

DCE Meeting  
February 28<sup>th</sup> – March 1<sup>st</sup>, 2007 in Orlando, FL

Meeting Minutes

- **Joint Meeting with Directors of Transportation Operations and District Construction Engineers February 28<sup>th</sup> from 1:00 pm to 3:00 pm:**
  - The meeting opened with introductions. The following individuals attended the DCE Meeting:

Calvin Johnson, Jerry Rudd, Clay McGonagill, Pat McCann, Pete Nissen, Brian Pickard, Patrick Stanford, Tracy Rose, Brian McKishnie, Brian Blanchard, Sharon Griffiths, Ernest Garcia, Tim Ruelke, Frank O'Dea, Lorie Wilson, Keith Hinson, Steve Benak, Renae Sanders, Nancy Aliff, Greg Schiess, Derek Fusco, Paul Wai, Matt Price, Kurt Stone, Terry Muse, Alan Autry, Jon Sands, Mark Croft, Rudy Garcia, Millicent Burns, Debbie Toole, and Kim Smith
  - Directors Meeting:

Ananth Prasad, Debbie Hunt, Nick Tsengas, Jimmy Rodgers, Hesham Ali, Gus Pego, Jim Moulton and Jennifer Olson
  - Ananth was concerned about the perception of hearing that the CEI and Contractor are being friendly. The CEI's only need to be fair and reasonable with the contractor.
  - Tier 2 Plan Update – Brian B. went over the Tier 2 Business Plan update. A lot of questions from the Districts were brought up on the Business Plan. **Action - Brian to review, and update Tier 2 Business Plan and perhaps have a future teleconference with the DCE's.**
  - Construction Quality Index (CQI) - A presentation was given on CQI. CQI provides a practical measure of the quality of pavement. CQI needs to be tied to pavement life and be validated. **Action - Should this be used as a management tool, part of construction contracts or grading of contractors?**
  - Lump Sum and Design/Build Construction Contracts- Ananth has a breakdown of D/B and LS projects in each District and will share it with the Districts. He reminded the Districts to be open to different delivery methods.
  - Errors and Omissions Significant Statewide Findings- Ananth provided a summary report from a process review conducted by Ken's L. section on how the District's are doing with Error's and Omissions. Some District's disagreed with the summary findings and stated there is a system issue with having to input duplicate E and O information into several databases. **Action -Ananth proposed that if a District disagreed with the summary of findings to send him a rebuttal with the appropriate justification within the next two weeks. Also, per the process review findings, the Districts want more training on Premium Costs. In addition, it was discussed that the EOR needs to be notified of any negotiations involving the contractor with premium costs.**



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**Feb 28, 2007 DCE meeting 3:15pm to 5:30 pm:**

1. Q&A during bid time – Brian questioned how this is being handled by the districts and the posting of responses? Districts are using different processes. **Action – State Construction Office needs to get with Juanita and Duane to set up a statewide consistent Q&A process.**
2. Direction to contractors by FDOT/CEI – example Almar Metals. If the CEI is giving the direction to contractors, it needs to be documented in writing. Please note to look for changes in the shop drawings that deviate from the plans.
3. Landscaping establishment period- problems w/spec, issues in districts?

**580-5 Plant Establishment Period and Contractor's Warranty.**

Take responsibility for the proper maintenance, survival and condition of all plants for a period of one year after final acceptance in accordance with 5-11. Notify the Engineer upon completion of installation of all plants.

Mowing as part of the landscape work will be identified in the Contract Documents. Continue any mowing of the landscape areas specified in the Contract Documents throughout the establishment period.

Provide a Warranty/Maintenance Bond to the Department in the amount of the total sums bid for all landscape items as evidence of warranty during this plant establishment period. The cost of the bond will not be paid separately, but will be included in the costs of other bid items.

