



Florida Department of Transportation

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ANANTH PRASAD, P.E.
SECRETARY

MEMORANDUM

DATE: June 4, 2013

TO: Specification Review Distribution List

FROM: Daniel Scheer, P.E., State Specifications Engineer

SUBJECT: Proposed Specification: **0071100 Legal Requirement and Responsibility to the Public - Preservation of Existing Property.**

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

This change was proposed by Rudy Powell, State Construction Engineer, to clarify responsibility for damage to existing property caused by the contractor and a third party.

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 ST986DS, or daniel.scheer@dot.state.fl.us. Comments received after **July 5, 2013**, may not be considered. Your input is encouraged.

DS/cah
Attachment

LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC.

(REV ~~12-20-1264-418-13~~)

ARTICLE 7-11 (Pages 64 – 67) is deleted and replaced by the following:

7-11 Preservation of *Existing* Property.

7-11.1 General: Preserve from damage all *existing* property ~~which is in~~ *within* the ~~vicinity~~ *project limits* of or ~~is~~ in any way affected by the ~~work~~ *Work*, the removal or destruction of which is not specified in the plans. This applies to, *but is not limited to*, public and private property, public and private utilities (except as modified by the provisions of 7-11.6), trees, shrubs, crops, signs, monuments, fences, guardrail, pipe and underground structures, *Intelligent Transportation Systems (ITS) facilities, traffic control signals and devices, highway lighting*, and public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Contractor), ~~etc.,~~.

Whenever the Contractor's activities damage ~~or injure~~ such *existing* property, immediately restore it to a condition ~~similar or~~ equal to *or better than* that existing ~~before at the time~~ such damage occurred, at no expense to the Department. *Temporary repairs may be used to immediately restore ITS facilities and traffic control signals and devices. Permanent repairs to ITS facilities and traffic control signals and devices shall be made within 90 days of any temporary repairs and prior to final acceptance of the project. Submit permanent ITS facility repair plans to the Engineer prior to beginning repair work.*

Protect existing bridges during the entire construction period from damage caused by the ~~construction operations or equipment~~ *Work*. *Immediately repair, at no expense to the Department, all damage to existing bridges caused by the Work, prior to continuing the Work.* The Department will not require the Contractor to provide routine repairs or maintenance for such structures. ~~However, immediately repair, at no expense to the Department, all damage occasioned by the construction operations. In the event that the Contractor's construction operations result in damage to a bridge requiring repairs, the Contractor shall make such repairs with any equipment, materials, or labor at the Contractor's disposal prior to continuing Contract work.~~

Direct special attention to the protection of all geodetic monuments, horizontal or vertical, located within the ~~project limits of construction~~.

Whenever the actions of a third party damage such existing property and is not otherwise due to any fault or activities of the Contractor, either restore it to a condition equal to or better than that existing at the time such damage occurred or provide access and coordinate with the Department's maintenance Contractor in accordance with 8-4.4 as directed by the Engineer. The Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs for restoring the existing property in accordance with 4-3.4. Restore damage resulting from vandalism at no expense to the Department.

7-11.2 Failure to Restore Damaged *Existing* Property: In case of failure on the part of the Contractor to restore such property, bridge, road or street, or to make good such damage or injury, the Engineer may, upon 48 hours notice, proceed to repair, rebuild, or otherwise restore such property, road, or street as may be deemed necessary, and the Department will deduct the cost thereof from any monies due or which may become due the Contractor under the Contract. Nothing in this clause prevents the Contractor from receiving proper compensation for the

removal, damage, or replacement of any public or private property, not shown on the plans, that is made necessary by alteration of grade or alignment. The Engineer will authorize such work, provided that the Contractor, or his employees or agents, have not, through their own fault, damaged such property.

7-11.3 Contractor's Use of Streets and Roads:

7-11.3.1 On Systems Other than the State Highway System: When hauling materials or equipment to the project over roads and bridges on the State park road system, county road system, or city street system, and such use causes damage, immediately, at no expense to the Department, repair such road or bridge to as good a condition as before the hauling began.

