

WORKBOOK CHANGE(S)

Add D 004039855.DOT  
Rev Date 1-29-04  
F.A. Date 3-29-04  
Letting Date 7-2-04

Move D \_\_\_\_\_  
To Deleted File \_\_\_\_\_  
Rev Date \_\_\_\_\_  
F.A Date \_\_\_\_\_  
Letting Date \_\_\_\_\_

Remarks New SS. Added  
by Mandatory #2 for  
July 2004 letting

Dates

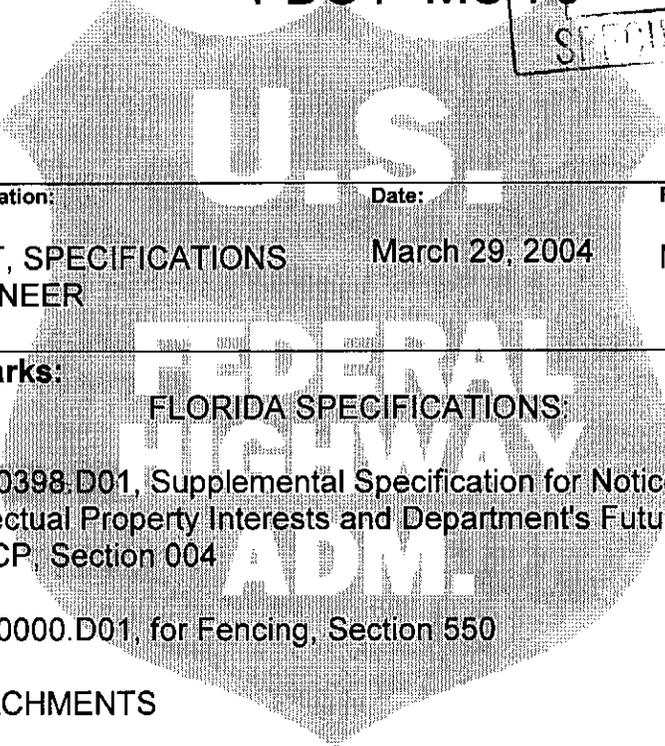
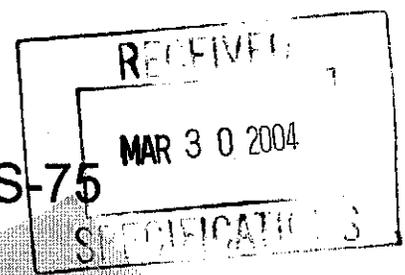
\*Copy of Spec to Paul that Impacts  
QPL (ONLY) \_\_\_\_\_  
Added to Nextwb file 3-31-04 sh  
Deleted from Nextwb file \_\_\_\_\_  
History File Updated \_\_\_\_\_  
Rolodexed 4/22/04 sh  
Additional back-up see \_\_\_\_\_

# Route Slip

U.S. Department of Transportation  
Federal Highway Administration  
Florida Division  
227 N. Bronough Street, Room 2015  
Tallahassee, FL 32301

Distribution:

FDOT MS-75



<b>To:</b>  MR. DUANE BRAUTIGAM	<b>Organization:</b>  FDOT, SPECIFICATIONS ENGINEER	<b>Date:</b>  March 29, 2004	<b>Routing Symbol:</b>  MS-75
--	--	------------------------------------	-------------------------------------

- Per Your Request
- For Your Information**
- Per Our Conversation
- Comment
- Take Appropriate Action
- Note and Return
- Discuss With Me
- For Your Approval
- For Your Signature
- Please Answer
- Prepare Reply
- For Signature of

**Remarks:**

FEDERAL  
HIGHWAY  
ADM.  
FLORIDA SPECIFICATIONS:  
D0040398.D01, Supplemental Specification for Notice of  
Intellectual Property Interests and Department's Future Rights to  
a VECP, Section 004  
D5500000.D01, for Fencing, Section 550  
ATTACHMENTS

By Ann Allshouse  
FOR: JAMES E. ST. JOHN,  
DIVISION ADMINISTRATOR

Telephone Number:  
(850) 942-9650, EXT. 3034

FDOT MS: # 29      Org/Rtg Symbol

DON Davis: ANN to file in binders cc: 1 (w/specification)



## Florida Department of Transportation

JEB BUSH  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

JOSÉ ABREU  
SECRETARY

March 23, 2004

Mr. Donald Davis  
Program Operations Engineer  
Federal Highway Administration  
545 John Knox Road  
Tallahassee, Florida 32303

Re: Office of Design, Specifications  
Section 4  
Proposed Specification: D0040398.D01

Dear Mr. Davis:

We are submitting, for your approval, two copies of a proposed Supplemental Specification for Notice of Intellectual Property Interests and Department's Future Rights to a VECP.