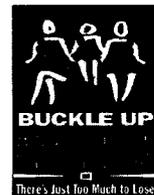
In addition to satisfying the provisions of Section 287.0935, Florida Statutes, the bonding company is required to have an A.M. Best rating of "A" or better. If the bonding company drops below the "A" rating during the Warranty/Maintenance Bond period, provide a new Warranty/Maintenance Bond for the balance of the establishment period from a bonding company with an "A" or better rating. In such event, all costs of the premium for the new Warranty/Maintenance Bond will be at the Contractor's expense.

The Engineer may conduct interim inspections of all landscape items during the plant establishment period, as well as at the end of the plant establishment period. As part of the warranty to the Department, and at no cost to the Department, replace all plants found not to meet minimum specifications as shown in 580-2.1.1 and 580-3.5 within ten days after each inspection. Prior to the end of the establishment period, remove all staking and guying from the project. At the end of the establishment period, the Engineer will release the Contractor from further warranty work and responsibility provided all plants are established and all previous warranty and remedial work, if any, has been completed to the satisfaction of the Engineer.

David stated the Districts need to use the tools to get the landscaping replaced if needed.

4. Bonus Adjustments after the fact- perception. Don't wait until end of project; adjust time as you go if it meets the spec. criteria.

No modification of a "Bonus" provision will be considered by the Chief Engineer for any impacts whatsoever, beyond the reasonable control of the Contractor, for which the effect results in a time extension of less than 15% of the time remaining in the period from first day of occurrence of such impact to the "Bonus Completion Date". Furthermore, as such impact, for which the effect results in a time extension of 15% or more of the time remaining in the period from the first day of occurrence of such impact to the "Bonus Completion Date", no modification of a "Bonus"



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provision will be considered by the Chief Engineer unless the contractor clearly establishes that it has continuously from the beginning the project aggressively, efficiently and effectively pursued the achievement of the "Bonus".

Brian and David stated not to wait until the end of the project to adjust the bonus date to try to meet the 15% threshold criteria per the special provision. This 15% threshold criterion is not cumulative of the impact delays.

5. Sunshine law and publicly noticed meetings- David asked if there was a need for Bruce Conroy to conduct any future training. It was decided it was not necessary.
6. Governor's Executive Order- Plain language, Code of Ethics, Code of Personal Responsibility – Brian stated if there is going to be Public Consumption of a document or website it needs to be in plain language. Brian noted that Ruth Dillard sent out an email, Feb 28, on Ethics, please read.
7. Henry Fuller Task Team (HFTT) issue – Contractor's are asking for a substantial completion definition to be added to specifications. David asked the DCE's if there was an interest to grant substantial completion (or whatever term of art was decided upon) in which LD's would not apply during punch list work. The DCE's were not in favor of this as completing punchlist was considered part of the contract work.  
**Action – David will look into in putting a proposal together for some type of graduated or sliding LD's for review.**
8. Reflectors versus lights on barricades/barrier walls – Brian is interested in trying more pilot projects with only reflectors on barrier wall and no lights on barrier wall.  
**Action – Perhaps make it option in the bid. Need to address any disparities between index and specs.**
9. Email retentions- Brian stated there is a need to tag and retain emails on construction projects with potential claims. Please include the six digit fin no. on emails in the subject line. Ernest to email directions on how to save emails into hummingbird. Outlook Express will be able to retain emails for five years. **Action- Issue needs to be discussed at the Executive Workshop again.**
10. Contract Modifications – surety signatures: when needed, statutory requirement

House Bill 1681 made a provision that as a July 1, 2005 that for contract changes less than 25% of the original contract amount the, Surety does not need a signature on the contract change.

For older contracts executed prior to the Statute change, we can do retroactive if the Surety agrees to abide with such terms on bonds issued prior to the Law being changed.

Surety Companies were supportive of this change. For bonds issued after the statute change, no acknowledgement is needed because is the Law.

