



Florida Department of Transportation

CHARLIE CRIST
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

STEPHANIE KOPELOUSOS
SECRETARY

October 20, 2009

Monica Gourdine
Program Operations Engineer
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Re: Office of Design, Specifications
Section 009
Proposed Specification: **0090103SLPQ Measurement and Payment**

Dear Ms. Gourdine:

We are submitting, for your approval, two copies of the above referenced Supplemental Specification.

This is one of several specifications to be implemented as special provisions to be used on Streamline Contracts, defined as projects less than \$2,000,000 and less than 2,000 tons of asphalt. These changes were proposed by David Chason of the State Construction Office to specify that the project is a plan quantity contract.

Please review and transmit your comments, if any, within two weeks. Comments should be sent via Email to ST986RP or rudy.powell@dot.state.fl.us.

If you have any questions relating to this specification change, please call Rudy Powell, State Specifications Engineer at 414-4280.

Sincerely,

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

RP/dt

Attachment

cc: Gregory Jones, Chief Civil Litigation
Florida Transportation Builders' Assoc.
State Construction Engineer

For State Funded Plan Quantity *Projects* Contracts less than \$2,000,000 and less than 2,000 tons asphalt.

MEASUREMENT AND PAYMENT.

(REV *107-1329-09*)

SUBARTICLE 9-1.3.2 (Page 95) is deleted and the following substituted:

9-1.3.2 Plan Quantity: When measuring items paid for on the basis of area of finished work, where the pay quantity is designated to be the plan quantity, the Engineer will determine the final pay quantity based on the plan quantity subject to the provisions of 9-3.2. Generally, the Engineer will calculate the plan quantity using lengths based on station to station dimensions and widths based on neat lines shown in the plans. *For this Contract, all pay items are Plan Quantity items. All references to pay item adjustments contained in the Contract Documents are superseded by this Specification and do not apply except as provided for in this Subarticle and the provisions of 9-3.2.*

SUBARTICLES 9-2.1.1 and 9-2.1.2 (Pages 96 - 98) are deleted.

~~—————~~ **9-2.1.1 Fuels:** The Department will, in the Contract Documents, provide an estimated quantity for fuel requirements for gasoline and diesel to cover the work specified in the Contract. Price adjustments will be made only for the amount of gasoline and diesel fuel estimated by the Department as required to complete the Contract. The requirement of each type of fuel for each pay item is estimated by multiplying the Department's standard fuel factor for that pay item by the quantity of that pay item. Price adjustments made for fuel used after expiration of the last allowable Contract Day (including any time extensions) will be limited to the increases or decreases dictated by the index in effect on the last allowable Contract Day. On Contracts with an original Contract Time in excess of 120 calendar days, the Department will make price adjustments on each applicable progress estimate to reflect increases or decreases in the price of gasoline and diesel from those in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting these adjustments. Price adjustments for these fuels will be made only when the current fuel price (CFP) varies by more than 5% from the price prevailing in the month when bids were received (BFP), and then only on the portion that exceeds 5%.

————— Price adjustments will be based on the monthly bulk average price for gas and diesel as derived by the Department. These average indexes shall be determined by averaging bulk fuel prices on the first day of each month as quoted by major oil companies that are reasonably expected to furnish fuel for projects in the State of Florida. Average price indices for gasoline and diesel will be available on the Construction Office website before the 15th of each month, at the following URL: www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm.

————— Payment will be based on the quantities shown on the progress estimate on all items for which established standard fuel factors are on a file maintained by the Department.

For State Funded Plan Quantity *Projects* Contracts less than \$2,000,000 and less than 2,000 tons asphalt.