This change was proposed by Clay McGonagill of the General Counsel's Office to address continuing issues on royalty free use of patented or proprietary VECPs.

Please review and transmit your comments, if any, within two weeks. Comments should be sent via Email to SP965DB or [duane.brautigam@dot.state.fl.us](mailto:duane.brautigam@dot.state.fl.us).

If you have any questions relating to this specification change, please call Duane F. Brautigam, State Specifications Engineer at 414-4110.

Sincerely,

Duane F. Brautigam, P.E.  
State Specifications Engineer

DFB/jf

Attachment

cc: General Counsel  
Florida Transportation Builders' Assoc.  
State Construction Engineer

**NOTICE OF INTELLECTUAL PROPERTY INTERESTS AND  
DEPARTMENT'S FUTURE RIGHTS TO A VECP.  
(REV 1-29-04)**

SUBARTICLE 4-3.9.8 (Page 25) is deleted and the following substituted:

**4-3.9.8 Notice of Intellectual Property Interests and Department's Future Rights to a VECP:**

**4-3.9.8.1 Notice of Intellectual Property Interests:** The Contractor's VECP submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's VECP development, have or may have that are in whole or in part implicated in the VECP. Such required intellectual property rights notice includes, but is not limited to, disclosure of any: issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. This notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the VECP that are already on the Department's OPL, or design standard indexes, or are otherwise generally known in the industry as being subject to patent or copyright protection.

**4.3.9.8.2 Department's Future Rights to a VECP:** Notwithstanding 7-3 nor any other provision of the Standard Specifications, upon acceptance of a VECP, the Contractor hereby grants to the Department and its contractors (such grant being expressly limited solely to any and all existing or future Department construction projects and any other Department projects that are partially or wholly funded by or for the Department) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such VECP on any and all existing and future construction projects and any other Department projects.

Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4.3.9.8.1, unless the Department has by express written exception in the VECP acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.

**Deleted:** . . . 4-3.9.8 Department's Future Rights to a VECP: In the event of acceptance of a VECP, the Contractor hereby grants to the Department all rights to use, duplicate or disclose, in whole or in part, in any manner and for any purpose whatsoever, and to have or to permit others to do so, royalty free and without fee, other costs or surcharge, data reasonably necessary to fully utilize such proposal on this and any other Department Contract.¶

**NOTICE OF INTELLECTUAL PROPERTY INTERESTS AND  
DEPARTMENT'S FUTURE RIGHTS TO A VECP.  
(REV 1-29-04)**

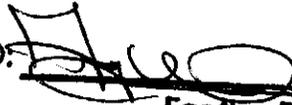
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Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4.3.9.8.1, unless the Department has by express written exception in the VECP acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.

APPROVED: 

DATE: 3-29-04

For the Division Administrator



Judy F Frazier

03/23/2004 03:11 PM

To: donald.davis@fhwa.dot.gov,

cc: ann.allshouse@fhwa.dot.gov, bburleson@ftba.com, Clay  
McGonagill/CO/FDOT, Ananth Prasad/CO/FDOT, David  
Sadler/CO/FDOT,

cc:

Subject: D0040398.D01

Please review the attached draft specification and return your approval/comments within two weeks. Thank you.



D0040398.D01.doc

Judy Frazier  
(850) 414-4127, SC 994-4127  
judy.frazier@dot.state.fl.us



## Florida Department of Transportation

JEB BUSH  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

JOSÉ ABREU  
SECRETARY

March 23, 2004

Mr. Donald Davis  
Program Operations Engineer  
Federal Highway Administration  
545 John Knox Road  
Tallahassee, Florida 32303

Re: Office of Design, Specifications  
Section 4  
Proposed Specification: D0040398.D01

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This change was proposed by Clay McGonagill of the General Counsel's Office to address continuing issues on royalty free use of patented or proprietary VECPs.