11. Wage Rate Compliance data – David stated there is a wide disparity between districts in administering wage rates. **Action - Mark Wright will be conducting a Wage Rate QAR in the need future.**



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12. Low Profile Barriers – David stated don't substitute standard 415 or K-wall barriers for these. This can create sight distance problems.
13. Recycled materials used/allowed by specification – District 5 using recycled limerock on two projects and have received a credit on the projects. **Action -Frank to send out a spec change for review to adopt this on future projects.**
14. Materials or manufactured products certifications – David stated the need to get the required Cert prior to work being done or product installed if spec states this. A Cert review is being conducted statewide by a Task Team. State Materials Office will be creating a tool, spreadsheet, listing the Certs needed for items required by the 2007 Spec book. Spreadsheet will note who gets the Cert, who sends it, when it is needed. See no. 15 below from second day of meeting.
15. Contractor Engineer of Record and Specialty Engineer – differences, uses, clarification/guidance – David stated the 2007 Specifications have new definitions for the Contractor Engineer of Record and Specialty Engineer. **Action - SCO, Jon Mayer, will be putting out guidance on examples for each and what they can and can not do. If questions, please ask SCO.**
16. Retainage on contracts – spec requirement, enforcement? Retainage is being used, but has to be entered manually into Site Manager. Site Manager should be doing this automatically. **Action - David to talk with Jim Johnson about this.**
17. Polyacrylamide (PAM) on FDOT projects – Josh Boan, State EMO, talked about this new product and stated it can be used to treat turbid water and slope stabilization. It offers a lot of different uses and can be used as a new tool. Josh provided handout material. **Action - There were not enough handouts to go around and if possible, the Districts wanted additional copies for their staff. SCO will attempt to gain additional copy of information provided and post on its website.**

In addition, Duane and Josh noted there is a new Standard Special Provision and guidelines developed for the unexpected appearance of endangered species on projects. This should help simplify things in the future.

**March 1, 2007 DCE meeting continued 7:30 am to 3 pm:**

1. Scope Alternative Requirements – Duane discussed the following bidding tools: 1) Alternate Bids, 2) Bid options (grocery shopping list analogy), and 3) Scope Alternatives. Scope Alternatives (A, B, C ...) is a system that will require to define the different project scopes at bid. This will allow you to make time and quantity adjustment to defined alternates, complete set of bids for all of the alternates with contract time for each.
2. SMO Verification Sampling Bulletin – Paul Vink discussed the proposed process to sample frequent and infrequent items they are on the QPL. A majority of the items on the QPL are not frequently used. A joint bulletin will be forthcoming. Will require sampling of essentially every item on the QPL. **Action – Mayur, Paul, and David will meet to review the list of QPL items needing sampling from projects.**



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3. 6-5.2 QC Inspection – inspection requirements and contractor’s records requirements – Tim asked for clarification on this spec. It was discussed and decided to leave the spec alone and if there is a need for the contractor to do inspections, you can request him to do so. Require contractor to provide this documentation as part of QC plan. Should be a duty of the QC Manager to oversee.
4. OIS presentation of PROFILE replacement – Jeff Porter, Mike Nelson, Don Sangregorio presented the CIMS and this is to be implemented in Oct 2007. This is a project management tracking system. This statewide system is to obtain information from all databases and create a single warehouse of information to obtain consistent contract information statewide. Comments are needed on the program statewide. Group suggested to OIS that it conduct another JAD now that the program has been developed this far and that OIS has received more comments on the product.
5. CPPR – Do you want to be able to enter CPPR monthly scores directly into SiteManager with check box to accept as Final Score? Yes. **Action – David to look into having CPPR as a plug in to Site Manager. In addition, can the E&O program be a plug in too.**
6. VAAP – are you seeing many deficiencies? Ride/rut/crack/bleeding/raveling Some Districts are seeing deficiencies such as bleeding, raveling, rutting and slippage issues. D2 and D5 have had contractors make repairs. D6 has had a FC5 asphalt content issue and will not hold contractor accountable for that particular job. **Action – CPAM section on warranties needs to be completed soon.**
7. DRB term limits question – No need for DRB term limits. Some Districts are rejecting the Contractor’ selection for the DRB member due to concerns. **Action – Review list of recommendations on rejections and reasons for rejection and other trends.**  
Also discussed some general DRB issues regarding entitlement and quantum, claim certification requirements.
8. Additional work on contracts in Liquidated Damages (LD) – Clay stated that if you add work after contract time has expired, you can not charge LD’s and may lose LD’s. As a result, add the work as soon as early as possible before contract time expired. Exception – if contractor is in LD’s, and discover a plan error, the contractor would be entitled to the amount of time necessary to do the correction of the plan error. Reason for this exception is that if the contractor was not late then the same work would have been added and time granted for the correction of the error. We need to be careful in the wording of the SA or WO in that the work is field corrections of plan error and not “extra work”.
9. Withholding advanced LD’s and Disincentives – This happened in District 1 by a CEI, but it was corrected. Discussed booking LD’s but not withholding and how could get to the end of the job with having to do a negative final estimate. Can do offsets, but must follow statutory requirement of having final judgment or negotiated agreement with the contractor.
10. Contractor responses to personal injury or property damage claims – what are you seeing in districts? How are you handling non-responsiveness? Greg Jones issue – 12-18-06 email. Legal expressed that we are having difficulty getting contractors to address these claims. CEI needs to step up and getting the contractor to pursue third



