



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JOSÉ ABREU
SECRETARY

MEMORANDUM

DATE: February 6, 2004

TO: District Secretaries

FROM: Jose' Abreu, P.E.

COPIES TO: Ken Morefield, Freddie Simmons, Ananth Prasad

SUBJECT: Role of CEI Firms

This Memo Has Been Expired

In light of recent discussions as it relates to professional firm's liability exposure and the authority these firms are given by the Department, it is my desire to revamp how the Department manages it's contract with a professional firm.

To that end, effective today, the CEI firms shall be allowed to exercise their independent professional judgment. On existing CEI contracts, such use of independent professional judgment is permitted, and should be allowed to the maximum extent under existing contract language. The Department will be modifying future contracts to further demonstrate and authorize this expectation.

The Department's current procedures state that the authority of the CEI firm's lead person, such as the CEI Senior Project Engineer, and the CEI Project Administrator are identical to the Department's Resident Engineer and Project Administrator, respectively. The role of the Department's Project Manager (PM) is to ensure that these CEI Firms are providing services in accordance with their Contract and not control the means and methods by which the CEI firm performs these services. Department procedures allow review and rating of such services and further provides for recovery of any errors or omissions made by the CEI firm.

Attached, please find a letter to Federal Highway Administration (FHWA) on the commitments made by the Department to satisfy requirements of the Code of Federal Regulations and FHWA's response to such letter. It is very important for the success of this initiative that we comply with the requirements in both the letters without exceptions.

If you have any questions, please feel free to contact Ananth Prasad at 850-414-4150 (suncom 994-4150).

JA:ap

Attachments (2)



Florida Department of Transportation

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605 Suwannee Street
Tallahassee, FL 32399-0450

JOSÉ ABREU
SECRETARY

November 18, 2003

Mr. Jim St. John
Division Administrator
Federal Highway Administration
227 N. Bronough Street, Suite 2015
Tallahassee, FL 32301

ATTN: Don Davis, Program Operations Engineer

Dear Mr. St. John:

**RE: DEPARTMENT'S OVERSIGHT AND THE ROLE OF THE
CONSTRUCTION PROJECT MANAGER ON CONSTRUCTION
ENGINEERING AND INSPECTION CONTRACTS**

In light of recent discussions as it relates to professional firm's liability exposure and the authority these firms are given by the Department, it is Secretary José Abreu's vision and desire to revamp how the Department manages its contract with a professional firm. It is vital to the State's interest to control costs and promote a healthy business climate while ensuring proper accountability and safety on public work projects.

The Department seeks FHWA's concurrence to implement the following changes on an experimental basis. The Department sincerely appreciates the willingness of FHWA to work with the Department on these issues and is committed to assessing the effectiveness of the changes as outlined below.

The Department hires professional firms to perform various functions including Construction Engineering and Inspection (CEI) services. The CEI firm shall be responsible for functions as defined in their Scope of Services and referenced manuals and procedures and shall utilize effective control procedures, which will assure that the construction of the project is performed in reasonable conformity with the plans, specifications, and contract provisions for construction projects.

It is the intent of the Department to allow the CEI firm to exercise their independent professional judgment with Department's oversight to the extent stated below. The Department's current procedures (Construction Project Administration Manual (CPAM))

Section 4.1 – Administration of Consultant CEI Contracts) state that the authority of the CEI firm's lead person, such as the CEI Senior Project Engineer, and the CEI Project Administrator are identical to the Department's Resident Engineer and Project Administrator, respectively.

The Department has full intentions to comply with the Code of Federal Regulations (CFR) as it relates to the Supervision of construction engineering consultants and is committed to accomplish the following such that the Department's Construction Project Manager (PM) is in "responsible charge".

- Aware of the day-to-day operations on the project.

The Department will still continue to have full-time construction project managers but those PM, in most cases, will be assigned to multiple projects. The role of the PM is to ensure that the CEI firm is providing services in accordance with their Contract and not control the means and methods by which the CEI firm performs these services. CPAM Section 4.1 spells out the responsibilities of the PM.

Furthermore, the Department, working jointly with FHWA, will establish Construction Project Manager staffing levels, by April 2004, to ensure that appropriate oversight is in place.

- Aware of, and involved in decisions about changed conditions which require change order or supplemental agreements;

The PM shall act as a liaison between the CEI firm and the Department. The Department intends to establish thresholds for changes resulting in additional dollars and time under which the CEI firm has full authority to negotiate such changes with the Contractor. The Scope of Services requires the CEI firm to make the PM aware of such changes (Section 7.0 and 9.1) and seek input from the PM. But the final authority to resolve such changes within the threshold shall be solely with the CEI. Department personnel may execute certain documents to consummate such changes for organization efficiencies but the Department will re-evaluate such process to work towards an end result of the CEI firm executing such documents.