The Department may modify the above requirement in accordance with any agreement the Contractor might make with the governmental unit having jurisdiction over a particular road or bridge, provided that the Contractor submits written evidence of such agreement to the Engineer.

7-11.3.2 On the State Highway System: The Department is responsible for the repair of any damage that hauling materials to the site causes to roads outside the limits of the project, that are either on the State highway system (roads under the jurisdiction of the Department) or specifically designated in the plans as haul roads from Department-furnished material pits, except in the event damage is due to failure to comply with 7-7.2. The Contractor is responsible for all damages to any road or bridge caused by the Contractor's failure to comply with 7-7.2.

7-11.3.3 Within the Limits of a Construction Project: The Department will not allow the operation of equipment or hauling units of such weight as to cause damage to previously constructed elements of the project, including but not necessarily limited to bridges, drainage structures, base course, and pavement. Do not operate hauling units or equipment loaded in excess of the maximum weights specified in 7-7.2 on existing pavements that are to remain in place (including pavement being resurfaced), cement-treated subgrades and bases, concrete pavement, any course of asphalt pavement, and bridges. The Engineer may allow exceptions to these weight restrictions for movement of necessary equipment to and from its worksite, for hauling of offsite fabricated components to be incorporated into the project, and for crossings as specified in 7-7.3.

~~7-11.4 Traffic Signs, Signal Equipment, Highway Lighting and Guardrail: Protect all existing roadside signs, signal equipment, highway lighting and guardrail, for which permanent removal is not indicated, against damage or displacement. Whenever such signs, signal equipment, highway lighting or guardrail lie within the limits of construction, or wherever so directed by the Engineer due to urgency of construction operations, take up and properly store the existing roadside signs, signal equipment, highway lighting and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the Engineer.~~

~~If the Department determines that damage to such existing traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, the Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Repair damage caused by vandalism at no expense to the Department.~~

~~Payment for repairs will be in accordance with 4 3.4.~~

7-11.45 Operations ~~Within~~ *within* Railroad Right-of-Way:

7-11.45.1 Notification to the Railroad Company: Notify the superintendent of the railroad company, as shown on the plans, and the Engineer at least 72 hours before beginning any operation within the limits of the railroad right-of-way; any operation requiring movement of employees, trucks, or other equipment across the tracks of the railroad company at other than an established public crossing; and any other work that may affect railroad operations or property.

7-11.45.2 Contractor's Responsibilities: Comply with whatever requirements an authorized representative of the railroad company deems necessary in order to safeguard the railroad's property and operations. The Contractor is responsible for all damages, delays, or injuries and all suits, actions, or claims brought on account of damages or injuries resulting from the Contractor's operations within or adjacent to railroad company right-of-way.

7-11.45.3 Watchman or Flagging Services: The railroad company will furnish protective services (i.e., watchman or flagging services) to ensure the safety of railroad operations during certain periods of the project. The Department will reimburse the railroad company for the cost thereof. Schedule work that affects railroad operations so as to minimize the need for protective services by the railroad company.

7-11.56 Utilities:

7-11.56.1 Arrangements for Protection or Adjustment: Do not commence work at points where the construction operations are adjacent to utility facilities until all necessary arrangements have been made for removal, temporary removal, relocation, de-energizing, deactivation or adjustment with the utility facilities owner to protect against damage that might result in expense, loss, disruption of service, or other undue inconvenience to the public or to the owners. The Contractor is solely and directly responsible to the owners and operators of such properties for all damages, injuries, expenses, losses, inconveniences, or delays caused by the Contractor's operations.

Do not request utility removal, temporary removal, relocation, de-energizing, deactivation, or adjustment when work can be accomplished within the utility work schedules. In the event that removal, temporary removal, relocation, de-energizing, deactivation, or adjustment of a utility or a particular sequence of timing in the relocation of a utility is necessary and has not been addressed in a utility work schedule, the Engineer will determine the necessity for any such utility work. Coordinate such work as to cause the least impediment to the overall construction operations and utility service. The Department is not responsible for utility removal, temporary removal, relocation, de-energizing, deactivation, or adjustment work where such work is determined not necessary by the Engineer or done solely for the benefit or convenience of the utility owner or its contractor, or the Contractor.