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party claims. CEI needs to continually ask the status and if getting a response that I was turned over to its insurance provider, need to get contractor to provide report from its insurance provider. Contractor needs to be responsive. If the contractor is not being cooperative, perhaps adjust his grade. **Action - Brian to send out an email and a copy will be attached to these minutes.**

11. Latent Defect- Clay stated construction surety bond expires 2 years after final acceptance and have 820 days to file a law suit if needed. However, there is still potential recovery after the 820 days. Need to be discussing this with Maintenance the 820 day time frame and possible use of Tolling Agreement. Recognize that you may have an issue in your district but need to see if we have statewide issues.
12. Bonus Adjustment – Clay discussed contractors submitting a claim in order to get a bonus. Districts are seeing this...
13. Materials office involvement in CPPR – Are any districts getting feedback from materials on contractor performance? Some discussion about the timely and complete submittal of documents (EAR's, DDM's, mix designs). Districts indicated getting feedback on this where necessary.
14. FHWA issues and concerns? – Greg Schiess discussed the QA process reviews that have worked well and the need to continue with them. Process reviews should be conducted by SCO with the appropriate FDOT personnel and if there are findings in a District, the Districts need to put together a team approach to resolve the issues. This has been done with asphalt issues in D-5 and embankment issues in D-2.
15. Quality Control -Job Guide Schedules on D/B and LS projects – how is this being done in your district?

Sampling and Testing requirements appear to be set by the contractor and accepted by the construction staff. The contractor is submitting a job guide schedule for materials to be sampled and tested and this is being accepted by Construction staff or the Consultant CEI. A Material Certification Review Committee has been formed with a goal to examine "How Sampling and Testing requirements are being identified, met, and assured in timely fashion on Lump Sum and Design Build projects compared to itemized projects."

See no. 14 above from first day meeting.

16. MAS speed limit signs at end of set up – David stated this is not being done correctly. Advised DCE's to review MAS index for ending signs.
17. MOT subs issues with post size and changes to the design standards – The Work Zone Sign supports are being changed due to the past hurricanes. The new design standards are to be in effect in the July 2007 lettings. Standard Index 600 has been modified and is on the web. The 2008 Standard Indexes will have these changes. There are changes to the weight post and splice requirements, height requirements and foundation depths.
18. Subcontractors are certifying quantities, but not getting paid for the certified MOT quantities. It was discussed the Department should only be paying for MOT quantities that are being used per specs and not paying for devices that are delivered to the job, but not used. Project personnel need to bring this to the attention of the



