



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street MS # 31
Tallahassee, FL 32399-0450

DENVER J. STUTLER, JR.
SECRETARY

April 13, 2006

This Memo Has Expired

DCE MEMORANDUM NO.: 08-06

(FHWA Approved: 4/12/06)

TO: DISTRICT CONSTRUCTION ENGINEERS
FROM: Brian Blanchard, Director, Office of Construction
COPIES: Bob Burleson (FTBA), Don Davis (FHWA)
**SUBJECT: DISPUTES REVIEW BOARD AND CLAIMS
CERTIFICATIONS REQUIREMENTS**

The Department revised specification 4-3.2 for contracts July 2004 and thereafter to require the following:

“....The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data provided are accurate and complete to the Contractor’s best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be the Department’s responsibility. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.....”

This revision makes it a requirement for the Contractor to certify requests for equitable adjustment of contract time or money made to the Department. If uncertified requests for equitable adjustment are submitted by the Contractor, the options are to 1) reject the package if the Department considers there to be no entitlement; or 2) if the Department considers there to be any reasonable entitlement, issue a Unilateral Payment in the amount determined by the Department to be fair and equitable, if an amount can be reasonably determined based on information available. In either option 1 or 2, the Contractor should still be required to certify the request for equitable adjustment per 4-3.2 prior to the Department agreeing to allow this issue being brought before a DRB on quantum.

DCE MEMO NO.: 08-06

April 13, 2006

Page 2

Department initiated requests for pricing of additional work do not require Contractor certification. However, in the event the Department does not agree with the pricing documentation provided by the Contractor, then either (a) a Unilateral Payment in the amount determined by the Department to be fair and equitable, if an amount can be reasonably determined based on information available or (b) encumber a reasonable sum and postpone further price determination pending actual performance.

This revised specification and the requirement for a certified request for equitable adjustment has generated some confusion related to the separate and distinct certification of a "contract claim" language under specification section 5-12. In addition, confusion has also occurred as to the requirements for allowing of either "requests for equitable adjustment" and "contract claims" to be brought before Disputes Review Boards. The following is offered to clarify this matter.

As defined in 1-3, a "contract claim (claim)" is a written demand submitted to the Department by the Contractor, in compliance with Standard Specification 5-12.3, seeking additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed by the Department. These formally disputed matters pursued under 5-12 do require certification by the Contractor, as well as the providing of full and complete documentation per 5-12.3.

Issues properly to be brought before a DRB are those to which the Department and the Contractor are in dispute over:

1. entitlement only, when the Contractor has not submitted a certified request for equitable adjustment prior to the issue being brought before a DRB
2. both entitlement and quantum, when the Contractor has submitted either (a) the required certification of a request for equitable adjustment pursuant to 4-3.2 or (b) a certified claim pursuant to 5-12.3 prior to the issue being brought before a DRB, and the Department and the Contractor otherwise agree to allow the DRB to consider quantum.
3. quantum only, when the Contractor has submitted either (a) the required certification of a request for equitable adjustment pursuant to 4-3.2 or (b) a certified claim pursuant to 5-12.3 prior to the issue being brought before a DRB, and the Department and the Contractor otherwise agree to allow the DRB to consider quantum.

If you have further questions, please contact David Sadler at 850-414-5203 or SC 994-5203.

BB/sw