Please review and transmit your comments, if any, within two weeks. Comments should be sent via Email to SP965DB or [duane.brautigam@dot.state.fl.us](mailto:duane.brautigam@dot.state.fl.us).

If you have any questions relating to this specification change, please call Duane F. Brautigam, State Specifications Engineer at 414-4110.

Sincerely,

A handwritten signature in black ink that reads "Duane F. Brautigam".

Duane F. Brautigam, P.E.  
State Specifications Engineer

DFB/jf

Attachment

cc: General Counsel  
Florida Transportation Builders' Assoc.  
State Construction Engineer

**NOTICE OF INTELLECTUAL PROPERTY INTERESTS AND  
DEPARTMENT'S FUTURE RIGHTS TO A VECP.  
(REV 1-29-04)**

SUBARTICLE 4-3.9.8 (Page 25) is deleted and the following substituted:

~~4-3.9.8 Department's Future Rights to a VECP: In the event of acceptance of a VECP, the Contractor hereby grants to the Department all rights to use, duplicate or disclose, in whole or in part, in any manner and for any purpose whatsoever, and to have or to permit others to do so, royalty free and without fee, other costs or surcharge, data reasonably necessary to fully utilize such proposal on this and any other Department Contract.~~

**4-3.9.8 Notice of Intellectual Property Interests and Department's Future Rights to a VECP:**

**4-3.9.8.1 Notice of Intellectual Property Interests:** *The Contractor's VECP submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's VECP development, have or may have that are in whole or in part implicated in the VECP. Such required intellectual property rights notice includes, but is not limited to, disclosure of any: issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. This notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the VECP that are already on the Department's QPL or design standard indexes, or are otherwise generally known in the industry as being subject to patent or copyright protection.*

**4.3.9.8.2 Department's Future Rights to a VECP:** *Notwithstanding 7-3 nor any other provision of the Standard Specifications, upon acceptance of a VECP, the Contractor hereby grants to the Department and its contractors (such grant being expressly limited solely to any and all existing or future Department construction projects and any other Department projects that are partially or wholly funded by or for the Department) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such VECP on any and all existing and future construction projects and any other Department projects.*

*Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4.3.9.8.1, unless the Department has by express written exception in the VECP acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.*

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Clay McGonagill  
03/17/2004 05:35 PM

To: Judy F Frazier/CO/FDOT@FDOT  
cc:  
Subject: Re: D0040398 

JUDY/CLINTON--- The term "intellectual property interest" is defined by law and does not need to be spelled out in Article 1-3. Am I correct that this was the only comment we received? If not, please advise. Thanks, Clay

E. Clay McGonagill, Jr.  
Special Counsel  
(SC) 994-5296  
(850) 414-5296  
Judy F Frazier



Judy F Frazier  
03/04/2004 02:58 PM

To: Clay McGonagill/CO/FDOT@FDOT  
cc:  
Subject: D0040398

Please review the attached comment from Industry Review and respond so that we may continue the review process. Thank you.



D0040398.doc William Richards.pd

Judy Frazier  
(850) 414-4127, SC 994-4127  
judy.frazier@dot.state.fl.us



**Judy F Frazier**  
03/15/2004 10:58 AM

To: Clay McGonagill/CO/FDOT,  
cc:  
cc:  
Subject: D0040398

As a reminder, I am awaiting your reply so that we may continue with the review process. Thank you.

Judy Frazier  
(850) 414-4127, SC 994-4127  
judy.frazier@dot.state.fl.us  
----- Forwarded by Judy F Frazier/CO/FDOT on 03/15/2004 10:58 AM -----



**Judy F Frazier**  
03/04/2004 02:58 PM

To: Clay McGonagill/CO/FDOT@FDOT  
cc:  
Subject: D0040398

Please review the attached comment from Industry Review and respond so that we may continue the review process. Thank you.