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- contractor when it occurs, not wait until end of project. It was also discussed that quantity certifications would not be required for LS projects as this adds no value. Quality certifications would still be required for LS projects.
19. Anchor bolt testing for K-wall installations – index 414 requirements or specification 416 – The pull out test is not always feasible. As a result, a mock test can be done at the gutter line with a 4x4 post with the bolts drilled through the 4x4 and the holes cleaned and epoxied through the 4x4. Intent is to replicate the installation practice of the installer in a non-production location.
  20. Jim Johnson scanned document handout – This was skipped...
  21. Project Information Signs – status of design standard? – This is forthcoming as a Design Standard in the Standard Index. David sent out an email on March 2, 2007 on the proposed design to the DCE's.
  22. "Oops" Letter Procedure: original contingency amount and CPAM Section 7.4.6.1. – Ernest talked about that the maximum contingency amount was violated due to the Engineer's Estimate being higher than the bid amount. Comptroller's Office required a letter per the CPAM. **Action – David said it should not be this way and will talk with the Comptroller's Office. Ernest to send a copy of the "Oops" letter to David.**
  23. Supplemental Agreement issues – (Derek)

Q - When completing a work order or supplemental agreement for the purposes of delaying the notice to proceed or extending the flex or material acquisition time on a project is it suppose to be completed before time charges begin? A- It should be executed prior to starting contract time charges and doing it after time starts should be done as a time extension.

Premium Cost – Work delays or inefficiencies are considered premium costs– In this situation, the premium costs are the total delay/inefficiency damages paid to the Contractor. For example, a SA for a complete and final settlement for the additional costs and delays for disputed issues of obtaining a General and Individual Water Use Permit from SFWMD. The SA stated delay costs were involved, but the SA did not have any premium costs. Be careful how the SA is worded if it states they were delay costs, then the SA should have premium costs.

The above was discussed.

24. DRB's – Sunshine Law applies to DRB Meetings per meeting with Bruce Conroy?- There are different opinions on whether the Sunshine Law is applicable to DRB Meetings. **Action – Clay to look into this.**
25. Lane Rental and Incentive/Disincentive issues and concerns – (Derek/Keith D-3)

The Lane Rental specification needs to include a maximum number of days to prevent the contractor from bidding an excessive high number of Lane Rental Days and receiving money back for Lane Rental days not used. - Keith expressed his concerns with the spec. It was discussed that Lane Rental spec is not used that often in the Districts

Suggested on the Incentive/Disincentive specification that the disincentive date not be allowed to be adjusted due to granted weather days and time. Although industry would be against this



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modification. – It was discussed that this could be used as a tool on specific projects where there is a big commitment to complete a project by a specific date.

26. DCE memos –

Payment of Bond for Extra Work – Subs. can submit the costs for the bond (proof of bond payment by sub. needed) if required by the prime - a cost of doing the work. As for the prime, bond markup is not allowed on the initial contingency pay item work as the bond has been included in bond at bid (i.e. DCE memo 32-05). (Derek- Pat D-4)

SCO will issue clarification to the DCE's that payment of a prime required bond on sub work would be eligible under initial contingency pay item. **Action – Derek to develop DCE Memo.**

27. Lump Sum projects – How are your LS projects being administered? Most PA's are paying the contractor for additional quantities on the projects and this should not always be the case? - (Derek)

It was decided LS projects are working well and to leave them alone. **Action – SCO to discuss with Final Estimates Office the LS requirements.**

28. LAP Conference –

LAP Conference was held on Feb 5 and 6 in Orlando, FL. Approximately 400 plus people attended and included representatives from FDOT, consultants and local. There were numerous presentations conducted; how does an agency become certified, LAP checklists, DBE requirements, EEO requirements, Contract Wages, Panel Discussions, Design and Spec requirements Case Studies, Construction Administration, and more. From hearing some of the questions asked during the presentations, some of locals seemed confused and/or overwhelmed with FDOT requirements such as pay roll certifications, wage rates, FDOT specifications, CQC requirements, etc.... They also do not appear to know where to get their questions answered.

It was noted that Duane's shop has developed LAP Specs in four areas; asphalt, earthwork, concrete and landscaping for local agencies to use for LAP's off the State System. For LAP's on the State System, the local agency should use FDOT Specs.

