



Florida Department of Transportation

CHARLIE CRIST
GOVERNOR

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STEPHANIE KOPELOUSOS
SECRETARY

MEMORANDUM

DATE: June 8, 2007
TO: Specification Review Distribution List
FROM: Duane F. Brautigam, P.E., State Specifications Engineer
SUBJECT: Proposed Specifications Change: **0090800**

In accordance with Specification Development Procedures, we are sending you a copy of a proposed new specification change for Acceptance and Final Payment.

This change was proposed by David Sadler of the State Construction Office to provide for Review of Engineer's Final Estimate.

Please share this proposal with others within your responsibility. Review comments are due within four weeks and should be sent to Mail Station 75 or to my attention via e-mail at SP965DB or duane.brautigam@dot.state.fl.us. Comments received after July 6, 2007 may not be considered. Your input is encouraged.

DFB/dr

Attachment

COMMENTS:

Submitted by:

Phone #:

ACCEPTANCE AND FINAL PAYMENT.

(REV ~~5-31-6-05-07~~)

SUBARTICLE 9-5.4 (Pages 99 and 100) is deleted and the following substituted:

9-5.4 Release of Retainage After Acceptance: When the Contractor has furnished the Department with all submittals required by the Contract, such as invoices, ~~Federal Highway Administration Form FHWA 47 (formerly known as PR 47)~~, EEO reports, materials certifications, certification of materials procured, etc., (excluding Contractor's letter of acceptance of final amount due and Form 21-A release) and the Engineer has determined that the measurement and computation of pay quantities is correct, the Department may reduce the retainage to \$1,000 plus any amount that the Department elects to deduct for defective work as provided in 9-5.3.

The Department will not allow a semifinal estimate under the provisions of the above paragraphs unless the time elapsing between (1) acceptance of the project and receipt of all test reports, invoices, etc., and (2) submission of the final estimate to the Contractor for acceptance, exceeds or is expected to exceed ten days.

The Department may deduct from payment estimates any sums that the Contractor owes to the Department on any account. Where more than one project or job (separate job number) is included in the Contract, the Department will distribute the reduced retainage as provided in the first paragraph of this Subarticle to each separate project or job in the ratio that the Contract value of the work for the particular job bears to the total Contract amount.

ARTICLE 9-8 (Pages 102 and 103) is deleted and the following substituted:

9-8 Acceptance and Final Payment.

9-8.1 Acceptance and Final Payment Documents: 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 the requirements of (a) through (h) below.

If the Contractor fails to furnish all required Contract Documents 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 Qualified Acceptance Letter, define in writing the dispute or pending claim with full particular of all items of all issues in dispute, including itemized amounts claimed for all particulars of all items, 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 limited to those particulars, including the itemized amounts, 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 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 7-13.

(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.~~

(hg) 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.

9-8.2 Review of Engineer's Final Estimate: The Department may review the Engineer's final estimate and make changes as necessary. If changes are made, the Contractor will be so notified in writing in the "Notification of Findings Due to Additional Review". This notification letter will detail the changes made as a result of the review, and will stipulate the actions to be taken by the Department and those required by the Contractor. The issuance of a "Notification of Findings Due to Additional Review" will not impact the requirements of 9-8.1, above.

Complete the required actions and return the signed notification to the Department within 30 days signifying agreement or disagreement with the findings. For

disagreement items, provide a full explanation including the item(s) and amount. For any claim or part of a claim that pertains solely to the “Notification of Findings Due to Additional Review” disputes, submit full and complete claim documentation as described in 5-12.3 as to such claim dispute issues within 90 days of receipt of the notification. Failure to return the signed notification or to furnish such claim documentation within the time frames specified may result in suspension of the Contractor’s Certificate of Qualification under the provisions of Florida Administrative Code 14-22.