

0071101 LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC –
PRESERVATION OF PROPERTY
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

Duane F. Brautigam,
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Comment: (5-12-14) (Internal Review)

Problem in the last sentence of the added paragraph ...

“ ... Department owned underground facilities **will not be are not located** by the Department nor through notification to "Sunshine 811".

Response:
Correction made. ft

Gevin J. McDaniel
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Comment: (5-12-14) (Internal Review)

Please see the highlighted text. Something is wrong with it.

Take responsibility to, locate, including physical exposure as necessary, all Department owned underground facilities as shown on the plans that are affected by the scope of the Contract work. Department owned underground facility locations shown in the plans are approximate. This work is considered incidental to the other work being performed and no direct compensation will be provided. Unless otherwise shown on the plans, Department owned underground facilities **will not be are not located** by the Department nor through notification to "Sunshine 811".

Response:
Correction made. ft

Charles E. Boyd,
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Comment: (5-12-14) (Internal Review)

There is an extra comma in the first sentence after the word "to", and the last sentence just don't make no sense.

Response:
Correction made. ft

Rachel Panchookian
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Comment: (5-30-14)

The Turnpike recommends leaving the following language, and adding additional language that will task Contractors with designating Department-owned facilities for the work of utility companies:

*Take responsibility to locate, including physical exposure as necessary, all Department owned underground facilities as shown on the plans that are affected by the scope of the Contract work, **and for the work of utility companies.** Department owned underground facility locations shown in the plans are approximate. Unless otherwise shown on the Plans, Department owned underground facilities will not be located by the Department, nor through notification to "Sunshine 811".*

Response:

The responsibility for locating facilities for the utility companies is not the responsibility of the Department's contractor. This revision is not intended to reverse that. Consequently, no change will be made to the revision. tb

Arthur L. Berger
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Comment: (6-3-14)

The only question I have is whether it is clear that it is part of the Contractor's work to locate these underground facilities. The sentence about it being incidental to other work has been deleted.

Response:

The revision is intended to make clear the contractor's responsibilities regardless of whether or not the work is incidental to other work. Consequently, no change will be made to the revision. tb

Shailesh Patel

Comment: (6-3-14)

711.1 General – The red text doesn't take into consideration the fact that the underground facilities may not be shown on the plans. It is suggested that some sort of language that addresses the possibility of facilities not shown in the plans. "when working in the vicinity of any of the previously listed Department property, coordinate the location of possible underground facilities".

Response:

If the contractor's work is within the vicinity of a Department owned underground facility, the underground facility the Department should show it in the plans or at least note that it exists and what it is. Consequently, no change will be made to the revision. tb

Eddy L. Scott
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Comment: (6-4-14)

1. There are other methods of notification besides calling 811. Change “Sunshine 811” to reference the full title “Sunshine State One-Call of Florida, Inc.”

Response:

Sunshine State One-Call of Florida, Inc. changed its official name to Sunshine 811. Consequently, no change will be made to the revision. tb

2. Move the new language to a new sub-article under 7-11.5 (Utilities).

Response:

7-11.5 (Utilities) defines the Contractor’s responsibility to the owners of utilities that are permitted in the R/W by a “utility permit” and governed by 337.401 F.S. and Chapter 14-46 F.A.C. Department owned facility; are not issued utility permits; are not governed by 337.401 F.S. nor Chapter 14-46 F.A.C., and are not defined as utilities. Therefore, we should not call them utilities nor group them in with utilities. They are Department property to be preserved as any other type of Department property. Consequently, no change will be made to the revision. tb

3. Include the language in PPM Volume 2 Exhibit 20-1 note one as part of this change as well.

Response:

PPM Volume 2 Exhibit 20-1 depicts the work on utility facilities that are owned by others but permitted in the R/W by a “utility permit” and governed by 337.401 F.S. and Chapter 14-46 F.A.C. Department owned facility; are not issued utility permits; are not governed by 337.401 F.S. nor Chapter 14-46 F.A.C., and are not defined as utilities. Therefore, we should not call them utilities nor group them in with utilities. They are Department property to be depicted on the plans as other features are. Consequently, no change will be made to the revision. tb

4. We use the following note on just about every project: “Contact Sunshine State One-Call of Florida, Inc. as required by Chapter 556 of the Florida Statutes”. We do this because of the obscure reference to statute 556 in 7-1.1(Laws to be Observed, General). Unlike other direct references there is no mention of the subject or title of the statute. If the subject or title were added in 7-1.1 or the reference as worded were added to 7-11.5 (Utilities). This is a note I think we could eliminate.

Response:

556.105 (5) F.S. says the Department is not notified of excavation through Sunshine 811 and that the Department is not obligated to mark its facilities. This is because the Department is on notice of the excavation activities by the contract schedule, “Level C” locate information is on the plans and the Department provides “Level B” for some and is noted in a revision to the specifications for the project. The referenced note should not be used. Consequently, no change will be made to

the revision. tb

5. We also have several other widely used Utility notes that could probably be eliminated with other minor changes to 7-11.5 or other Specs. I've provided these below for general information in case you have similar issues and are working on it.