D0040398.doc William Richards.pd

Judy Frazier  
(850) 414-4127, SC 994-4127  
judy.frazier@dot.state.fl.us



Judy F Frazier

03/04/2004 10:18 AM

To: Clay McGonagill/CO/FDOT  
cc:  
cc:  
Subject: D0040398

Please review the attached comment from Industry Review and respond so that we may continue the review process. Thank you.



D0040398.doc William Richards.pd

Judy Frazier  
(850) 414-4127, SC 994-4127  
judy.frazier@dot.state.fl.us



# Florida Department of Transportation

JEB BUSH  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

JOSÉ ABREU  
SECRETARY

## MEMORANDUM

**DATE:** March 4, 2004  
**TO:** Clay McGonagill  
**FROM:** Clinton J. Shaw, State Specifications Office   
**SUBJECT:** **Proposed Modifications To Specification: D0040398**

Comments received, regarding the subject modification to the Standard Specifications, are attached. Please review these comments and advise of any further modifications by March 18, 2004. Also, please submit an electronic summary, of your decisions concerning these comment(s) in memorandum format. This summary will be posted on the State Specifications Office Web Page and included in the Specifications folder for future reference, should someone question your response. Your assistance will be appreciated.

Please Email submittals to SP965CS or [clinton.shaw@dot.state.fl.us](mailto:clinton.shaw@dot.state.fl.us).

CS/jf

Attachment

**NOTICE OF INTELLECTUAL PROPERTY INTERESTS AND  
DEPARTMENT'S FUTURE RIGHTS TO A VECP.  
(REV 1-29-04)**

SUBARTICLE 4-3.9.8 (Page 25) is deleted and the following substituted:

~~4-3.9.8 Department's Future Rights to a VECP: In the event of acceptance of a VECP, the Contractor hereby grants to the Department all rights to use, duplicate or disclose, in whole or in part, in any manner and for any purpose whatsoever, and to have or to permit others to do so, royalty free and without fee, other costs or surcharge, data reasonably necessary to fully utilize such proposal on this and any other Department Contract.~~

**4-3.9.8 Notice of Intellectual Property Interests and Department's Future Rights to a VECP:**

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*Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4.3.9.8.1, unless the Department has by express written exception in the VECP acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.*



**Duane F Brautigam**  
02/11/2004 12:48 PM

To: Clinton Shaw/CO/FDOT@FDOT  
cc:  
Subject: Data posted to form 1 of  
<http://www11.myflorida.com/specificationsoffice/IndustryReview.htm>

Duane F. Brautigam, P.E.  
State Specifications Engineer  
Florida Department of Transportation  
(850) 414-4130; SC 994-4130  
[duane.brautigam@dot.state.fl.us](mailto:duane.brautigam@dot.state.fl.us)

----- Forwarded by Duane F Brautigam/CO/FDOT on 02/11/2004 12:48 PM -----



<[webmaster@dot.state.fl.us](mailto:webmaster@dot.state.fl.us)>  
02/11/2004 08:43 AM

To: <[duane.brautigam@dot.state.fl.us](mailto:duane.brautigam@dot.state.fl.us)>  
cc:  
Subject: Data posted to form 1 of  
<http://www11.myflorida.com/specificationsoffice/IndustryReview.htm>

\*\*\*\*\*

\*\*\*\*\*

File: D0040398.D01 - Notice of Intellectual Property  
Interests and Department's Future Rights to a VECP  
Username: William Richards  
UserEmail: [william.richards@dot.state.fl.us](mailto:william.richards@dot.state.fl.us)  
UserTel: 386/943-5161  
UserFAX:  
ContactRequested:  
Remote Name: 156.75.65.51  
Remote User:

Comments:

Suggest that we also add the definition of Intellectual Property  
Interests to section 1-3 of our Spec book.

**Clay McGonagill**  
02/06/2004 12:50 PM

To: Judy F Frazier/CO/FDOT@FDOT  
cc: Duane F Brautigam/CO/FDOT@FDOT  
Subject: Re: VECP Spec. 