~~Price adjustments will not be made for Items of work added by contingency supplemental agreement, supplemental agreement, field supplemental agreement, or work orders.~~

~~Payment on progress estimates will be adjusted to reflect adjustments in the prices for gasoline and diesel in accordance with the following:~~

~~When fuel prices have decreased between month of bid and month of this progress estimate:~~

~~$A_i = F_i (P_i - .95 P_b)$ during a period of decreasing prices.~~

~~$A_i =$ Total dollar amount — positive or negative — of the cost adjustment for each kind of fuel used by the Contractor during the month “i.”~~

~~$F_i =$ Total gallons calculated as being used during the month.~~

~~$P_i =$ Average price for fuel prevailing during month “i.”~~

~~$P_b =$ Average price for fuel prevailing during the month “b” when bids were received on this Contract.~~

~~When fuel prices have increased between month of bid and month of this progress estimate:~~

~~$A_i = F_i (P_i - 1.05 P_b)$ during a period of increasing prices.~~

~~$A_i =$ Total dollar amount — positive or negative — of the cost adjustment for each kind of fuel used by the Contractor during the month “i.”~~

~~$F_i =$ Total gallons calculated as being used during the month.~~

~~$P_i =$ Average price for fuel prevailing during month “i.”~~

~~$P_b =$ Average price for fuel prevailing during the month “b” when bids were received on this Contract.~~

~~Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.~~

~~Adjustments will be paid or charged to the Prime Contractor only. Any Contractor receiving an adjustment under this provision shall distribute the proper proportional part of such adjustment to subcontractors who perform applicable work.~~

~~**9-2.1.2 Bituminous Material:** On Contracts having an original Contract Time of more than 365 calendar days, or more than 5,000 tons of asphalt concrete, the Department will adjust the bid unit price for bituminous material, excluding cutback and emulsified asphalt to reflect increases or decreases in the Asphalt Price Index (API) of bituminous material from that in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting this adjustment. Bituminous adjustments will be made only when the current API (CAPI) varies by more than 5% of the API prevailing in the month when bids were received (BAPI), and then only on the portion that exceeds 5%.~~

~~The Department will determine the API for each month by averaging quotations in effect on the first day of the month at all terminals that could reasonably be expected to furnish bituminous material to projects in the State of Florida.~~

~~The API will be available on the Construction Office website before the 15th of each month at the following URL:
www.dot.state.fl.us/construction/fuel&Bit/Fuel&Bit.htm.~~

For State Funded Plan Quantity *Projects* Contracts less than \$2,000,000 and less than 2,000 tons asphalt.

~~Payment on progress estimates will be adjusted to reflect adjustments in the prices for bituminous materials in accordance with the following:~~

~~\$ Adjustment = (ID)(Gallons)~~

~~Where ID = Index Difference = [CAPI - 0.95(BAPI)] when the API has decreased between the month of bid and month of this progress estimate.~~

~~Where ID = Index Difference = [CAPI - 1.05(BAPI)] when the API has increased between the month of bid and month of this progress estimate.~~

~~Payment will be made on the current progress estimate to reflect the index difference at the time work was performed.~~

~~For asphalt concrete items payable by the ton, the number of gallons will be determined assuming a mix design with 6.25% liquid asphalt weighing 8.58 lb/gal.~~

~~Asphalt concrete items payable by the square yard will be converted to equivalent tons assuming a weight of 100 lb/yd² per inch.~~

SUBARTICLE 9-3.2.3 (Page 99) is deleted and the following substituted:

~~**9-3.2.3 Specified Adjustments to Pay Quantities:** Do not apply the limitations specified in 9-3.2.1 and 9-3.2.2 to the following:~~

~~(1) Where these Specifications or Special Provisions provide that the Department determines the pay quantity for an item on the basis of area of finished work adjusted in accordance with the ratio of measured thickness to nominal thickness.~~

~~(2) Where these Specifications provide for a deduction due to test results falling outside of the allowable specified tolerances.~~