The threshold currently established by the CPAM for monetary changes is \$ 100,000, whereas, for time impacts, there are no such thresholds. The Districts have implemented certain other thresholds for such changes but it is the intent of the Department to establish the same thresholds for all the Districts. The Department is currently evaluating increasing the dollar threshold to \$ 150,000 and establishing a threshold for time impacts. The threshold for time impacts currently under consideration is 10 % of the Original Contract Time, excluding time granted due to effects of inclement weather. The Department will work with FHWA in implementing such changes. Monetary changes and time impacts above the established thresholds would require the approval of the Department. However, it is the CEI firm's responsibility to review, evaluate, and negotiate such changes with the Contractor while seeking the PM's input. Special emphasis shall be placed on review of contract changes that involve time so as to assure that the CEI firm is not granting additional time in order for the CEI firm to renegotiate their own contract with the Department.

CPAM Section 4.2 – Consultant CEI Accountability, establishes a procedure for assignment of responsibilities when a CEI has been determined to perform work that has been identified as having errors, omissions, or contractual lapses. The Department along with FHWA, over the past year, has been reevaluating this procedure and that effort should culminate with a streamlined process with clear expectations. It is vital for the success of this program that CEI Accountability process works while factoring in reasonableness.

The PM will continue to serve as the liaison to the FHWA and the Department as it relates to various contract administration issues. The PM shall obtain FHWA approval and participation for Construction Contract changes on Federal Aid projects in accordance with CPAM Section 7.3.11. Due to some recent occurrences of non-compliance with this procedure, this issue and importance of such will be reiterated at the next District Construction Engineer's Meeting in February 2004.

Furthermore, the Construction Project Manager shall review all contract changes approved by the CEI and notify the Resident Engineer and the District Construction Engineer on whether any errors or omissions have occurred or decisions are not in agreement with Department's historical

decisions. Such review is not meant to approve or disapprove the decision and the agreement made by the CEI firm but rather a way to review the Consultant's performance.

Additionally, the District Construction Engineer shall develop a process to review a representative sample of contract changes approved by the CEI firms to ensure that such changes were necessary and comply with the Construction Contract documents. Such process will be documented and kept on file in each District.

- Aware of the qualifications, assignments, on-the-job performance, etc., of the consultant staff at all stages of the project.

The PM shall review the performance of the CEI firm in accordance with Article 4.1.12, 4.1.13, and 4.1.14 in Section 4.1 of the CPAM. The review area consists of Personnel, Equipment and Contract Administration.

Emphasis will be placed on the role of the PM and the need to thoroughly evaluate the performance of the CEI firm during the early stages of the construction project to ensure that the CEI firm is demonstrating the necessary knowledge, skills and experience to make decisions in accordance with the Consultant's Contract. Any deficiencies in the performance of the CEI firm will necessitate remedial action, including but not limited to, reassignment of personnel, replacement of personnel, and increase in the frequency of monitoring and inspection activities and increase the scope and frequency of training of the Consultant personnel.

The Section 8.0 – Cooperation and Performance of the Consultant's Scope of Services spells out the Department's review and the authority of the PM.

- Visiting the project on a frequency that is commensurate with the magnitude and complexity of the project.

The PM shall continue to visit the project on a frequency that is commensurate with the magnitude and complexity of the project. It is also to be noted that various other Department personnel visit construction projects as part of process reviews, independent assurance reviews, and other forms of reviews.

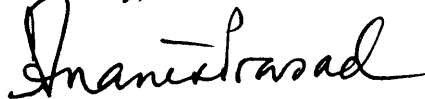
Mr. St. John
November 18, 2003
Page 5

The Department is in process of revising the CEI grading system to better align the criteria for grading with the expectations of the Department. The Department plans to implement the new Grading system in spring of 2004. The implementation of this new grading system requires change to Administrative Rule 14-75, Qualification, Selection, and Performance Evaluation Requirements for Professional Consultants to Perform Work for DOT. The Department is fully committed in revamping the current grading system.

Furthermore, the Department is committed to coordinating any related changes to the procedures and CEI Scope of Services with FHWA and obtaining their concurrence prior to implementing such changes. The Department will perform a process review, jointly with FHWA, during the summer of 2004 to ensure that the Districts are adhering to the commitments made in this letter and request the Office of Inspector General to conduct a formal audit of this process during the fiscal year 2005/2006.

If you have any questions, please feel free to contact me at 850-414-4150.

Sincerely,

A handwritten signature in black ink, appearing to read "Ananth K. Prasad". The signature is fluid and cursive, with the first name "Ananth" being more prominent.

