

0090103SLLS, Measurement and Payment  
Comments from Industry Review

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**Greg Vickery**  
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**Comments:**

By removing 9-8.2 and adopting 9-8, does this mean the DFEO (District Final Estimates Office) will not be reviewing these types of contracts and therefore, a Notice of Findings letter will not be needed? And only paying the contractor for what he submits as “Final Invoice?”

Will these contracts have Contingency Pay Items?

Will there be an Acceptance Letter sent to the contractor? Or can the contractor qualify any issues?

Is a “Final Offer” necessary with the contractor submitting a “Final Invoice?”

**Response:** Section 9-8.2 will still be part of the Contract. The modification should be 9-8.1. The DFEO will still close out these projects. There will be no Final Offer. The Department may assist the Contractor in locating the Contract Documents, if needed. These Contracts may have contingency pay items.

**From the Specifications Office:** The lead in sentence for the proposed change will be modified to say “subarticle 9-8.1 is deleted and the following substituted.” No changes will be made to subarticle 9-8.2.

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**Anonymous**

**Comments:**

This is an effort on the Department’s part to minimize paying the Contractor additional money for doing a Quality job (CPF – composite pay factor). With 35% or more of the FDOT contracts involving less than 5,000 tons, the loss of the CPF to the Contractor is significant. This proposed specification places all risk on the Contractor, eliminates Bit Adjustment (which the Contractor has no control over), eliminates a reward for performing beyond the contractual expectations, eliminates the possibility of receiving a CPF. In essence, the Department would have numerous ways of reducing payment to the Contractor. The proposed Streamlined Contracts Specification would save the Department time and money at the expense of the Contractor. This appears to be an easy way to limit the Department’s exposure to the volatility in the market. With no protection, the Contractor could see a huge exposure in the asphalt adjustment, as well as fuel, with no recourse. The Lump Sum Specification changes would push the burden completely on the Contractor’s plate for quantities and payment. This will also play a factor at the bidding table allowing the conservative contractor to play it close and others to roll the dice.

**Response:** The Department has been utilizing these Specifications for the past two years, and these concerns mentioned above have not come up. These types of projects are short duration type of jobs which will be less vulnerable with the changing market when estimating the Fuel & Bit costs for the project. Also, there will be no CPF adjustments anyway, because it is based on 2000 Tons or less which is “visual inspection” only. This limits the number of resurfacing projects to only a couple per district per year. The lump sum specifications would only be used

with the same guidelines they are used today. If a project is not suitable for lump sum under current department guidelines, pay items with quantities would be established.  
No changes made.

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Comment:

Based on discussions between D5 Construction and FHWA the usage note for streamline contracts will be “Projects less than \$2,000,000 and less than 2,000 tons asphalt.”

Response: Yes, this is correct.

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Comment:

I have received the following comments from the D2 Construction Residencies for the above mentioned Specification change:

**9-2.2 General Basis of Adjusted Pay:** This proposed revision contains Table 9-2 and 9-3 for adjusting overbuild according to spreadrate and foundations according to pile/drilled shaft elevations.

Question:

Will there be no adjustments for quality (CPF) for superpave and friction as we have done in the past using table 9-4?

Response: Yes, this is correct. No changes made.

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The following comments pertain to this proposed spec change *and* Proposed Specification Change: 0090103SLPQ, Measurement and Payment.

These two excerpts seem to contradict themselves:

**9-5.1 General:** last sentence *Amounts withheld will not be released until payment of the final invoice.*

**9-8 Acceptance and Final Payment.** Part of first and second sentences *...the Contractor shall submit a final invoice for work completed and accepted by the Department. The Department will*

*pay the invoice, less any sums that the Department may have deducted or retained under the provisions of the Contract,...*

If retainage (or any other monies withheld) is not released on the final invoice, when is it released?.. should it instead read: The Dept will pay the invoice *plus* any sums the dept may have deducted...?

Response: No change needed, leave as is.

Also, within *9-8 Acceptance and Final Payment* , the statement pertaining to our current Offer of Final Payment has been removed, yet it appears we still send them an acceptance letter and 21-A for them to complete/return which is part of the ... *met the requirements of (a) through (f) below*. before we can pay their last invoice???? So this means we can't pay their last invoice?? What about the contractor that doesn't submit any invoice during the job and only submits one invoice at the end of the job? They get no payment until (a) through (f) have been submitted?

Response: The Department may also assist the Contractor in locating these contract documents on the website, if needed. When these documents are submitted and approved by the DFEO, the final invoice will be paid and the project may be closed out. The Contract requires monthly invoices. No changes made.

It also appears original contract time will no longer be part of the criteria for determining when to apply fuel or bit adjustments; it appears these adjustments will *just not apply* to these Streamline Lump Sum Contracts or Plan Quantity Contracts (per Proposed Specification Change: 0090103SLPQ, Measurement and Payment)?

Response: Yes, this is correct.

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Comment:

The Asphalt Industry is against this change. We believe there are a significant number of contracts that are affected by this change and do not clearly see the need to make this change. This change puts additional and unnecessary risk on the contractor. ACAF opposes this change.

Response: These are short duration type projects, and hopefully the exposure will not be as great. The Department has been utilizing these types of Contracts since 2007 as Developmental Specifications. Very few asphalt resurfacing jobs fall into this category, and if they do, the timeframe for the work performance is generally small (less than four months). As discussed with industry, this limits the exposure from time of bid to time of asphalt placement. No changes made.

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