JUDY--- This is fine. Thanks. Clay

E. Clay McGonagill, Jr.  
Special Counsel  
(SC) 994-5296  
(850) 414-5296  
Judy F Frazier



**Judy F Frazier**  
01/29/2004 03:37 PM

To: Clay McGonagill/CO/FDOT@FDOT  
cc: Duane F Brautigam/CO/FDOT@FDOT  
Subject: VECP Spec.

Clay, please take a look at the below attachment. I have formatted the spec you submitted and made one minor change in 4.3.9.8.2. In the first sentence I removed the word "Section" before 7-3.

In formatting we do not refer to Section when the actual reference is broken out to an Article or Subarticle. With your approval of this draft we will proceed with the Industry Review. Thank you.



D0040398.D01.doc

Judy Frazier  
(850) 414-4127, SC 994-4127  
judy.frazier@dot.state.fl.us



POSTED 2/3/04  
*[Signature]*

# Florida Department of Transportation

605 Suwannee Street  
Tallahassee, FL 32399-0450

JEB BUSH  
GOVERNOR

JOSÉ ABREU  
SECRETARY

## MEMORANDUM

**DATE:** February 3, 2004

**TO:** Specification Review Distribution List

**FROM:** Duane F. Brautigam, P.E., State Specifications Engineer  
*[Signature: Duane F. Brautigam]*

**SUBJECT:** **Proposed Specifications Change: D0040398.D01 - Notice of Intellectual Property Interests and Department's Future Rights to a VECP.**

In accordance with Specification Development Procedures, we are sending you a copy of a proposed specification change to Section 4.

This change was proposed by Clay McGonagill of the General Counsel's Office to address continuing issues on royalty free use of patented or proprietary VECPs.

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 SP965DB or duane.brautigam@dot.state.fl.us. Comments received after March 2, 2004 may not be considered. Your input is encouraged.

DFB/jf

Attachment

COMMENTS:

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Submitted by:

Phone #:

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**NOTICE OF INTELLECTUAL PROPERTY INTERESTS AND  
DEPARTMENT'S FUTURE RIGHTS TO A VECP.  
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**4-3.9.8 Notice of Intellectual Property Interests and Department's Future Rights to a VECP:**

**4-3.9.8.1 Notice of Intellectual Property Interests:** *The Contractor's VECP submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's VECP development, have or may have that are in whole or in part implicated in the VECP. Such required intellectual property rights notice includes, but is not limited to, disclosure of any: issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. This notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the VECP that are already on the Department's QPL or design standard indexes, or are otherwise generally known in the industry as being subject to patent or copyright protection.*

**4.3.9.8.2 Department's Future Rights to a VECP:** *Notwithstanding 7-3 nor any other provision of the Standard Specifications, upon acceptance of a VECP, the Contractor hereby grants to the Department and its contractors (such grant being expressly limited solely to any and all existing or future Department construction projects and any other Department projects that are partially or wholly funded by or for the Department) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such VECP on any and all existing and future construction projects and any other Department projects.*

*Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4.3.9.8.1, unless the Department has by express written exception in the VECP acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.*



**SPECIFICATION PROCESSING AND STATUS FORM**

**Begin date:** January 6, 2004

**File Number:** D0040398

**Proposed completion date:** A.S.A.P.

**Implementation team member:** Judy Frazier.

**Schedule of activities:** Industry review.

**Resource needs:** None identified at this time.

**Implementation schedule:** Unsure of implementation at this time. Leaning towards July 2004 but could be Mandatory.

**Proposed solution:** Proposed language to further clarify and resolve any potential continuing issues on royalty free use of patented or proprietary VECs.

**Progress report:** What is the current status of the issue? Detail problems encountered, that hinders the process.

[Clays012204CLEANFINALRedraftVECPlanguage VERSION]

4-3.9.8 Notice of Intellectual Property Interests and Department's Future Rights to a VECP:

4-3.9.8.1 Notice of Intellectual Property Interests: The Contractor's VECP submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's VECP development, have or may have that are in whole or in part implicated in the VECP. Such required intellectual property rights notice includes, but is not limited to, disclosure of any: issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. This notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the VECP that are already on the Department's QPL or design standard indexes, or are otherwise generally known in the industry as being subject to patent or copyright protection.

