American Bridge / FLUOR
A JOINT VENTURE

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03-Dec-2009

ABF-CAL-LTR-001307

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. 14**
Submission of Supplemental Notice of Potential Claim

REFERENCE: **ABFJV Letter ABF-CAL-LTR-001296 Dated November 20, 2009**
Initial Notice of Potential Claim No. 14

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 # 14, Form CEM 6201B, in regard to the Department's refusal to issue a Change Order for the Department's unilateral modifications of the Special Provisions, Section 10-1.59, Steel Structures via "Approved as Noted" Submittal ABF-SUB-000234R08, Dimension Control Plan dated January 28, 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: Form CEM 6201B (4 pages)

File: 01.07.14
02.01

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION		FOR STATE USE ONLY	
SUPPLEMENTAL NOTICE OF POTENTIAL CLAIM CEM-6201B (NEW 9/2002)		Received by (For resident engineer)	Date
TO Gary Pursell (resident engineer)	CONTRACT NUMBER 04-0120F4 04-SF-80-13.2/13.9	DATE 12/5/2009	IDENTIFICATION NUMBER 014

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 November 18, 2009

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

Contractor submitted a Dimension Control Plan (DCP), Submittal ABF-SUB-000234R00, in accordance with the requirements set forth in the Special Provisions, AASHTO and AWS D1.5. The Department, during the review process made several redline changes to the DCP and eventually, DCP Submittal ABF-SUB-000234R08, was "Approved as Noted" by the Department on January 28, 2009, and this revision has not been modified since.

The basis of this NOPC is the Department's failure to acknowledge Department Changes to the Contract and the Department's subsequent arbitrary refusal to issue a Contract Change Order. The Department's stated reason for such action is twofold.

1. "The Contractor's DCP, referenced in State Letter 05.03.08-000023, was submitted to and approved by the Department and as such is a controlling contract document..." (Submittal ABF-SUB-000234R08, DCP, was "Approved as Noted" by the Department in Department Letter No. 05.03.01-003387 on January 28, 2009).

2. "Whenever multiple tolerances are applicable, the stricter tolerance governs."

Item 1 above contains two statements that are inaccurate.

The first is "The Contractor's DCP, referenced in State Letter 05.03.08-000023, was submitted to and approved by the Department..."

- Submittal ABF-SUB-000234R08, was not "Approved" as indicated by the Department. It was "Approved as Noted." Department Letter No. 05.03.01-003387 states, "The submittal is "Approved as Noted," as shown on the attached drawings and as outlined by the following comments."

The second is that the "Approved" Submittal is "a controlling contract document..." The following bullet points establish that Submittal ABF-SUB-000234R08 is not the "controlling contract document."

- Standard Specifications Section 1-1.29, Plans, is as follows; *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.*

- Standard Specifications, Section 5-1.02, Plans and Working Drawings, *"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."*

- The Standard Specifications, Section 5-1.04, Coordination and Interpretation of Plans, Standard Specification, and Special Provisions, state that the "... *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."*

- Section 5-1.04 indicates that in the event of conflict between the Standard Specifications, the Standard Plans, project plans, special provisions, contract change orders and all supplementary documents that *"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."*

- The Special Provisions Section 10-1.59, Steel Structures, require that *Dimensional tolerances for the box girder, including the crossbeam, shall conform to the tolerances in AWS D1.5, AASHTO Standard Specification For Highway Bridges, Sixteenth Edition 1996, Division II – Construction, Section 11.4.13 –Orthotropic Deck Superstructures."*

In summary, Submittal ABF-SUB-000234R08 is a Working Drawing (Standard Specifications, Section 5-1.02, Plans and Working Drawings) and as such is considered a part of the Project Plans (Standard Specifications Section 1-1.29, Plans). Submittal ABF-SUB-000234R08 was "Approved as Noted," as shown on the attached drawings and as outlined by the comments provided by the Department in State Letter 05.03.08-000023 dated August 13, 2009. The revised requirements identified in the "Approved as Noted" Working Drawings and comments are not compatible with the requirements set forth in Special Provisions Section 10-1.59, Steel Structures. When a conflict exists in the Standard Specifications, the Standard Plans, Project Plans, Special Provisions, Contract Change Orders and all Supplementary Documents that "Project plans shall govern over Standard Plans; Standard Plans and project plans shall govern over these Standard Specifications, **the Special Provisions shall govern over both these Standard Specifications and the Plans.**

As indicated in bold above, the Contract requires that the Special Provisions govern over both the Standard Specifications and the Plans. For this reason, unless a Contract Change Order is issued stating that Approved Working Drawings govern over the Special Provisions, Submittal ABF-SUB-000234R08 is not the "controlling contract document", and is not a legitimate basis for the Department's refusal to issue a Contract Change Order. In this case, Special Provision Section 10-1.59 governs over the over the Submittal Working Drawings and is therefore the "controlling document".

In Item Number 2 above, the Department advises, "Whenever multiple tolerances are applicable, the stricter tolerance governs." This statement is inconsistent with the terms and conditions of the Contract (Standard Specifications, Section 5-1.04, Coordination and Interpretation of Plans, Standard Specification, and Special Provisions).

- The Standard Specifications, Section 5-1.04, Coordination and Interpretation of Plans, Standard Specification, and Special Provisions, state that the "... *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."*

- Section 5-1.04 indicates that in the event of conflict between the Standard Specifications, the Standard Plans, project plans, special provisions, contract change orders and all supplementary documents that *"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."*

The Contractor is unable to locate any Contract support for the Department's assertion that "Whenever multiple tolerances are applicable, the stricter tolerance governs." If the Department wants the "stricter tolerance" to govern, the issuance of a Contract Change Order by the Department is required as identified in the Contract provisions set forth below.

Standard Specification Section 4-1.03, Changes, provides as follows:

- *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 therefor. 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.*

(The Department in Letter No. 05.03.01-002717, informed Contractor that RFI responses, submittal redlines, and previously transmitted listings are, in themselves, written direction to proceed with Changes under the Contract.)

Standard Specification, Section 4-1.03C, Changes in Character of Work, provides in pertinent part that 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.

The Department attempted to modify the Contract Plans and Specifications by redline changes and comments to Submittal ABF-SUB-000234R08. These redline changes and comments created a conflict in the Contract documents (between the Plans and the Special Provisions, which govern) and for the reasons set forth herein, Contractor is entitled to a Contract Change Order.

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