



*Florida Department of Transportation*

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**MEMORANDUM**

**DATE:** June 15, 2017

**TO:** Rudy Powell, Director, Office of Maintenance; Mike Sprayberry, State Administrator for Maintenance Contracts; Scott Foltz, General Counsel's Office; Greg Davis, State Estimates Office, Maintenance Distribution List

**CC:** Dan Hurtado, State Specifications Engineer; Stefanie Maxwell, Manager, Program Management Office

**FROM:** Frances Thomas, Specifications Development Coordinator

**SUBJECT: Proposed Specification: SP0080703M Contract Time and Term Extensions**

Attached for your review and comments is a copy of the subject proposed specification.

The changes are proposed by Mike Sprayberry of the State Maintenance Office to allow for a unilateral extension of the contract term for Maintenance contracts.

Please share this proposal with others within your responsibility. Review comments are due within four weeks and may be entered on-line, sent to Mail Station 75, or by email to Frances Thomas at [frances.thomas@dot.state.fl.us](mailto:frances.thomas@dot.state.fl.us) .

Comments received after **July 13, 2017** may not be considered. Your input is encouraged.

Attachment

**PROSECUTION AND PROGRESS – CONTRACT TIME *AND TERM* EXTENSIONS.**  
**(REV ~~2-15-17~~ ~~4-21-17~~) (~~7-17~~)**

SUBARTICLE 8-7.3.2 is deleted and the following substituted:

**8-7.3.2 Contract Time Extensions:** The Department may grant an extension of Contract Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid. The Department may allow such extension of time only for delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by the Department to fulfill an obligation under the Contract results in delays to the controlling items of work, the Department will consider such delays as a basis for granting a time extension to the Contract.

Whenever the Engineer suspends the Contractor's operations, as provided in 8-6, for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension. The Department will not grant time extensions to the Contract for delays due to the fault or negligence of the Contractor.

~~The Department does not include an allowance for delays caused by the effects of inclement weather or suspension of Contractor's operations as defined in 8-6.4, in establishing Contract Time. The Engineer will e~~Continually monitor the effects of weather. ~~and, when found justified, grant time extensions on either a bimonthly or monthly basis. The Engineer will not require the Contractor to submit a request for additional time due to the effects of weather.~~*When a controlling item of work is delayed by the effects of inclement weather, the Contractor may submit a request for contract time extension due the weather related delay. Requests must be submitted no later than 10 days after the work was originally scheduled to be completed and must include sufficient supporting information to evaluate the request. If approved, the Engineer will grant the time extension.*

The Department will grant time extensions, on a day for day basis, for delays caused by the effects of rains or other inclement weather conditions, related adverse soil conditions or suspension of operations as defined in 8-6.4 that prevent the Contractor from productively performing controlling items of work resulting in:

- ~~(1).~~ The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items; or
- ~~(2).~~ The Contractor must make major repairs to work damaged by weather, provided that the damage is not attributable to the Contractor's failure to perform or neglect; and provided that the Contractor was unable to work at least 50% of the normal workday on pre-determined controlling work items.

No additional compensation will be made for delays caused by the effects of inclement weather.

The Department will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No

additional compensation will be made for delays caused by delivery of materials or component equipment.

The Department will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor furnishes documentation that he placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

The Department will consider the ~~affect~~ *effect* of utility relocation and adjustment work on job progress as the basis for granting a time extension only if all the following criteria are met:

~~(1)~~. Delays are the result of either utility work that was not detailed in the plans, or utility work that was detailed in the plans but was not accomplished in reasonably close accordance with the schedule included in the Contract Documents.

~~(2)~~. Utility work actually affected progress toward completion of controlling work items.

~~(3)~~ The Contractor took all reasonable measures to minimize the effect of utility work on job progress, including cooperative scheduling of the Contractor's operations with the scheduled utility work at the preconstruction conference and providing adequate advance notification to utility companies as to the dates to coordinate their operations with the Contractor's operations to avoid delays.