~~(3) To payment for extra length fence posts, as specified in 550-6.3.~~

9-3.2.3 Determination of Pay Reduction: *In measurement of areas of work, where pay reductions are to be assessed, the Engineer will use the lengths and/or widths in the calculations based upon station to station dimensions in the Contract Documents; the station to station dimensions actually constructed within the limits designated by the Engineer; or the final dimensions measured along the final surface of the completed work within the neat lines shown in the Contract Documents or designated by the Engineer. The Engineer will use the method or combination of methods of measurement, which will reflect with reasonable accuracy, the actual surface area of the finished work as the Engineer determines.*

Failure on the part of the Contractor to construct any item of work in compliance with the contract requirements; or to plan or authorized dimensions within the specification tolerances will result in: reconstruction to acceptable tolerances at no additional cost to the Department; or acceptance at no pay at the discretion of the Engineer.

For State Funded Plan Quantity *Projects* Contracts less than \$2,000,000 and less than 2,000 tons asphalt.

SUBARTICLE 9-5.1 (Pages 100 and 101) is deleted and the following substituted:

9-5.1 General: ~~The Engineer will make partial payments on monthly estimates based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The Engineer will make approximate monthly payments, and the Department will correct all partial estimates and payments in the subsequent estimates and in the final estimate and payment.~~

~~_____ The Department will base the amount of such payments on the total value of the work that the Contractor has performed to the date of the estimate, based on the quantities completed and the Contract prices, less payments previously made and less any retainage withheld.~~

~~_____ Retainage will not be withheld until the percent of allowable Contract time used exceeds 75%. From that time forward, the Department will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%.~~

~~_____ Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements.~~

~~_____ Contract time is defined as the original Contract time adjusted by approved Contract time extensions.~~

~~_____ Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final estimate.~~ *The Engineer will make partial payments based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The Department will base the amount of such payments on certified monthly invoices submitted by the Contractor for progress payments each month, less any retainage withheld. The Contractor must make a request for payment no later than 12 O'clock noon, Monday, after the estimate cut-off date or as directed by the Engineer, based on the amount of work done or completed. The invoice shall include the Contract Number, the Financial Project Number, the Invoice Number, the Invoice Date, and the time period that the invoice represents.*

Retainage will not be withheld until the percent of allowable Contract time used exceeds 75%. From that time forward, the Department will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%.

Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements.

Contract time is defined as the original Contract time adjusted by approved Contract time extensions.

Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final invoice.

For State Funded Plan Quantity *Projects* Contracts less than \$2,000,000 and less than 2,000 tons asphalt.

SUBARTICLE 9-8.1 (Pages 104 - 105) is deleted and the following substituted:

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 executed supplemental agreements received after final acceptance.~~

~~_____ 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~~

For State Funded Plan Quantity *Projects* Contracts less than \$2,000,000 and less than 2,000 tons asphalt.

~~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. *Upon final inspection and final acceptance of the Contract (as provided in 5-10 and 5-11), and subject to the terms of 8-11, 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, provided the Contractor has met the requirements of (a) through (f) below.*~~

~~(a) *The Contractor provides the Acceptance Letter.*~~

~~(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 furnished all required mill tests and analysis reports to the Engineer.*~~

~~(f) *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.*~~

ARTICLE 9-9 (Page 106) is expanded as follows:

Section 215.422(5), Florida Statutes, requires the Department to include a statement of vendor (Contractor) rights. Contractors are hereby advised of the following:

~~For State Funded Plan Quantity~~ *Projects* ~~Contracts~~ less than \$2,000,000 and less than 2,000 tons asphalt.

Contractors providing goods and services to an agency should be aware of the following time frames: Upon receipt, an agency has five working days to inspect and approve the goods and services, unless the bid specifications, purchase order or Contract specifies otherwise.

An agency has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, by the Department.

If a payment is not made within 40 days, a separate interest penalty at the rate established pursuant to Section 55.03(1), Florida Statutes will be due and payable, in addition to the invoice amount, to the Contractor. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one dollar will not be enforced unless the Contractor requests payment. Invoices that have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the State Comptroller's Hotline, 1-800-848-3792.

