

ORIGINATION FORM

THE INFORMATION BELOW IS TO BE PROVIDED BY THE ORIGINATOR (The person who receives or originates the issue and needs to forward the issue for action.)

Specification: 9-8.1 & 9-8.2
Subject: Acceptance and Final payment documents & Review of Engineer's Final Estimate
Origination date: 9-30-08
Originator: David Chason
Office/Phone: State Construction Office / 414-4171

Problem statement: Under the current specification after the Department makes the offer of final payment all the required documents listed in this section half to be received before this estimate is payable. Also, after the offer has been made the Department may receive fully executed Supplemental Agreements which requires waiting on these documents listed in section 9-8.1 to be received before payment can be made in accordance with this section.

The requirements on returning the notification letter did conflict with section 9-8.1.

Proposed solution: This change will allow the Department to make timely payments on SA's that may be received after the offer been made.

This change will eliminate any conflicts with section 9-8.1 on the return of the notification letter.

Information source: David Chason
Recommended Usage Note: All jobs
Estimated fiscal impact, if implemented: N/A

For State Specifications Office Use Only

Begin date: November 13, 2008
File Number: 0090800
Scheduled completion date: February 10, 2009
Implementation date: July 2009
Implementation team member: Frances Thomas
Usage Note: All Jobs

Notes:

1. This will be a revision to a supplemental.



Florida Department of Transportation

CHARLIE CRIST
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STEPHANIE KOPELOUSOS
SECRETARY

MEMORANDUM

DATE: November 24, 2008

TO: Specification Review Distribution List

FROM: Rudy Powell, Jr., P.E., State Specifications Engineer

SUBJECT: Proposed Specification: 0090800 Acceptance and Final Payment

In accordance with Specification Development Procedures, we are sending you a copy of a proposed specification change.

This change was proposed by David Chason of the State Office of Construction to eliminate conflict and provide timely payments to the Contractor on Supplemental Agreements received after final offer is made.

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 ST986RP or rudy.powell@dot.state.fl.us. Comments received after December 22, 2008 may not be considered. Your input is encouraged.

RP/ft
Attachment

ACCEPTANCE AND FINAL PAYMENT.

(REV ~~6-5-07~~~~11-13-08~~) (~~FA 7-19-07~~) (~~1-08~~)

ARTICLE 9-8 (~~Pages 102 and 103 of the Supplemental Specifications~~) 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, *along with all fully executed supplemental agreements received after final acceptance.* ~~provided the Contractor has met the requirements of (a) through (g) below.~~

If the Contractor fails to furnish all required Contract Documents *as listed in (a) through (g) 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 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 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 *the timeframe specified in 9-8.1. If the notification is received after the time has expired in 9-8.1, return 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.