29. LAP's - Off the State System Designer and CEI being the same firm

If off the state highway system, the guidance should be that the designer and the CEI cannot be the same firm, as primes, on LAP projects.

As for being a prime EOR and also the sub to the CEI, or vise-versa, the local government should sign off when off-system projects are involved.

We need to add guidance to the LAP manual to address these conflicts of interest.



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30.    OIG Review Findings –  
OIG Review Findings:

We're all getting better. Most recent summary of OIG Contract Modification Advisory shows that unsupported contract modifications has gone from 26% to 17%. Thanks for your efforts and let's all strive for a next step of less than 10%.

Two notable findings are 1) lack of supporting documentation for costs and time as part of contract modification and 2) a variety of administrative/procedural errors.

SCO will be augmenting Guidance Document 7-3-A attachment for CPAM chapter 7.3 to address with examples what is expected for an Engineer's Estimate for both costs and time. When this is completed, you will all be notified.

31.    Asphalt Base by the Ton – Need to develop specs to support the optional base payment differences by the square yards or tons for different options. Possibly stay with optional base SY pay item with a conversion factor for asphalt base option. Should asphalt base be eligible for asphalt adjustment only if contract was limited to asphalt option only? **Action - Duane and Frank to do some additional research on this with their production staff.**
32.    Elimination of CARS; use SiteManager – Use CARS for more than just construction quantities. Brian talked with Jim Johnson and he is working on this.
33.    Modify of Specification 120-4.2 – (Frank D-5 per Jody C.)

Existing specification

**120-4.2 Removal of Existing Old Road:** Where a new roadway is to be constructed over an old one, plow or scarify the old road, and break it up full width, regardless of height of fill. If the plans provide that paving materials may be incorporated into the fill, distribute such material in a manner so as not to create voids.

Proposed modification

**120-4.2 Construction over Existing Old Road:** Where a new roadway is to be constructed over an old one, plow or scarify the old road, and break it up full width, regardless of height of fill. If the plans provide that paving materials may be incorporated into the fill, distribute such material in a manner so as not to create voids. Recompact the old road to meet the Acceptance Criteria in Section 120-10.2.

Contractors are claiming that 120-4.2 means to literally truck material away. They are also saying that there are no density requirements. They want to leave the roadway as is.

D-5 Earthwork committee working on this.

34.    Drilled Shafts- Due to problems with Drilled Shafts for miscellaneous structures, the State Structures Office is looking at experimenting with Precast Drilled Shafts. D-2 to be piloting this.
35.    DCE's – what's the latest in wild requests? General discussion amongst meeting participants.





Brian A Blanchard/CO/FDOT

03/01/2007 11:08 AM

To FDOT-DCE

cc Clay McGonagill/CO/FDOT@FDOT, Nancy  
Aliff/CO/FDOT@FDOT, Greg Jones/CO/FDOT@FDOT

Subject Contractor Responses to Personal Injury and Property  
Damage Claims

This is a follow-up to our discussion at the DCE meeting. Please pass on to your folks. To get the attention of the contractors, this can also be discussed at the Pre-Construction Conferences.

The individual contractors performing the work have insurance carriers to cover incidents of property and vehicle damage. In order to process this claim, we need the person's contact information so we can discuss the exact location and time of a incident. Once that is determined, the CEI can notify the contractor via a vehicle claim letter. It is the CEI's responsibility to pursue third party claims against the contractor proactively and aggressively. The CEI should get a detailed response from the contractor if the contractor refutes the claim. The claimant should be provided with this documentation and the contractor's insurance carrier.

7-11.1 and 7-11.2 gives FDOT the right to withhold such monies from the Contractor if the claim is "serious" and obviously the contractor's fault. Failure to indemnify is a breach of contract and the contractor should be cooperating/coordinating with the CEI, property owners, and other third parties, so it should also have an affect on a contractor's grade. Deficiency letters should be issued until the issue is resolved. The SCO should be notified of flagrant violations so the matter can be addressed during pre-qualification. Thanks and let me know if you have questions.

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