MEASUREMENT AND PAYMENT.

(REV 10-13-09)

SUBARTICLE 9-1.3.2 (Page 95) is deleted and the following substituted:

9-1.3.2 Plan Quantity: For this Contract, all pay items are Plan Quantity items. All references to pay item adjustments contained in the Contract Documents are superseded by this Specification and do not apply except as provided for in this Subarticle and the provisions of 9-3.2.

SUBARTICLES 9-2.1.1 and 9-2.1.2 (Pages 96 - 98) are deleted.

SUBARTICLE 9-3.2.3 (Page 99) is deleted and the following substituted:

9-3.2.3 Determination of Pay Reduction: In measurement of areas of work, where pay reductions are to be assessed, the Engineer will use the lengths and widths in the calculations based upon station to station dimensions in the Contract Documents, the station to station dimensions actually constructed within the limits designated by the Engineer, or the final dimensions measured along the final surface of the completed work within the neat lines shown in the Contract Documents or designated by the Engineer. The Engineer will use the method or combination of methods of measurement, which will reflect with reasonable accuracy, the actual surface area of the finished work as the Engineer determines.

Failure on the part of the Contractor to construct any item of work in compliance with the contract requirements or to plan or authorized dimensions within the specification tolerances will result in reconstruction to acceptable tolerances at no additional cost to the Department or acceptance at no pay at the discretion of the Engineer.

SUBARTICLE 9-5.1 (Pages 100 and 101) is deleted and the following substituted:

9-5.1 General: The Engineer will make partial payments based on the amount of work that the Contractor completes during the month (including delivery of certain materials, as specified herein below). The Department will base the amount of such payments on certified monthly invoices submitted by the Contractor for progress payments each month, less any retainage withheld. The Contractor must make a request for payment no later than 12 O'clock noon, Monday, after the estimate cut-off date or as directed by the Engineer, based on the amount of work done or completed. The invoice shall include the Contract Number, the Financial Project Number, the Invoice Number, the Invoice Date, and the time period that the invoice represents.

Plan Quantity Projects less than
\$2,000,000 and less than 2,000 tons asphalt.

Retainage will not be withheld until the percent of allowable Contract time used exceeds 75%. From that time forward, the Department will withhold retainage of 10% of the amount due on the current estimate as retainage when the percent of allowable Contract time used exceeds the percent of Contract amount earned by more than 15%.

Contract amount is defined as the original Contract amount adjusted by approved supplemental agreements.

Contract time is defined as the original Contract time adjusted by approved Contract time extensions.

Retainage will be determined for each job on multiple job Contracts. The Department will not accept Securities, Certificates of Deposit or letters of credit as a replacement for retainage. Amounts withheld will not be released until payment of the final invoice.

SUBARTICLE 9-8.1 (Pages 104 - 105) is deleted and the following substituted:

9-8.1 Acceptance and Final Payment Documents: Upon final inspection and final acceptance of the Contract (as provided in 5-10 and 5-11), and subject to the terms of 8-11, 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, provided the Contractor has met the requirements of (a) through (f) below.

(a) The Contractor provides the Acceptance Letter.

(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 furnished all required mill tests and analysis reports to the Engineer.

(f) 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.

ARTICLE 9-9 (Page 106) is expanded as follows:

Section 215.422(5), Florida Statutes, requires the Department to include a statement of vendor (Contractor) rights. Contractors are hereby advised of the following:

Contractors providing goods and services to an agency should be aware of the following time frames: Upon receipt, an agency has five working days to inspect and approve the goods and services, unless the bid specifications, purchase order or Contract specifies otherwise.

An agency has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, by the Department.

If a payment is not made within 40 days, a separate interest penalty at the rate established pursuant to Section 55.03(1), Florida Statutes will be due and payable, in addition to the invoice amount, to the Contractor. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one dollar will not be enforced unless the Contractor requests payment. Invoices that have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the State Comptroller's Hotline, 1-800-848-3792.