Ananth K. Prasad, P.E.
State Construction Engineer

AP/ww



U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
FLORIDA DIVISION
227 N. BRONOUGH STREET, SUITE 2015
TALLAHASSEE, FLORIDA 32301
(850) 942-9650



January 26, 2004

IN REPLY
REFER TO:

HPO-FL

RECEIVED
STATE CONSTRUCTION
ENGINEER'S OFFICE
04 JAN 27 AM 11:54

Mr. José Abreu
Secretary of Transportation
Florida Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399

Attention: Mr. Ananth Prasad

Dear Mr. Abreu:

Subject: Department's Oversight and the Role of the Construction Project Manager
on Construction Engineering and Inspection Contracts

The Federal Highway Administration (FHWA) has completed its review of Mr. Ananth Prasad's letter dated November 18, 2003, requesting the FHWA's concurrence in changes to the Department's role in administering consultant Construction Engineering and Inspection (CE&I) contracts. The FHWA understands the Department's need to utilize consultants and empower them to perform the CE&I functions. As I know you understand, it is our responsibility to ensure the Department maintains a full-time publicly employed engineer to be in "Responsible Charge" as required by 23 CFR 635.105.

While a consultant may provide daily CE&I for a Federal-aid project, the Department must assign a full-time engineer to be in responsible charge for the project at all times, although the engineer need not be assigned solely to that project. The FHWA defines "Responsible Charge" as meaning the publicly employed engineer is:

- Aware of day-to-day operations on the project,
- Aware of, and involved in decisions about changed conditions which require change orders or supplemental agreements,
- Aware of the qualifications, assignments, on-the-job performance, etc., of the consultant staff at all stages of the project, and
- Visiting the project on a frequency that is commensurate with the magnitude and complexity of the project.

Mr. Prasad's letter requesting FHWA concurrence in the proposed changes addresses each aspect of the "Responsible Charge" definition. Upon fulfillment of the commitments contained in the request, the FHWA has concluded the Department will

have operating procedures in place assuring the Department has publicly employed personnel in responsible charge. There are several commitments that must be fulfilled to effectively implement the proposed changes and ensure proper quality assurance by the Department. The following is a list of those commitments along with other requirements placed on FHWA's concurrence in the proposed changes:

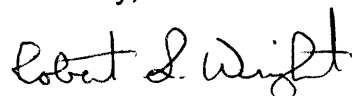
1. This new concept for the Department's oversight and the role of the Construction Project Manager on Construction Engineering and Inspection Contracts is approved on a two-year experimental basis, beginning on the date of this letter. Therefore, to continue this concept beyond the conclusion of the two-year trial period, the Department must submit a thorough evaluation and request an additional trial period or permanent implementation.
2. The Department will work with the FHWA in establishing Construction Project Manager staffing level requirements by April 2004.
3. The Department will work with the FHWA in establishing thresholds for contract time changes that delineate which ones are to be approved by the Consultant CEI and Department personnel. Also, the Department will place special emphasis on reviewing contract time changes.
4. The Department will work with the FHWA in completing the evaluation of the assignment of responsibilities regarding CEI accountability in the Department's Construction Project Administration Manual (CPAM).
5. The Department's Construction Project Manager (PM) shall remain as the liaison to FHWA on Federal-aid Projects. The PM shall obtain FHWA approval and participation for changes on FHWA Oversight projects in accordance with CPAM.
6. The Department's Construction PM will review all contract changes approved by the Consultant CEI for errors and omissions, or decisions not in agreement with the Department's historical decisions.
7. The Department's District Construction Engineers will develop a process to review a representative sample of contract changes approved by the consultant CEI, to ensure changes were necessary and comply with contract documents.
8. The Department will review the performance of the consultant CEI during the early stages of the construction project to ensure that the consultant CEI is

demonstrating the necessary knowledge, skills, and experience to make decisions in accordance with the consultant's contract.

9. The Department will work with the FHWA in evaluating and improving the consultant CEI grading system by June 1, 2004.
10. The Department will work with the FHWA in revising the consultant CEI Scope of Services.
11. The Department and the FHWA will begin a joint process review in the summer of 2004 to ensure the commitments are fulfilled, and to evaluate the new process.
12. The Department will request their Office of Inspector General to conduct a formal audit of the process during the Department's 2005 Fiscal Year.
13. The Department will work with the FHWA in making the necessary revisions to CPAM, to implement the changes and ensure proper quality assurance.
14. The Department will work with the FHWA in establishing a procedure for formally obtaining FHWA's concurrence in all future CPAM revisions, prior to implementation.
15. The Department will work with the FHWA in establishing a procedure for formally obtaining FHWA's concurrence, prior to implementation, in all District Construction Engineer Memorandums issued by the State Construction Engineer having an effect on Federal-aid contracts.

The FHWA looks forward to working with the Department in developing, implementing, and evaluating the new procedures related to the Department's oversight, and the role of the Construction Project Manager on Construction Engineering and Inspection Contracts. Mr. Donald Davis, Program Operations Engineer will lead our coordination efforts with the Department. If you have any questions please contact Mr. Davis at (850) 952-9650, extension 3035.

Sincerely,



For: James E. St. John
Division Administrator