

04-Aug-2011

ABF-CAL-LTR-001616

Mr. Peter Siegenthaler  
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: Potential Claim Number 16**  
**Installation of Washers on Mechanical Piping Bolted Connections**  
**Submission of Initial Notice of Potential Claim**

**REFERENCE: Department Letter Number 05.03.01-009789, Dated July 28, 2011**

Gentlemen:

Pursuant to the Agreement, including Standard Specifications, Article 9-1.04, Notice of Potential Claim, as amended by the Special Provisions, American Bridge / Fluor Enterprises Inc., A Joint Venture (ABFJV) hereby submits on behalf of F.W. Spencer & Son, Inc. (FWS), ABFJV's mechanical subcontractor, the enclosed, certified Form CEM 6201A, Initial Notice of Potential Claim, identified by the above number.

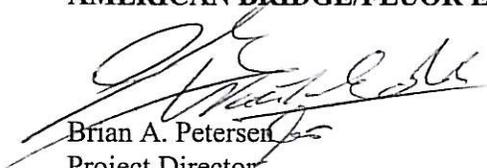
This Initial Notice of Potential Claim will be followed-up with a Supplemental Notice of Potential Claim.

We look forward to receiving your prompt response to the above identified Initial Potential Claim.

If you have any questions, please contact our office.

Sincerely,

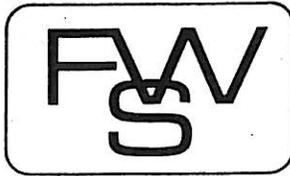
**AMERICAN BRIDGE/FLUOR ENTERPRISES, INC. A JOINT VENTURE**

  
Brian A. Petersen  
Project Director

Encl: Letter from F.W. Spencer  
Initial Notice of Potential Claim

Cc: F.W. Spencer

File: 02.01  
01.07.16



**F.W. SPENCER & SON, INC.**  
**MECHANICAL CONTRACTORS**  
— SINCE 1903 —

99 SOUTH HILL DRIVE • BRISBANE, CA 94005-1215  
PHONE: (415) 468-5000 • FAX: (415) 468-4579  
CALIFORNIA CONTRACTOR'S LIC. #112799

FWS-ABF-HARDWASH1

0609-86

8/3/11

Bob Kick  
American Bridge / Fluor Enterprises A Joint Venture, Inc.  
375 Burma Road  
Oakland, CA 94607

Re: Letter No. 05.03.01-009789  
Caltrans Contract # 04-0120F4 04-SF-80-13.2/13.9

Subject: Installation of Washers on Mechanical Piping Bolted Connections

Dear Bob,

On August 2, 2011, F.W. Spencer and Son, Inc. received letter ABF-FWS-LTR-000138 as a cover letter to DOT Letter No. 05.03.01-009789 directing FWS to commence addition of hardened washers to bolted connections on the pipe supports we are installing. Letter No. 05.03.01-009789 accepts bolted connection installations to date as fit for purpose without washers.

As required by contract, FWS is complying with the directions contained in Letter No. 05.03.01-009789. We are in the process of obtaining hardened washers while simultaneously submitting on this added material through the project submittal and CalTrans approval process. Please request CalTrans provide an expedited review of this material or, if possible, elect to inspect on site upon delivery so we can comply as quickly as possible with their requested change.

Letter No. 05.03.01-009789 stated "Tolco must provide certification that their design for their pipe clamps is adequate without washers for the Bay Bridge applications". A copy of the requested document is attached to this letter.

