

0040321 – COMMENTS FROM INDUSTRY REVIEW

Ed Nowak

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Comments:

As confirmed by discussions with surety bond agents, most sureties do not adjust the initial bond premium until after completion and generally before request is made of the surety to authorize final payment to the contractor. (For DOT construction contracts this is the point at which the surety is asked to sign our 21A form.

At that point a surety will do an "audit" to determine the adjusted contract amount, taking into account all additive and deductive SAs. In some cases additional premiums will be required and in some a rebate may be made.

Premium rates vary based on surety involved, the rating of the principal/contractor, i.e. the financial condition of the contractor, prime rates or sub prime rates.

Based on the adjusted contract amount rates per thousand dollars can go from, e.g. \$25 per thousand to less than \$7.50 per thousand.

The point being that the proposed Spec 4-3.2.1 (d) (1) (i), as worded will:

- (a) Subject the Department to inflated costs and costs that may not be actually incurred by the contractor.
- (b) Also bond premium costs are best calculated at the time of final completion and as part of the final estimate or payment process and not on a SA per SA basis.
- (c) Elimination of the proof of additional premium payment or obligation is not advisable.

If anyone is concerned with the above, I would be happy to discuss further or make suggested revisions.

Kenneth Whitfield

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Comments:

Suggested wording:

Cost of Bonds for additional or unforeseen work will be compensated at the original Contract bond rate.

No bond premium compensation will be made for additional or unforeseen work covered under the initial contingency pay item.

How about this?

ALLOWABLE COSTS FOR EXTRA WORK

REV 4-17-07)

SUBARTICLE 4-3.2.1, (d) (1) (i), (Page 23)

(i) Bond: Bond Premium costs for additional or unforeseen work will be reimbursed at the original Contract bond rate paid by the Contractor. Bond premiums for additional or unforeseen work included under the initial contingency pay item will not be reimbursed.

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Comments:

There may be circumstances where the actual bond rate for added or unforeseen work could be higher than the original rate. Remediation of hazardous waste or something akin to that comes to mind. Could the spec say what it says "unless the contractor provides a legitimate argument and appropriate documentation for a rate higher than the original." Or something like that? I agree that virtually all of the time the original will be sufficient; however, there could be occurrences otherwise.

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Comment

Revisions looks fine.

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Comments:

This specification addresses the prime contractor, but does it need to address the subcontractor. Please see DCE Memo 04-07 dated 4-12-07.

"This memo is issued to clarify what bond payment for extra work shall be and to ensure it is paid in a consistent manner statewide.

If the prime contractor requires a subcontractor to obtain a bond for additional or unforeseen work, the subcontractors can receive compensation for the costs of the bond. This is considered a cost of doing work.

The subcontractor bond will be allowed for additional work paid by the initial contingency pay item included in the contract.

The subcontractor must provide documentation to the Department via the prime contractor showing clear and convincing proof that a bond premium is being paid. The subcontractor is to provide documentation of their bond rate for the contract in the form of copy of bond paid for other work already subcontracted as part of this contract.

This must not be confused with the prime contractor's bond that is included in the initial contingency pay item in the contract. The prime is not entitled to additional bond premium on additional or extra work paid under the initial contingency pay item. Prime bond premiums are allowable for additional or extra work paid by work orders issued against contingency supplemental agreements.

This applies to all past, present, and future projects."

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Comments:

State Materials Office supports the changes and have no additional comments.