4.3.9.8.2 Department's Future Rights to a VECP: Notwithstanding Section 7-3 nor any other provision of the Standard Specifications, upon acceptance of a VECP, the Contractor hereby grants to the Department and its contractors (such grant being expressly limited solely to any and all existing or future Department construction projects and any other Department projects that are partially or wholly funded by or for the Department) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such VECP on any and all existing and future construction projects and any other Department projects.

Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4.3.9.8.1, unless the Department has by express written exception in the VECP acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.

**DEPARTMENT'S FUTURE RIGHTS TO A VECP.  
(REV 1-6-03)**

SUBARTICLE 4-3.9.8 (Page 25) is deleted and the following substituted:

**4-3.9.8 Department's Future Rights to a VECP:** ~~In the event of acceptance of a VECP, the Contractor hereby grants to the Department all rights to use, duplicate or disclose, in whole or in part, in any manner and for any purpose whatsoever, and to have or to permit others to do so, royalty free and without fee, other costs or surcharge, data reasonably necessary to fully utilize such proposal on this and any other Department Contract. Notwithstanding Section 7-3 nor any other provision of the Standard Specifications, upon the acceptance of a VECP, (1) Contractor grants to the Department and its contractors, a world-wide, royalty-free and perpetual license under all forms of intellectual property rights, including, but not limited to, statutory rights under patent and copyright and to common law rights to trade secrets and data, the right to manufacture, use, sell and offer to sell, the right to reproduce, prepare derivative works, distribute, display and publish and to otherwise commercially exploit, and the right to have manufactured, used, offered for sale or sold, reproduced, derivative works prepared, distributed, displayed or published and to otherwise have commercially exploited, on its or their behalf, any discovery, invention, concept, data, drawings, specification, apparatus and method, that is embodied, included, described or implied in or from the subject matter, in whole or in part, of the VECP in connection with any and all existing or future construction projects partially or wholly funded by or for the Department or the State of Florida, (2) Contractor represents and warrants to the Department and its contractors and others in privity therewith, that the VECP is wholly original to Contractor, that Contractor is the sole creator or author of the VECP, that Contractor is the sole owner of all right, title and interest in the VECP, that no manufacture, use, offer to sell or sale, reproduction, preparation of derivative works, distribution, display or publication nor any other form of commercial exploitation of the subject matter, in whole or in part, of the VECP, will infringe upon any intellectual property rights, rights of publicity or privacy, moral rights or any other rights of others and (3) Contractor shall hold harmless, indemnify and defend the Department, the State of Florida, its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, representations and warranties.~~



**Clinton Shaw**  
01/29/2004 02:19 PM

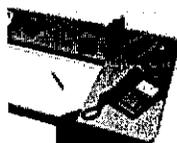
To: Shirley Harvey/CO/FDOT@FDOT  
cc:  
Subject: Re: D9-SCEC v. DOT Proposed VECP Spec Rewrite

Shirley,

Judy has this one but as per Clay's note below, it's a July implementation.

Thanks

Clinton J. Shaw  
(850) 414-4129 SC 994-4129  
Clinton.Shaw@dot.state.fl.us  
----- Forwarded by Clinton Shaw/CO/FDOT on 01/29/2004 02:17 PM -----



**Duane F Brautigam**  
01/29/2004 12:38 PM

To: Clinton Shaw/CO/FDOT@FDOT  
cc: Clay McGonagill/CO/FDOT@FDOT, Ken  
Leuderalbert/CO/FDOT@FDOT, Kurt G Lieblong/CO/FDOT@FDOT,  
Freddie L Simmons/CO/FDOT@FDOT  
Subject: Re: D9-SCEC v. DOT Proposed VECP Spec Rewrite

Let's go with this ASAP, getting it ready for Industry Review.