**RECEIVED**

**AUG 03 2011**

**AMERICAN BRIDGE/FLUOR**

**F. W. SPENCER & SON, INC.**  
**MECHANICAL CONTRACTORS**

Letter No. 05.03.01-009789 further states that costs of including hardened steel washers should have been included in the original bid. FWS disagrees with this statement and considers the directed addition to be a change in contract for which we should be compensated. No engineering justification has been presented for the requested change which overrides approved engineered details and is logically contradictory. The request in Letter No. 05.03.01-009789 also reveals an ambiguity in the specifications for which DOT is legally responsible. FWS and its engineer reasonably understood the specifications as not requiring washers at all connections and accordingly submitted designs that were approved as such. Although we are required to proceed as directed, FWS is consequently filing an Initial Notice of Potential Claim as dictated by the contract specifications. Per contract specifications (CalTrans standards 9-1.04) a copy of form CEM6201A – Initial Notice of Potential Claim is attached. Please transmit these documents to the appropriate parties.

This letter is also to serve as notice of written protest as described under 4-1.03A of the CalTrans standards.

FWS will be submitting the required change request documents and subsequent Potential Claim forms under the schedule dictated by the contract provisions.

Please don't hesitate to contact me if you require any additional clarification on this matter. It remains FWS's hope that this matter can still be resolved in a more logical and definitive manner to the satisfaction of all parties without the burden of pursuing the matter as a Claim.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy J. Bartlett', with a long horizontal stroke extending to the right.

Jeremy J. Bartlett

Project Manager

Encl: CEM6201A, TOLCO Letter



**TOLCO**  
a brand of **NIBCO**

TOLCO  
1375 Sampson Avenue  
Corona, CA 92879

Phone: 951.737.5599  
Fax: 951.737.0330

www.tolco.com

8/1/2011

Mr. Jeremy Bartlett  
F.W. Spencer & Son, Inc.  
Mechanical Contractors  
99 South Hill Drive  
Brisbane, CA 94005

**Subject: California Department of Transportation Bay Bridge: Pipe Supports, Hardened Steel Washers, Mechanical Piping Clamps and Other Pipe Supports Bolted Connections**

Dear Mr. Bartlett,

The purpose of this letter is to address the requirement of the hardened steel washers for the pipe clamps and other pipe supports bolted connections for the subject project. Please note the following:

1. Our pipe support submittal, which has been reviewed and approved, does not require the use of hardened steel washers at the pipe clamps or at the other pipe supports bolted connections that use standard hole sizes.
2. Our design for the pipe supports does not require the use of hardened steel washers for the pipe clamps or other pipe supports bolted connections that use standard hole sizes and it is suitable for the Bay Bridge application.
3. Our design of the pipe supports is in compliance with the project specifications, that according to our understanding, do not require the use of hardened steel washers for the pipe clamps or other pipe supports bolted connections that use standard hole sizes.
4. Please refer to our approved pipe supports submittal for additional information.

Please feel free to call me if you have any questions.

Kind Regards,  
Zubair Sheikh, P.E., S.E.



STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**INITIAL NOTICE OF POTENTIAL CLAIM**  
 CEM-6201A (REV. 7/2008)

FOR STATE USE ONLY	
Received by	Date
(For resident engineer)	

TO	CONTRACT NUMBER	DATE	IDENTIFICATION NUMBER
Peter Siegenthal (resident engineer)	04-0120F4 04-S-80-13.2/13/9	08/02/2011	1 FWS 8-2-11

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 08/02/2011

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

On August 2, 2011, F.W. Spencer and Son, Inc. (FWS) received Letter No. 05.03.01-009789 (hereafter "letter 9789") from the Department of Transportation (DOT) requiring, as of July 28, 2011, that hardened washers be installed on all future bolted connections for pipe supports but accepting previously installed connections without hardened washers as fit for purpose. DOT claims the specifications required these hardened washers and therefore installation is to be performed at no cost as they should have been included in FWS's base scope of work. FWS considers this request to be a change in scope that warrants compensation.

It is FWS's view that the requested change is DOT's responsibility for two reasons. The first reason is that letter 9789's direction contradicts approved, engineered details without clear engineering justification. The second reason is that letter 9789 reveals what turn out to be ambiguous specifications that did not make the design intent clear; ambiguity in contractual documents is the responsibility of the party developing the contract. FWS is being requested to supply and install material to an unclear extent in an arbitrary and contradictory manner according to criteria that are not clearly required by the specifications and in contradiction to approved engineered details.

