approve each weld repair, will have a negative impact on the Project Schedule and our joint efforts to mitigate Delays.

Standard Specification 4-1.03, Changes, provides that the Department has the right to alter the plans and specifications and when the Department does so, those changes will be set forth in a Contract Change Order. ABFJV requests that the Change Order, required pursuant to Standard Specification 4-1.03, be provided ABFJV by the Department or that the Department retract its change in the Plans.

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

22-Oct-2009

ABF-CAL-LTR-001265

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. 13  
Submission of Supplemental Notice of Potential Claim**

**REFERENCE: ABFJV Letter ABF-CAL-LTR-001259 Dated October 9, 2009  
Initial Notice of Potential Claim No. 13**

Gentlemen:

American Bridge / Fluor Enterprises, Inc. Joint Venture (ABFJV) hereby submits, pursuant to Section 9-1.04, Notice of Potential Claim, of the Standard Specifications, Supplemental Notice of Potential Claim # 13, Form CEM 6201B, in regard to the Department's refusal to issue a Change Order for the Department's July 1, 2009 unilateral modification of "Approved as Noted" Submittal ABF-SUB-000200R02, Fabrication Procedures – Methods to Repair Elements that Exceed Specified Tolerances, dated January 23, 2009.

Should you have any questions, or wish to discuss this matter further, please contact our office.

Sincerely,

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

<<< ORIGINAL SIGNED >>>

Michael D. Flowers  
Project Director

Encl: Supplemental Notice of Potential Claim No. 13 (3 pages)

File: 02.01  
01.07.13

22-Oct-2009

ABF-CAL-LTR-001265

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. 13  
Submission of Supplemental Notice of Potential Claim

**REFERENCE:** ABFJV Letter ABF-CAL-LTR-001259 Dated October 9, 2009  
Initial Notice of Potential Claim No. 13

Gentlemen:

American Bridge / Fluor Enterprises, Inc. Joint Venture (ABFJV) hereby submits, pursuant to Section 9-1.04, Notice of Potential Claim, of the Standard Specifications, Supplemental Notice of Potential Claim # 13, Form CEM 6201B, in regard to the Department's refusal to issue a Change Order for the Department's July 1, 2009 unilateral modification of "Approved as Noted" Submittal ABF-SUB-000200R02, Fabrication Procedures – Methods to Repair Elements that Exceed Specified Tolerances, dated January 23, 2009.

Should you have any questions, or wish to discuss this matter further, please contact our office.

Sincerely,

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



Michael D. Flowers  
Project Director

Encl: Supplemental Notice of Potential Claim No. 13 (3 pages)

File: 02.01  
01.07.13

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION		FOR STATE USE ONLY	
<b>SUPPLEMENTAL NOTICE OF POTENTIAL CLAIM</b>		Received by	Date
CEM-6201B (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	10/22/2009	013

***This is a Supplemental 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 22, 2009

The particular nature and circumstances of this potential claim are described in detail as follows: 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 in 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."

Subsequently, on August 3, 2009 in Letter No. ABF-CAL-LTR-001000, American Bridge Fluor Enterprises, Inc. A Joint Venture (ABFJV) made a Request for Change Order (RFCO #63) for the Change made in the "Updated" Submittal Response. The Department in its Letter No. 05.03.01-004925, dated August 11, 2009 made the determination that a Contract Change Order (CCO) was not warranted. ABFJV in its Letter No. ABF-CAL-LTR-001095, dated August 25, 2009 requested that the Department reconsider its determination that a CCO was not warranted. The Department, in Letter No. 05.03.01-005384, dated September 3, 2009, reiterated that they could find no justification for the issuance of a Change Order. ABFJV then sent ABF-CAL-LTR-001231, dated September 18, 2009, to inform the Department that RFCO #63 revolved around a procedural Contract issue and not a technical weld issue. Finally, the Department, in Letter No. 05.03.01-005629 dated October 5, 2009 provided in response to ABF-CAL-LTR-001231, "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. Shop Drawings/Welding Procedure Submittals are considered working drawings. Working drawings, once they are approved by the Department, become part of the official Project Plans (see below Standard Specifications, 5-1.02). In the event the Department orders in writing, a Change in the Plans, in order to comply with Standard Specification 4-1.03 Changes (see below) the Department should issue a Contract Change Order. To date, The Department has refused to issue the required Change Order.

