



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

DENVER J. STUTLER, JR.
SECRETARY

July 20, 2005

Mr. Donald Davis
Program Operations Engineer
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Re: Office of Design, Specifications
Section 9
Proposed Specification: 0090800

Dear Mr. Davis:

We are submitting, for your approval, two copies of a proposed Supplemental Specification for Measurement and Payment-Acceptance and Final Payment.

This change was proposed by David Sadler of the State Construction Office for clarification of Offer of Final Payment and Claim Issues.

Please review and transmit your comments, if any, within two weeks. Comments should be sent via Email to SP965DB or duane.brautigam@dot.state.fl.us.

If you have any questions relating to this specification change, please call Duane F. Brautigam, State Specifications Engineer at 414-4110.

Sincerely,

Signature on file

Duane F. Brautigam, P.E.
State Specifications Engineer

DFB/jf
Attachment

cc: General Counsel
Florida Transportation Builders' Assoc.
State Construction Engineer

**MEASUREMENT AND PAYMENT-ACCEPTANCE AND FINAL
PAYMENT.
(REV 4-27-06)**

ARTICLE 9-8 (Pages 95-97) is deleted and the following substituted:

9-8 Acceptance and Final Payment.

Whenever the Contractor has completely performed the work provided for under the Contract and the Engineer has performed a final inspection and made final acceptance (as provided in 5-10 and 5-11), and subject to the terms of 8-11, the Engineer will prepare a final estimate showing the value of the work as soon as the Engineer makes the necessary measurements and computations. The Engineer will correct all prior estimates and payments in the final estimate and payment. The Department will pay the estimate, less any sums that the Department may have deducted or retained under the provisions of the Contract, as soon as practicable after final acceptance of the work, provided the Contractor has met *all of* the requirements ~~of (a) through (h)~~ below.

If the Contractor fails to furnish ~~all the~~ required Contract Documents *(a), (c), (d), (f), (g), (h), and (i) below* within 90 days of the Department's offer of final payment or request for refund of overpayment, the Department may suspend the Contractor's Certificate of Qualification under the provisions of Florida Administrative Code 14-22.

(a) The Contractor has agreed in writing to accept the balance due or refund the overpayment, as determined by the Department, as full settlement of his account under the Contract and of all claims in connection therewith, or the Contractor, ~~has,~~ through the use of the Qualified Acceptance Letter, accepted the balance due or refunded the overpayment, as determined by the Department, with the stipulation that his acceptance of such payment or the making of such refund does not constitute any bar, admission, or estoppel, or have any effect as to those payments in dispute or the subject of a pending claim between the Contractor and the Department. ~~To receive payment based on a~~ The Qualified Acceptance Letter, ~~shall~~ define in writing the dispute or pending claim with full particulars ~~of as to~~ all items of ~~all each and every~~ issues in dispute, including itemized amounts claimed for all particulars of ~~all each and every~~ items ~~of each issue, and submit it as part of the Qualified Acceptance Letter.~~ The Contractor further agrees, by submitting a Qualified Acceptance Letter, that any pending or future arbitration ~~claim~~ or suit is *solely* limited to those particulars ~~only,~~ including the itemized amounts ~~and issues, as~~ defined in the original Qualified Acceptance Letter, and that he will commence with any such arbitration ~~claim~~ or suit within 820 calendar days from and after the time of final acceptance of the work and that his failure to ~~file a formal~~ *timely file any such arbitration or suit claim* within this period constitutes his full acceptance of the Engineer's final estimate and payment. The overpayment refund check from the Contractor, if required, will be considered a part of any Acceptance Letter executed.

(b) The Contractor has properly maintained the project, as specified hereinbefore.

(c) The Contractor has furnished a sworn affidavit to the effect that the Contractor has paid all bills and no suits are pending (other than those exceptions listed, if any) in connection with work performed under the Contract and that the Contractor has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of the Department in the performance of the Contract. Include with the listed tort liability exceptions, if any, evidence of adequate insurance coverage as required in 7-12.1.

(d) The surety on the Contract bond consents, by completion of their portion of the affidavit and surety release subsequent to the Contractor's completion of his portion, to final payment to the Contractor and agrees that the making of such payment does not relieve the surety of any of its obligations under the bond.

(e) The Contractor has complied with and settled all requirements pertaining to any wage-rate provisions.

(f) The Contractor has furnished all required mill tests and analysis reports to the Engineer.

(g) The Contractor has submitted the Form FHWA-47 (formerly known as PR-47) Record of Materials and Labor on Federal-aid Projects, to the Engineer for transmittal to the FHWA. This submittal is required on all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000.

(h) The Contractor has furnished the Construction Compliance with Specifications and Plans Certification. Provide the Engineer with a notarized final certification of compliance with the requirements of Section 105 to accompany the final estimate. Certification must be on a form provided by the Engineer.

(i) For any claim notification submitted to the Department, the Contractor has timely submitted, in accordance with 5-12, full and complete claim documentation as described in 5-12.3.

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If the Contractor fails to furnish the required Contract Documents (a), (c), (d), (f), (g), (h), and (i) below within 90 days of the Department's offer of final payment or request for refund of overpayment, the Department may suspend the Contractor's Certificate of Qualification under the provisions of Florida Administrative Code 14-22.

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