From the technical perspective, the pipe supports were engineered in detail to finalize the general support designs presented in the contract documents. These engineered details do not contain washers and were reviewed and approved for installation. As requested in letter 9789, the state licensed engineer subcontracted by FWS to develop the approved pipe support details has supplied a letter confirming that none of the bolted connections require or include hardened washers. He has additionally stated that his professional reading of the specifications is that they were and are not required. Furthermore DOT accepts, in letter 9789 itself, that bolted connections installed without hardened washers are fit for purpose. Logically, if there were any engineering need for the washers, the washerless connections could not have been accepted as "fit for purpose". From the technical perspective, Letter 9789 thus contradicts its own rationale. The lack of an engineering justification for the directed change makes the request technically arbitrary. There is no technical reason for the requested change.

With regards to the specifications, the direction in Letter 9789 is based on an incomplete, partial citation of Section 10-4.02 of the Special Provision for the project. The interpretation DOT now attaches to this cited portion of the specifications does not conform to the remaining portion of the cited section of the specification. At best the presented interpretation of the cited section reveals an ambiguity in the specifications if not an outright contradiction. The quoted section states "use ASTM A36 for fabrication of pipe supports and ASTM A325 heavy hex head bolts with hardened washers and heavy hex nuts for bolted connections". What has been crucially left out in Letter 9789 is that this is followed in the same paragraph by "Pipe supports shall be fabricated and installed according to MSS SP-58 and SP-69." In an entirely reasonable manner FWS reads the first quoted section as indicating the materials to be used and the second as the way the materials are to be installed; that is both the nature of the specifications referred to and the language used in the quoted sections ("use" and "installed"). As stated above, the state licensed engineer designing the pipe supports also read the specifications in this manner. The installation specification cited, MSS SP-58, refers to RCSC specifications that, for the type of connections made, state "washers are not required". This was reinforced by DOT's own response to RFI 0022454R00 wherein DOT confirmed the bolts be installed per RCSC "Snug Tight" specifications; these do not require washers. Until just before letter 9789 was issued it appears DOT personnel involved in the project also read the specifications this way; FWS installed bolted connections without hardened washers which were inspected and approved for payment without question by DOT personnel familiar with the specifications. DOT now states the specifications were intended to require installation of hardened washers at all bolted connections including these which are installed as directed using AISC/RCSC "snug tightened" criteria. At best this disagreement reveals DOT's specifications are not as clear as they are required to be to avoid responsibility for ambiguity. If hardened washers were required or desired at all bolted connections the specifications should have contained clear language such as "install hardened washers at all bolted connections regardless of MSS SP-58 specifications". DOT rather than FWS is responsible for DOT's failure to clearly communicate their contractual requirements. FWS is not liable for burdens imposed by ambiguous contractual language. There is no contractual reason for the change.

**ADA Notice**

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

FOR STATE USE ONLY	
Received By	Date
(For resident engineer)	

TO	CONTRACT NUMBER	DATE	IDENTIFICATION NUMBER
Peter Siegenthaler (resident engineer)	04-0120F4 04-SF-80-13.2/13.9	4 August 2011	1 FWS 8-2-11

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: 4 August 2011

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

See CEM-6201A (REV. 7/2008) attached  
dated 8/2/11

This earlier version of form CEM6201A is being submitted to include the certification signatures which are missing from the more recent official version of the form on the Department of Transportation website.

(attach additional sheets as 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.*

F.W. Spencer and Son, Inc.

SUBCONTRACTOR or CONTRACTOR  
(Circle One)

(Authorized Representative)

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded by

American Bridge/Fluor Enterprises, Inc.  
PRIME CONTRACTOR

(Authorized Representative)

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