Notwithstanding the Department's failure to issue a change order, the terms set forth in Standard Specification, 4-1.03C, Changes in Character of Work remain applicable. Standard Specification, 4-1.03C provides in pertinent part (see below), in the event the Department orders a change in the plans or specifications and the change materially changes the character of the work of a contract item from that on which the Contractor based the bid price and the change increases the actual unit cost of the changed item as compared to the actual or estimated actual unit cost of performing the work of that item, in the absence of an executed contract change order specifying the compensation payable, the adjustment in compensation will be the difference between the actual unit cost to perform the work of that item involved in the change as originally planned and the actual unit cost of performing the work of the item or portion thereof involved in the change, as changed.

There is no dispute that 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 (Letter No. 05.03.01-004548) the Department, refuses to recognize that a Contract Change Order is due ABFJV. 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.

(attach additional sheets as needed)

**THE BASIS OF THIS POTENTIAL CLAIM INCLUDING ALL RELEVANT CONTRACT PROVISIONS ARE LISTED 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.

4-1.03C Changes in Character of Work, states "If an ordered change in the plans or specifications materially changes the character of the work of a contract item from that on which the Contractor based the bid price, and if the change increases or decreases the actual unit cost of the changed item as compared to the actual or estimated actual unit cost of performing the work of that item in accordance with the plans and specifications originally applicable thereto, in the absence of an executed contract change order specifying the compensation payable, an adjustment in compensation therefor will be made in accordance with the following."

"The basis of the adjustment in compensation will be the difference between the actual unit cost to perform the work of that item or portion thereof involved in the change as originally planned and the actual unit cost of performing the work of the item or portion thereof involved in the change, as changed. Actual unit costs will be determined by the Engineer in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-1.03; or the adjustment will be as agreed to by the Contractor and the Engineer. The adjustment will apply only to the portion of the work of the item actually changed in character... "

5-1.04, Coordination and Interpretation of Plans, Standard Specification, and Special Provisions, provides, "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."

Standard Specifications 8-1.07, Liquidated Damages, 4-1.03A, Procedure and Protest,

Special Provisions, 9-1.04, Notice of Potential Claim, 10-1.13 Progress Schedule (Critical Path Schedule)

(attach additional sheets as needed),

The estimated dollar cost of the potential claim including a description of how the estimate was derived and an itemized breakdown of individual costs are attached hereto.

Unknown at this time

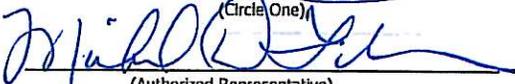
(attach sheets as required)

A time impact analysis of the disputed disruption has been performed and is attached hereto. The affect on the scheduled project completion date is as follows: Unknown at this time.

(attach time impact analysis as required)

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.*

American Bridge/Fluor JV  
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)

**ADA Notice** *For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-64100 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814. California Department Of Transportation • Construction Manual • July 2004*

20-Nov-2009

ABF-CAL-LTR-001297

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 Number 013

**REFERENCE:** Request for Change Order (RFCO) No. 63 – Critical Weld Report (CWR)  
Department Letter No. 05.03.01-005803, Dated November 10, 2009

Gentlemen:

American Bridge / Fluor Enterprises, Inc., A Joint Venture (ABFJV) is in receipt of Department Letter No. 05.03.01-005803, dated November 10, 2009 provided in response to ABFJV letter, ABF-CAL-LTR-001265, Supplemental Notice of Potential Claim (NOPC) No. 13, dated October 22, 2009. In this letter the Department acknowledged that they modified ABF-SUB-000200R02, Methods to Repair Elements that Exceed Specified Tolerances, in the following statement, "Approval was provided for non-SPCM (Seismic Performance Critical Member) welds via State Letter 05.03.01-003474, but required notification of each incidence. The Department modified the approval process by requiring the submission of a 'Notification for the Engineer's Review and Approval,' form"

The Department, in the referenced letter, opines that ABFJV believes that "...a Change Order is required because the Engineer modified the approval process for out-of-tolerance weld joints." This statement is accurate.

When the Department modified the Plans and Specifications as described in the two bulleted items below, the Department was contractually required to provide ABFJV a Change Order. The reason for this is because the Department ordered the "notice of repair" requirements set forth in the current Project Plans (Department Letter No. 05.03.01-003474) changed to "Engineer's approval prior to each case of repair" (Department Letter No. 05.03.01-004548).

- 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 ordered Submittal ABF-SUB-000200R02, Fabrication Procedures – Methods to Repair Elements that Exceed Specified Tolerances, dated January 23, 2009 Category A, 1 modified as follows, "**Repair procedures require the Engineer's approval prior to each case of repair.**" (Emphasis Ours).

