



## Florida Department of Transportation

**RICK SCOTT**  
**GOVERNOR**

605 Suwannee Street  
Tallahassee, FL 32399-0450

**ANANTH PRASAD, P.E.**  
**SECRETARY**

May 2, 2011

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: 0090506 Measurement and Payment – Certification of Payment  
to Subcontractors.

Dear Ms. Gourdine:

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

These changes are proposed by David Sadler of the State Construction Office to require the contractor to indemnify the Department related to contractor payment and performance issues.

Please review and transmit your comments, if any, within two weeks. Comments should be sent via Email to SP965RP 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/cah

Attachment

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

**MEASUREMENT AND PAYMENT – CERTIFICATION OF PAYMENT TO SUBCONTRACTORS.****(REV 3-9-11)**

SUBARTICLE 9-5.6 (Page 103) is deleted and the following substituted:

**9-5.6 Certification of Payment to Subcontractors:** The term “subcontractor,” as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Department has made partial payment and firms working under equipment-rental agreements. The Contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Department will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor’s work is satisfactorily complete, as determined by the Department. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to subcontractors within 30 days after satisfactory completion of the subcontractor’s work. Provide this certification in the form designated by the Department.

Within 30 days of the Contractor’s receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The Department will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Department and the affected subcontractors or suppliers within said 30 day period.

*The Contractor shall indemnify and provide defense for the Department when called upon to do so for all claims or suits against the Department, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which ~~amount~~ shall be the original Contract amount as may be increased by subsequent Supplemental Agreements.*

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