As a condition precedent to an extension of Contract Time the Contractor must submit to the Engineer:

A preliminary request for an extension of Contract Time must be made in writing to the Engineer within ten calendar days after the commencement of a delay to a controlling item of work. If the Contractor fails to submit this required preliminary request for an extension of Contract Time, the Contractor fully, completely, absolutely and irrevocably waives any entitlement to an extension of Contract Time for that delay. In the case of a continuing delay only a single preliminary request for an extension of Contract Time will be required. Each such preliminary request for an extension of Contract Time shall include as a minimum the commencement date of the delay, the cause of the delay, and the controlling item of work affected by the delay.

Furthermore, the Contractor must submit to the Engineer a request for a Contract Time extension in writing within 30 days after the elimination of the delay to the controlling item of work identified in the preliminary request for an extension of Contract Time. Each request for a Contract Time extension shall include as a minimum all documentation that the Contractor wishes the Department to consider related to the delay, and the exact number of days requested to be added to Contract Time. If the Contractor contends that the delay is compensable, then the Contractor shall also be required to submit with the request for a Contract Time extension a detailed cost analysis of the requested additional compensation. If the Contractor fails to submit this required request for a Contract Time extension, with or without a detailed cost analysis, depriving the Engineer of the timely opportunity to verify the delay and the costs of the delay, the Contractor waives any entitlement to an extension of Contract Time or additional compensation for the delay.

Upon timely receipt of the preliminary request of Contract Time from the Contractor, the Engineer will investigate the conditions, and if it is determined that a controlling item of work is being delayed for reasons beyond the control of the Contractor the Engineer will take appropriate action to mitigate the delay and the costs of the delay. Upon timely receipt of the request for a Contract Time extension the Engineer will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the controlling item of work beyond the control of the Contractor, then an adjustment of Contract Time will be made, and a monetary adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly.

SUBARTICLE 8-7.3 is expanded by the following new Subarticle:

*8-7.3.3 Unilateral Contract Term Extension: If ~~the pace of work progress indicates that~~ the work will is not be completed prior to the expiration of the Contract term, the Department may extend the term of the Contract to allow for the completion of the work. Contract term extension will not exceed a maximum of 90 calendar days. If a Contract term extension is issued by the Department, written notice of the extension will be provided to the Contractor. Liquidated damages will be assessed per 5-1.7 or 8-10.2 as applicable during the Contract term extension.*

ARTICLE 8-8 is deleted and the following substituted:

### **8-8 Contractor Non-Responsibility.**

Section 337.16(2) of the Florida Statutes and Rule 14-22, Florida Administrative Code (FAC), establish certain requirements for Contractors bidding on or any Maintenance Contracts, and authorize ineligibility to bid due to Contractor non-responsibility.

The Department will review and rate the performance of each Contractor using the Contractor Field Performance Report. The Contractor will receive written notification of the Field Performance Report and will be given an opportunity to resolve disputes concerning the rating.

SUBARTICLE 8-9.1 is deleted and the following substituted:

**8-9.1 Determination of Default:** The following acts or omissions constitute acts of default and, except as to subparagraphs (i and k), the Department will give notice, in writing, to the Contractor and his surety for any delay, neglect or default, if the Contractor:

- (a)1. fails to begin the work under the Contract within the time specified in the Notice to Proceed;
- (b)2. fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure prompt completion of the Contract;
- (c)3. performs the work unsuitably, or neglects or refuses to remove materials or to perform anew such work that the Engineer rejects as unacceptable and unsuitable;
- (d)4. discontinues the prosecution of the work, or fails to resume discontinued work within a reasonable time after the Engineer notifies the Contractor to do so;

~~(e)~~5. becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily;

~~(f)~~6. allows any final judgment to stand against him unsatisfied for a period of ten calendar days;

~~(g)~~7. makes an assignment for the benefit of creditors;

~~(h)~~8. fails to comply with Contract requirements regarding minimum wage payments or EEO requirements;

~~(i)~~9. fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order; or

~~(j)~~10. for any other cause whatsoever, fails to carry on the work in an acceptable manner, or if the surety executing the bond, for any reasonable cause, becomes unsatisfactory in the opinion of the Department.