ABF-CAL-LTR-001297  
Page 2 of 2

Despite the Department's admission that they changed the existing Contract Plans and Specifications and ABFJV's repeated requests for a Contract Change Order, the Department refuses to issue a Change Order or provide a sound contractual explanation why ABFJV is not entitled to a Change Order.

In Department Letter No. 05.03.01-005803, ABFJV is requested to please provide the following information:

1. Confirm whether ABF is requesting a change order for submitting the Notification for the Engineers Review and Approval form for either (1) all assembly gaps in T-shaped fillet welds, including SPCM members, or (2) all assembly gaps and T-shaped fillet welds for non-SPCM members only.
2. Provide a complete listing of where the repairs have occurred through October 2009 and include:
  - OBG segment
  - Weld location and map number
  - Date and time of notification
  - Type of notification (verbal or written)
  - Who was notified and by whom
  - Transmittal No. if any
  - Caltrans approval date and time
  - Verify if the repaired weld joints were SPCM members
3. Provide a description of the impacts incurred and the work processes disrupted, along with an itemized breakdown of the costs.

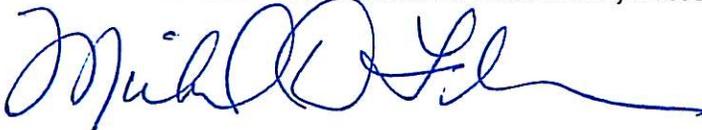
ABFJV believes that the information requested by the Department is irrelevant to the dispute which has arisen by virtue of the Contract and the Department's subsequent failure to act. Until such time as ABFJV's entitlement to a Contract Change Order is determined, the provision of the requested information is premature.

Unless the Department agrees to issue requested Change Order, RFCO No. 63 on or before November 24, 2009 ABFJV intends to submit this matter to the Dispute Review Board for resolution.

If you have any questions, please contact our office.

Sincerely,

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



Michael D. Flowers  
Project Director

File: 01.06.0063  
01.07.13

**DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program**

333 Burma Rd.

Oakland, CA 94607

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February 12, 2009

Contract No. 04-0120F4

04-SF-80-13.2 / 13.9

Self-Anchored Suspension Bridge

Letter No. 05.03.01-003474

Michael Flowers  
Project Executive  
American Bridge/Fluor, A JV  
375 Burma Road  
Oakland, CA 94607

Dear Michael Flowers,

**Submittal 200, Rev. 2 - Methods to Repair Elements that Exceed Specified Tolerance**

The Department has completed review of Submittal ABF-SUB-000200R02, "Fabrication Procedures - Methods to Repair Elements that Exceed Specified Tolerance," dated January 23, 2009. The submittal is "Approved as Noted," as shown on the attached drawings and as outlined by the following comments:

**CATEGORY A:**

1. Repair procedures require the Engineer to be notified for each case of repair.
2. The repair methods will be limited to 3 holes per hole pattern (group).
3. Cooling times prior to inspections for SPCMs shall conform to AWS D1.5, Section 12.16.4. and the approved FCP.
4. **Repair Method 4:** Repairs of this type are considered critical repairs and must be addressed on a case by case basis.
5. **Repair Method 5:** Buttering is limited to 10mm or less. Edges and faying surfaces are to be ground flush after buttering. For repairs requiring greater than 10mm thickness, butt weld another plate of the same size and properties to the plate being repaired.

**CATEGORY B:**

1. Provide, for review and approval, the Weld Procedure Specifications (WPS) to be used.
2. Specify cooling times for the associated UT and MT testing to be performed in accordance with Category A, comment 3 above.

**CATEGORY C:**

1. Since NDT will be required after welding, when rejectable indications are discovered, they may be removed during subsequent re-drilling operation and the necessity of repairing again could be negated.

AMERICAN BRIDGE/FLUOR, A JV

05.03.01-003474

Page 2 of 2

If you have any questions, please contact Gary Lai in the Working Drawing Campus.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary Purcell".

GARY PURSELL  
Resident Engineer

Attachment

cc: Rick Morrow  
Stanley Ku  
Mazen Wahbeh  
Jason Tom  
file: 05.03.01, 55.0200

**DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program**

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July 01, 2009

Contract No. 04-0120F4

04-SF-80-13.2 / 13.9

Self-Anchored Suspension Bridge

Letter No. 05.03.01-004548

Michael Flowers  
Project Executive  
American Bridge/Fluor, A JV  
375 Burma Road  
Oakland, CA 94607

Dear Michael Flowers,

**Submittal 200, Rev. 2 - Update 1 - Methods to Repair Elements that Exceed Specified Tolerance**

This letter is an update to State Letter 05.03.01-003474, issued February 12, 2009, in response to Submittal ABF-SUB-00200R02, "Methods to Repair Elements that Exceed Specified Tolerance," dated January 23, 2009. Based upon the Department's observations, several locations were identified where the repair procedure was utilized in an intermittent skip-weld type fashion, and without notification to the Engineer. These locations are as follows:

- OBG Floor Beam fillet welds
- OBG Longitudinal Diaphragm (LD) fillet welds
- Bike Path

Submit weld maps of all locations where "The out-of-tolerance of assembly gap of T-shaped joint" procedure has been previously utilized for the Engineer to evaluate their suitability.

