

# District Construction Engineer's Monthly Meeting

December 27, 2010 3:00 PM

## Attendees:

TP – Matt Price  
D1 – Terry Muse  
D2 – Tim Ruelke  
D3 – Steve Benak, Keith Hinson, Renae Sanders  
D4 – Pete Nissen  
D5 – Frank O'Dea  
D6 – Mark Croft  
D7 – Brian McKishnie  
CO – David Sadler, Nancy Aliff, Alan Autry  
FHWA – Not present

## New Business:

- 1) Subletting / Assigning of Contracts on D-B projects – (David Sadler)

Research & prepare to discuss the following questions during the meeting:

- Does your district require a sublet for the design portion of a D-B project?
- Does your district include or exclude the design portion (\$\$) when calculating the amount of work performed by the Prime Contractor (40% self-performance requirement of 8-1)?

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SECTION 8  
PROSECUTION AND PROGRESS

**8-1 Subletting or Assigning of Contracts.**

Do not, sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the Department. If the Contractor chooses to sublet any portion of the Contract, the Contractor must provide a written request to sublet work on the Certification of Sublet Work form developed by

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the Department for this purpose. With the Engineer's acceptance of the request, the Contractor may sublet a portion of the work, but shall perform with his own organization work amounting to not less than 40% of the total Contract amount. The Certification of Sublet Work request will be deemed acceptable by the Department, for purposes of the Department's consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that the Department is not consenting to the requested subletting.

Include in the total Contract amount the cost of materials and manufactured component products, and their transportation to the project site. For the purpose of meeting this requirement the Department will not consider off-site commercial production of materials and manufactured component products that the Contractor purchases, or their transportation to the project, as subcontracted work.

If the Contractor sublets a part of a Contract item, the Department will use only the sublet proportional cost in determining the percentage of subcontracted normal work.

Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. Upon request, furnish the Department with a copy of the subcontract. The subletting of work does not release the Contractor or the surety of their

*The districts were polled to determine if a sublet agreement for the design portion of a design-build project is always required and whether or not the district excludes the design portion of the project as part of the total contract amount when determining the Prime Contractors 40% self performance requirement. Some inconsistencies in both of these areas were identified. However, 75% of the districts (6 of 8) did not require a sublet agreement and did not exclude the design portion of the project as part of the total contract amount when determining the Prime Contractors 40% self performance requirement. Those remaining districts were encouraged to modify current practices to be consistent with the majority of the districts. SCO will follow up with*

*Art Wright to determine whether or not a sublet agreement is required from a DBE designer in order for the Contractor & lead designer to receive DBE utilization credit.*

2) Acceptance of Schedule Updates – (David Sadler)

*The group discussed disposition of contractor's updated schedules which demonstrate completion of the project beyond the expiration of allowable contract time. SCO advised that in those instances when all time related issues have been resolved and the contractor submits a schedule update which shows completion of the project after the expiration of allowable contract time, the updated schedule should be accepted by the department and should be used to track the contractor's progress on the project. However, the department should provide a letter to the contractor in which the contractor should acknowledge that liquidated damages will be assessed if the project is completed after the expiration of allowable contract time. SCO and CO Legal will provide sample language for this acknowledgment to the districts. District Seven indicated that they have previously used similar language and will provide that language to SCO for review.*

3) Power of Attorney or Corporate Resolution for signing SA's, not Work Orders – discuss requirements – (David Sadler). Below is an excerpt from CPAM 7.3.14 (A)(3)(a)

Contract Modifications Revision: April 27, 2010

a. Execution by the Contractor

- Corporation

Must be executed by the President or Vice President or, if executed by another person, must include a certified copy of that person's authority to bind the Corporation. When the **Supplemental Agreement** is not executed by either the President or Vice President, then a Corporate Resolution which designates those individuals who have authority to legally bind the Corporation should be obtained.

The Seal of the Corporation must be affixed.

*The above requirement of CPAM 7.3.14 was discussed. Contractors have shared concerns with CO over districts requiring executed Work Orders be accompanied by a Power of Attorney or Corporate Resolution if not executed by the President or Vice President of the contracting firm. Contractor execution of Work Orders is intended to be handled at the project level (Project Superintendent, Project Manager, etc.) similar to the Departments execution which can be performed by the Project Administrator. Districts should not require a Power of Attorney or Corporate Resolution for Work Order execution. District Seven clarified that Contingency Supplemental Agreements should be executed by the President or Vice President of the contracting firm and in those instances when neither the President or V.P. execute the CSA, a Power of Attorney or Corporate Resolution should be provided.*

4) Thermoplastic update – how many projects deleting thermo and ending jobs with paint? – (David Sadler)

*The districts were polled to determine the number of instances when placement of thermoplastic pavement markings which were part of the original construction contract had been deleted from the project. Thus far this has been limited to 2 instances in districts One and Five for a total of 4 projects statewide. The group also discussed the latest developments related to the alleged thermoplastic shortage and bid prices.*

5) DB team responsibility for information provided by Department with RFP – (David Sadler)

From the boilerplate RFP:

*“No information contained in these documents shall be construed as a representation of any field condition or any statement of facts upon which the Design Build Firm can rely upon in performance of this contract. All information contained in these other documents must be verified by a proper factual investigation. The bidder agrees that by accepting copies of the documents, any and all claims for damages, time or any other impacts based on the documents are expressly waived.”*