Duane F. Brautigam, P.E.  
State Specifications Engineer  
Florida Department of Transportation  
(850) 414-4130; SC 994-4130  
duane.brautigam@dot.state.fl.us  
----- Forwarded by Duane F Brautigam/CO/FDOT on 01/29/2004 12:36 PM -----

**Clay McGonagill**  
01/29/2004 11:02 AM

To: Duane F Brautigam/CO/FDOT@FDOT  
cc: Ken Leuderalbert/CO/FDOT@FDOT, Kurt G  
Lieblong/CO/FDOT@FDOT, Freddie L Simmons/CO/FDOT@FDOT  
Subject: Re: D9-SCEC v. DOT Proposed VECP Spec Rewrite

DUANE-- Per the below email string, Freddie Simmons has signed off on the following VECP spec modification version. Please restart the finalization process and take what steps are necessary to get it implemented no later than in the July 2004 Workbook. If this deadline requires any special push from Freddie, let me know and I will get Freddie to make it happen.



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Let me know if you need anything further to "make it happen." Thanks, Clay

E. Clay McGonagill, Jr.  
Special Counsel  
(SC) 994-5296  
(850) 414-5296  
----- Forwarded by Clay McGonagill/CO/FDOT on 01/29/2004 10:55 AM -----



**Kurt G Lieblong**  
01/29/2004 07:46 AM

To: Clay McGonagill/CO/FDOT@FDOT  
cc:  
Subject: Re: D9-SCEC v. DOT Proposed VECP Spec Rewrite

Clay,

Per our meeting last week, here is the approval from Freddie on the revised language. Please proceed with initiating the change to the specification and keep us in the loop.

Thanks,

Kurt Lieblong, P.E.  
State Value Engineer  
Florida Department of Transportation  
kurt.lieblong@dot.state.fl.us  
(850) 414-4787 s/c 994-4787  
(850) 414-4796 Fax

----- Forwarded by Kurt G Lieblong/CO/FDOT on 01/29/2004 07:42 AM -----



**Freddie L Simmons**  
01/28/2004 11:11 AM

To: Kurt G Lieblong/CO/FDOT@FDOT  
cc: Ken Leuderalbert/CO/FDOT@FDOT  
Subject: Re: D9-SCEC v. DOT Proposed VECP Spec Rewrite

ok to proceed with spec process ....thanks...Freddie

Freddie Simmons, P.E.  
State Highway Engineer  
Phone: 850-414-5240 / SC 994-5240  
Fax: 850-414-5201 / SC 994-5201  
freddie.simmons@dot.state.fl.us

How blessed we are...have a great day!!  
Kurt G Lieblong



**Kurt G Lieblong**  
01/26/2004 09:27 AM

To: Freddie L Simmons/CO/FDOT@FDOT  
cc: Ken Leuderalbert/CO/FDOT@FDOT  
Subject: D9-SCEC v. DOT Proposed VECP Spec Rewrite

Freddie,

Ken L., Clay and I met last Thursday and agreed to the following language for the VECP section of the specification.



Clays012204FINALRedraftVECPlanguage

To summarize, the first paragraph says that in the VECP submittal the Contractor must let us know of any intellectual property rights, which includes issued patents, pending patents, copyrights etc.. The second paragraph says that the contractor will grant the Department and it's contractors a perpetual and royalty free license for all intellectual rights to design and construct VECP on all existing and future construction projects. The last paragraph says that the Contractor shall hold harmless, indemnify and defend the Department against any claims related to the intellectual property rights of the VECP.

With your approval we will proceed with incorporating into the specifications.

Thank you,

Kurt Lieblong, P.E.  
State Value Engineer  
Florida Department of Transportation  
kurt.lieblong@dot.state.fl.us  
(850) 414-4787 s/c 994-4787  
(850) 414-4796 Fax

----- Forwarded by Kurt G Lieblong/CO/FDOT on 01/26/2004 09:06 AM -----

**Clay McGonagill**  
01/22/2004 03:36 PM

To: Ken Leuderalbert/CO/FDOT@FDOT, Kurt G  
Lieblong/CO/FDOT@FDOT  
cc:  
Subject: D9-SCEC v. DOT Proposed VECP Spec Rewrite

KEN/KURT-- Per our meeting this afternoon, attached is a redraft version for your review and comment-- prior to my sending it out to Duane and for broader internal review. I will await your reply before acting further. Thanks, Clay



Clays012204FINALRedraftVECPlanguage

E. Clay McGonagill, Jr.  
Special Counsel  
(SC) 994-5296  
(850) 414-5296