The Department is hereby updating the response to Submittal ABF-SUB-000200R02, "Methods to Repair Elements that Exceed Specified Tolerance." This submittal remains "Approved as Noted," as shown on the attached drawings and as outlined by the following comments:

**CATEGORY A:**

1. Repair procedures require the Engineer's approval prior to each case of repair.
2. The repair methods will be limited to 3 holes per hole pattern (group).
3. Cooling times prior to inspections for SPCMs to conform to AWS D1.5, Section 12.16.4 and the approved FCP.
4. Repair Method 4 – Repairs of this type are considered critical repairs and must be addressed on a case by case basis.
5. Repair Method 5 – Buttering is limited to 10mm or less in length. Grind flush edges and faying surfaces after buttering. For repairs on plates greater than 10mm in thickness, butt weld another plate of the same size and properties to the plate being repaired.

**CATEGORY B:**

1. Submit Welding Procedure Specifications (WPSs) proposed for use in these procedures for review and approval.
2. Specify cooling times for the associated UT and MT testing to be performed in accordance with Category A, comment 3 listed above.

**CATEGORY C:**

1. As NDT will be required after welding when rejectable indications are discovered, the indications could be removed during the subsequent re-milling operation, thus negating the necessity of doing additional repairs.

If you have any questions, please contact Doug Coe.

Sincerely,



GARY PURSELL  
Resident Engineer

Attachment

cc: Rick Morrow  
Brian Boal  
Pete Siegenthaler  
Mazen Wahbeh  
Doug Coe  
file: 05.03.01, 55.0200

**DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program**

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August 11, 2009

Contract No. 04-0120F4  
04-SF-80-13.2 / 13.9  
Self-Anchored Suspension Bridge  
Letter No. 05.03.01-004925

Michael Flowers  
Project Executive  
American Bridge/Fluor, A JV  
375 Burma Road  
Oakland, CA 94607

Dear Michael Flowers,

**Request for Change Order - RFCO 063**

The Department has reviewed ABF-CAL-LTR-001000, dated August 3, 2009, in which ABF requested a CCO be issued in response to State Letter 05.03.01-004548, dated July 1, 2009, related to an update to Submittal AFB-SUB-00200R02, "Methods to Repair Elements that Exceed Specified Tolerance." Regarding the request for a CCO, AWS D1.5: 2002 requires the Engineer's approval when a revised design is requested to compensate for weld fit-up deficiencies, thus no CCO is warranted.

For a fillet weld, Section 3.3.1 of AWS D1.5: 2002 specifies, "*The root opening shall not exceed 5mm...*" and Section 3.7.4 specifies that, "*Prior approval of the Engineer shall be obtained... for revised design to compensate for deficiencies.*" The use of a complete joint penetration (CJP) weld in lieu of a fillet weld location referenced in the submittal above, or any other location where it might be used, is a revised design requiring the Engineer's approval prior to performing the repair. The Engineer will want to verify details such as location, bevels, backing, and root opening prior to the repair.

The repair procedure referenced in AFB-SUB-00200R02 was to be a proactive method of allowing ZPMC to move forward when the weld fit-up for the deck diaphragm to floor beam top flange plate fillet welds (see Section A-A on contract plan sheet 649/1204) exceeded the contract tolerance of 5mm. Regarding the length of the CJP to be used in lieu of a fillet, the following shall apply:

- 1) At locations where root gap is out-of-tolerance, the fillet weld shall be replaced with a CJP weld.
- 2) The CJP weld shall extend at least 50mm beyond either sides of the out-of-tolerance root gap.
- 3) The CJP weld preparation shall have a 1:1 slope or smoother transition at the ends.
- 4) The CJP weld shall have reinforcing fillets equal to the replaced fillet weld.
- 5) The CJP weld (including transitions) shall be 100% UT inspected.

Should you like to discuss this further, please contact Doug Coe at 137-6132-2704, or (510) 714-7079.

Sincerely,

A handwritten signature in blue ink that reads "Gary Purcell".