7-11.56.2 Cooperation with Utility Owners: Cooperate with the owners of all underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum, and that services rendered by the utility owners will not be unnecessarily interrupted.

In the event of interruption of water or other utility services as a result of accidental breakage, exposure, or lack of support, promptly notify the proper authority and cooperate with the authority in the prompt restoration of service. If water service is interrupted and the Contractor is performing the repair work, the Contractor shall work continuously until the service is restored. Do not begin work around fire hydrants until the local fire authority has approved provisions for continued service.

7-11.56.3 Utility Adjustments: Certain utility adjustments and reconstruction work may be underway during the progress of the Contract. Cooperate with the various utility construction crews who are maintaining utility service. Exercise due caution when working adjacent to relocated utilities. The Contractor shall repair all damage to the relocated utilities resulting from his operations at no expense to the Department. The requirements of 7-11.1 and 7-11.6.2 outline the Contractor's responsibility for protecting utility facilities. The Department will include in the Contract the utility authorities who are scheduled to perform utility work on the project.

7-11.56.4 Weekly Meetings: Conduct weekly meetings on the job site with all the affected utility companies and the Engineer in attendance to coordinate project construction and utility relocation. Submit a list of all attendees one week in advance to the Engineer for approval.

Provide the approved Work Progress Schedule and Work Plan for the project, as specified in 8-3.2, to document the schedule and plan for road construction and utility adjustments.

When utility relocations no longer affect construction activities, the Contractor may discontinue the meetings with the Engineer's approval.

ARTICLE 7-14~~1~~ (Pages 64 – 67) is deleted and replaced by the following:

7-14 Contractor's Responsibility for Work.

The Contractor will take charge and custody of the Work, and take every necessary precaution against damage to the Work, by the action of the elements or from any other cause whatsoever, until the Department's final acceptance of the ~~W~~Work. The Contractor will rebuild, repair, restore, and make good, all damage to any portion of the Work occasioned by any of the above causes before final acceptance of the Contract.

The Department will have no obligation to pay any reimbursement for damage caused by the execution or nonexecution of the Work by the Contractor or its sub-contractors, or damage the Contractor was negligent in preventing. For damage to the Work caused by third parties, ~~the Contractor may pursue recovery or seek reimbursement from the Department, but not both.~~ The Department will not reimburse the Contractor for repair costs due to damage to the Work caused by third parties unless the Contractor has timely filed a report with law enforcement concerning the damage and provided the report to the Department within 14 calendar days of filing the report with law enforcement. Upon submission of the report to the Department, the Department solely retains the right to pursue recovery from the known third party. If damage to the Work is caused by a known third party, the Department will reimburse the Contractor for costs associated with the repair after reducing the amount of the repair cost by a \$2000.00 deductible for each occurrence, borne solely by the Contractor. ~~The Department solely retains the right to pursue recovery from the known third party, and if the Department is successful in recovery, the Department may reimburse the Contractor may be reimbursed proportionally, up to the amount of the deductible. If damage to the Work is caused by an unknown third party, the Department will reimburse the contractor for 50% of the cost of the repair after reducing the amount of the repair cost by a \$2000.00 deductible for each occurrence, borne solely by the Contractor. Repair cost will be determined in accordance with 4-4 using unit prices bid for this Contract, or for lump sum projects, using the weighted average unit prices in the Six Month~~

Moving Statewide Averages Report. The dates will be the six months prior to the letting date for this Contract.

The Department may, at its discretion, reimburse the Contractor for the repair of damage to the ~~work~~ Work not caused by a third party and due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to Acts of God, of the public enemy, or of governmental authorities.

~~Until the Department's acceptance of the work, take charge and custody of the work, and take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the nonexecution of the work. Rebuild, repair, restore, and make good, without additional expense to the Department, all injury or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance, except that in case of extensive or catastrophic damage, the Department may, at its discretion, reimburse the Contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to Acts of God, of the public enemy, or of governmental authorities.~~