~~(k)~~11. fails to comply with 3-9.

~~(l)~~12. fails to provide all required insurance and to keep said insurance in force during the duration of the Contract.

For a notice based upon reasons stated in subparagraphs (a) through (h) and (j): if the Contractor, within a period of time specified by the Department after receiving the notice described above, fails to correct the conditions of which complaint is made, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect, or default and the Contractor's failure to correct such conditions, have full power and authority, without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

If the Contractor, after having received a prior notice described above for any reason stated in subparagraph ~~(b)~~2, ~~(c)~~3, ~~(d)~~4, ~~(e)~~5, ~~(f)~~6 or ~~(h)~~8, commits a second or subsequent act of default for any reason covered by the same subparagraph ~~(b)~~2, ~~(c)~~3, ~~(d)~~4, ~~(e)~~5, ~~(f)~~6 or ~~(h)~~8 as stated in the prior notice, and regardless whether the specific reason is the same, then, regardless of whether the Contractor has cured the deficiency stated in that prior notice, the Department will, upon written certificate from the Engineer of the fact of such delay, neglect or default and the Contractor's failure to correct such conditions, have full power and authority, without any prior written notice to the Contractor and without violating the Contract, to take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph ~~(i)~~9, if the Contractor fails to comply with the Engineer's written suspension of work order within the time allowed for compliance and which time is stated in that suspension of work order, the Department will, upon written certificate from the Engineer of the fact of such delay and the Contractor's failure to correct that condition, have full power and authority, without violating the Contract, to immediately take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

Regarding subparagraph ~~(k)~~11, if the Contractor fails to comply with 3-9, the Department will have full power and authority, without violating the Contract, to immediately take the prosecution of the work out of the hands of the Contractor and to declare the Contractor in default.

The Department has no liability for anticipated profits for unfinished work on a Contract that the Department has determined to be in default.

Notwithstanding the above, the Department shall have the right to declare the Contractor (or its "affiliate") in default and immediately terminate this Contract, without any prior notice to the Contractor, in the event the Contractor (or its "affiliate") is at any time "convicted" of a "contract crime," as these terms are defined in Section 337.165(1), Florida Statutes. The Department's right to default the Contractor (or its "affiliate") for "conviction" of a "contract crime" shall extend to and is expressly applicable to any and all Department Contracts that were either advertised for bid; for which requests for proposals or letters of interest were requested; for which an intent to award was posted or otherwise issued; or for which a Contract was entered into, after the date that the underlying or related criminal indictment, criminal information or other criminal charge was filed against the Contractor (or its "affiliate") that resulted in the "conviction." In the event the Department terminates this Contract for this reason, the Contractor shall hereby forfeit any claims for additional compensation, extra time, or anticipated profits. The Contractor shall only be paid for any completed work up to the date of termination. Further, the Contractor shall be liable for any and all additional costs and expenses the Department incurs in completing the Contract work after such termination.

SUBARTICLE 8-9.3 is deleted and the following substituted:

**8-9.3 Completion of Work by Department:** Upon declaration of default, the Department will have full authority to appropriate or use any or all suitable and acceptable materials and equipment on the site and may enter into an agreement with others to complete the work under the Contract, or may use other methods to complete the work in an acceptable manner. The Department will charge all costs that the Department incurs because of the Contractor's default, including the costs of completing the work under the Contract, against the Contractor. If the Department incurs such costs in an amount that exceeds the sum that would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay the Department the amount of the excess.

If, after the period of time specified by the Department and prior to any action by the Department to otherwise complete the work under the Contract, the Contractor establishes his intent to prosecute the work in accordance with the Department's requirements, then the Department may allow the Contractor to resume the work, in which case the Department will deduct from any monies due or that may become due under the Contract, any costs to the Department incurred by the delay, or from any reason attributable to the delay.