GARY PURSELL  
Resident Engineer

cc: Peter Siegenthaler, Doug Coe, Rick Morrow, Marwan Nader  
file: 05.03.01, 57.0063

**DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program**

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September 03, 2009

Contract No. 04-0120F4  
04-SF-80-13.2 / 13.9  
Self-Anchored Suspension Bridge  
Letter No. 05.03.01-005384

Michael Flowers  
Project Executive  
American Bridge/Fluor, A JV  
375 Burma Road  
Oakland, CA 94607

Dear Michael Flowers,

**Request for Change Order (RFCO) No. 63 - Engineer Approval of Weld Repairs**

The Department is in receipt of ABF-CAL-LTR-001095, dated August 25, 2009, requesting the Department to reconsider the determination made in State Letter 05.03.01-004925 regarding RFCO 63. State Letter 05.03.01-004548, "Submittal 200, Rev. 2 - Update 1 - Methods to Repair Elements that Exceed Specified Tolerances," dated July 1, 2009, was issued to clarify the language used in State Letter 05.03.01-003474, dated February 12, 2009. The contract requires that repairs that are not submitted in the Welding Quality Control Plan (WQCP) be approved in writing by the Engineer prior to the start of remedial work. Special Provision Section 8-3, "Welding," subsection "Welding Quality Control," states in part:

*The Engineer shall be notified immediately in writing when welding problems, deficiencies, base metal repairs, or any other type of repairs not submitted in the WQCP are discovered and also of the proposed repair procedures to correct them. For requests to perform repairs, the Contractor shall include an engineering evaluation of the proposed repair. The engineering evaluation, at a minimum, shall include what is causing the defects, why the repairs will not degrade the material properties, and what steps are being taken to prevent similar defects from happening again in the future. The Contractor shall allow the Engineer 5 days to review these procedures. No remedial work shall begin until the repair procedures are approved in writing by the Engineer.*

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.

Please contact Doug Coe if there are any questions.

Sincerely,

A handwritten signature in blue ink that reads "Gary Pursell".

GARY PURSELL  
Resident Engineer

cc: Rick Morrow, Doug Coe, Jason Tom  
file: 05.03.01



**DEPARTMENT OF TRANSPORTATION -Toll Bridge Program**

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November 10, 2009

Contract No. 04-0120F4

04-SF-80-13.2 / 13.9

Self-Anchored Suspension Bridge

Letter No. 05.03.01-005803

Michael Flowers  
Project Executive  
American Bridge/Fluor, A JV  
375 Burma Road  
Oakland, CA 94607

Dear Michael Flowers,

**NOPC 13 - Regarding T-Shaped Fillet Welds for OBG Skin Plate Stiffeners**

The Department has reviewed ABF-CAL-LTR-001265, dated October 22, 2009, regarding Supplemental Notice of Potential Claim (NOPC) No. 13. It is the Department's understanding that ABF believes that a Change Order is required because the Engineer modified the approval process for out-of-tolerance weld joints. The weld joints referenced are T-shaped fillet welds for OBG skin plate stiffeners that have exceeded the maximum allowable out-of-tolerance assembly gap and require repairs.

In Submittal ABF-SUB-000200R02, ABF requested to repair a fillet weld with a Complete Joint Penetration (CJP) weld whenever an assembly gap exceeded 5mm. This change in weld type required the Engineer's prior approval. Approval was provided for non-SPCM (Seismic Performance Critical Member) welds via State Letter 05.03.01-003474, but required notification of each incidence. The Department modified the approval process by requiring the submission of a "Notification for the Engineer's Review and Approval," form.

In order to clarify the above and determine the merits of this potential claim, please provide the following information:

1. Confirm whether ABF is requesting a change order for submitting the "Notification for the Engineer's Review and Approval" form for either (1) all assembly gaps in T-shaped fillet welds, including SPCM members, or (2) all assembly gaps and T-shaped fillet welds for non-SPCM members only.
2. Provide a complete listing of where the repairs have occurred through October 2009 and include:
  - OBG segment
  - Weld location and map number
  - Date and time of notification
  - Type of notification (verbal or written)
  - Who was notified and by whom
  - Transmittal No. if any
  - Caltrans approval date and time
  - Verify if the repaired weld joints were SPCM members

3. Provide a description of the impacts incurred and the work processes disrupted, along with an itemized breakdown of the costs.

Please provide the requested information by November 29, 2009. Once the information is submitted, the Department will resume review of the merits of NOPC 13.

Sincerely,



GARY PURSELL  
Resident Engineer

cc: Don Ross  
Rick Morrow  
Doug Coe  
Bill Shedd

file: 05.03.01, 62.02.013