*The group discussed several recent and historical scenarios where the department has received claims from D-B firms which were based on conceptual information prepared by the department (or its representatives) upon which the D-B firm relied and later alleged to be erroneous. The above language which is an excerpt from the SCO boilerplate RFP should be used and D-B firms are expected to perform reasonable verifications to confirm the accuracy of conceptual information provided by the department during the procurement process if that data is used by the DB team in its design. The DB team Designer will be the successor engineer and is required to verify information provided that is to be used in its design and sign/seal the design drawings.*

6) Notify State Materials Office of Pipe Failures – (David Sadler)

**From:** Paredes, Mario  
**Sent:** Monday, December 20, 2010 12:58 PM  
**To:** Sadler, David A; Renna, Rick; Ritchie, Larry; Poullotte, Jeffrey  
**Cc:** Byron, Tom; Malerk, Tom; Simmons, Ronald  
**Subject:** Failure of pipe

Gentlemen,

The State Materials Office is responsible for estimating service life of all culvert pipe products. The estimations are made available to designers via the Culvert Service Life Estimator (CSLE). In order to provide verification of the calculations made, field reports are essential.

It is imperative that SMO is copied in all failures of any kind of culvert pipe in the field so that we can at least serve as repositories of the information. In some cases, an in-depth investigations of particular mechanisms of failure will be necessary to further advance the knowledge base and to modify the CSLE.

Any help from your respective offices is much appreciated.

Thanks

Mario A. Paredes, PE  
State Corrosion Engineer  
Corrosion Research Laboratory  
FDOT-SMO  
5007 NE 39th Avenue  
Gainesville, FL 32609  
352-955-6690

*The above email which requests that SMO be notified of culvert pipe failures was discussed. It was noted that the districts should notify SMO of all fabrication type failures and not necessarily those installation type failures (e.g. contractor's means/methods) which occur during the prosecution of the work. District Two shared with the group their experience related to the failure of an aluminum clad steel pipe which was installed over bedding material comprised of mainly limerock material. District Five stated they have also experienced a similar failure. SCO will discuss the specifics of these situations with the State Drainage Engineer.*

7) Warranty Repairs – (Tim Ruelke)

*As part of our on-going performance based contracting discussions, we would like to discuss any trends in warranty repairs. Will you please ask your warranty coordinators to give you a year by year count of warranty repairs that have occurred?*

*The group discussed District Two's interest in collecting & analyzing data related to asphalt failures/repairs on those projects governed by the Value Added Asphalt Warranty specification (section 338). Other districts should gather this data and provide it to SCO and District Two by mid-January 2011. District Three provided the group with an update on the status of an on-going analysis (district is obtaining a pavement slice from a section of Interstate 10) related to an asphalt failure. The district expects to obtain the pavement slice by the end of next week and then begin analyzing the pavement.*

8) District attendance for the 2011 Construction Conference – (Jon Sands)

*SCO is finalizing the list of anticipated participants for the 2011 Construction Conference. Once the list is finalized it will then be submitted for approval. It is anticipated that district attendance will be the same as the 2010 Construction Conference and for planning purposes the districts can utilize last year's attendance as a guide. Once the finalized list is approved, SCO will disseminate it to the districts.*

9) Transportation Construction Management Conference – (David Sadler)

*Information about the upcoming 2<sup>nd</sup> International Conference on Transportation Construction Management which will be held February 7-10, 2011 in Orlando was shared with the group (emailed to the DCE's prior to the meeting). The department anticipates being able to send a single representative from each District to the Conference. Districts should review the referenced program and schedule of events information for the purpose of identifying their suggested participant and submit that individuals name to David Sadler by January 7, 2011.*

10) As-built Plans e-Document Search & CBT – (David Sadler)

*As-Built Plans have been loaded to the EEDMS from the CD's provided by ImageAPI. This has been done for all images since the contract was started in 2004 and a process is worked out for any newly scanned images to be added (typically within a few days of the scanning being completed by ImageAPI). The documents are able to be viewed in [e-Document Search](#) on the Enterprise Information Portal (EIP). All As-Built plans are stored in the Central Office document location under the Construction business area and the As-Built document group. This makes them available to PSEE as well. The portal, and especially the e-Document Search is a powerful tool, so a [CBT](#) was created using the example of the As-Built Plans.*

*Vicki Bradford  
Manager, BSSO*

*The above email was discussed. Districts are encouraged to share this information with those individuals who frequently access electronically stored as-built plans. In addition to accessing these plans via the [e-Document Search](#), the following website can be used:  
<http://bilby.imageapi.com/dot/main.aspx>*

**Walk-on Items:**

1) Contractor's Past Performance Grades on D-B projects – (David Sadler)

*The group discussed a proposing D-B firm whose Contractor average 5 year CPPR score was a 65. The contractor in this case was requesting the department not utilize those scores which were creating the low average but instead use the interim CPPR grades it has on its current, active contract. Section 3.10.1.1 of the D-B Guidelines was recently expanded in response to industry request to make the Long-List/Short-List process more objective. Districts are encouraged to review and follow these guidelines during the D-B procurement process.*

2) Updated Schedule of Values

*District Six was recently asked by General Counsel to obtain an updated Schedule of Values prior to executing a Supplemental Agreement for extra work. SCO and Central Office General Counsel will discuss this project specific situation further. Since the value of the extra work is known SCO sees no value in requiring the contractor to provide an updated SoV prior to execution of the SA.*

**NEXT DCE MONTHLY MEETING – January 24, 2011**