1. Verify vertically and horizontally (vvh) existing utilities prior to any directional or jack and bores.
2. Survey and stake each proposed signal structure footer and foundation location prior to requesting utility locates. Set one white center stake a minimum of 36" above ground clearly labeled with station, offset, signal pole number and diameter of excavation in inches. The entire perimeter of proposed excavation shall be clearly delineated with non-permanent white paint and four or more white stakes.
3. When installing signal structure footers and foundations excavate the first 4 feet by non mechanical and non destructive means.
4. Contact the company providing electrical power to determine if a service processing fee is required. If required, fee shall be included under pay item series 639-1-.

Response:

The intent of this revision is to inform the contractor that Department owned underground facilities locations are approximate on the plans and locates are not provided through Sunshine 811. The above note instructs the contractor how to provide markings in the field. This is not the intent of the revision. Consequently, no change will be made to the revision. tb

Andy Thompson
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Comment: (6-10-14)

Dear comment review staff, As an established and long standing contractor in the Southeast Florida heavy construction market, we feel that it is necessary to articulate some of the burdens that we will legally be faced with as a result of the FDOT's unwillingness to locate their own privately owned utilities within FDOT Rights of Way.

Firstly, I would like to respectfully state that it has always been our great pleasure to work on FDOT projects that improve the state's utilities system and I appreciate your consideration in reading the comments I am now forwarding to you. That being said, there are at least the following five areas of great concern that I would like to bring to your attention that will negatively impact contractors working in FDOT Rights of Way;

1. Safety • We must recognize that un-located utilities present a danger to the health and safety of our employees, subcontractors, vendors visiting sites and the general public. The possibility of electrical hazards, sewage hazards or any other hazard that can injure or kill those within the Right of Way where there will be no locate responsibility by the utility owner, is a transfer of

burden both ethical and legal, which we are forced to take on as a result of this proposed rule. There is no standard guidance in place to estimate this financial cost or negative safety culture impact to our company.

2. Training • We pride ourselves on the quality and content of the training that we provide to our employees. We are constantly striving to improve upon this aspect of our company, and I feel that among like companies our workforce has no equal. As a direct result of this rule, any training on Sunshine 811 must conclude with a separate section for the Florida Department of Transportation. In that section we will have to find a way to explain that we have done all that we can (as yet to be determined) to safely and accurately locate all the facilities within our work zone, but in the event there is a question as to the accuracy of our locating, we have no recourse to clarify existing FDOT utility locations because FDOT will not locate their own facilities. We must further explain that although it may not seem fair, if we damage something after having followed what is understood to be the law, the damage is still our fault. This sends very unclear messages to our employees, who do everything they can to avoid damages, but can usually take comfort in the fact that damages resulting from poorly marked or unmarked utility damage “is not their fault” under the law.
3. Guarantee of repair • The rules change states that contractors should repair damaged utilities to a “pre-damaged state”. Is there any implied guarantee of these repairs beyond the backfilling stage? We feel that after all the burden of trying to locate your facilities and paying for the repair of any damages that may occur, to be billed months later for a failed repair is wholly unfair. This is yet another cost that we must find a way to account for when bidding on projects. Once again – there is no standard guidance for estimating this potential cost.
4. Additional cost of locating • By shifting the responsibility of utility locates to contractors, FDOT is binding us to a state law that they themselves are not following. We will still have to follow prudent digging techniques, tolerance zones and any other Sunshine 811 rules that apply to marks that we ourselves will be placing with very limited information. Responsible contractors will be those who hire outside private locating companies. This cost will now be shifted to contractors. I must reiterate – responsible contractors will hire outside locators. If you will not locate your facilities, nothing prevents any contractor from attempting to locate themselves or not at all to avoid this cost. Fiber optics in long, HDD drilled in HDPE conduit runs cannot be located without included tracing wire and can be at a wide variety of depths and positions that will not be recorded. Even if we pay for the services of a private locating company, this damage cost will still be ours along with the locator cost.
5. “Unfair Disadvantage” • As stated in the first of these five comments, we have been in business here for many years and have always conducted our business fairly and ethically while doing our best to develop an unparalleled work force. There are many undefined costs associated with this shift of burden. We feel it necessary to point out that if our company was to “build in” the anticipated or potential costs of locating and damage repair, we could be pricing ourselves out of competitiveness with companies who will not do so just to get the work. Granted, companies who shortcut this process will stand to lose a great deal by doing so, but would the FDOT want a contractor on their ROW who will purposely only do the bare minimum to locate your facilities? In the event of damage, the same could be true of repairs as

well. I thank you for taking the time to read and consider our comments in this matter and hope that they help guide the FDOT in making a responsible decision in regard to this proposed amendment. I look forward to any response, and would be more than willing to discuss these comments at any time.

Response to comments 1 through 5:

The Department is willing to locate its underground facilities, despite the fact that under 556.105 (5) F.S. the Department is not obligated to provide any locate information. The Department provides "Level C" locate information on the plans and "Level B" markings for fiber optic lines and other facilities deemed critical by the Department. How the contractor obtains these "Level B" locates is described in a revision to the specifications for the project. This revision informs the contractor that if there are no specifications addressing "Level B" locates the contractor should not assume "Level B" locates will be provided by calling Sunshine 811. When the Department decides not to provide "Level B" the contractor must locate the facility themselves or hire a locating company. The Department understands that, when it does not provide "Level B" locates, the contractor will add these costs into the contract and the contractor establishes the amount of diligence provided. Consequently, no change will be made to the revision. tb

Brian Blair
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Comment: (6-16-14)

I offer the following suggestions in RED for the proposed language to be added to clean up the formatting/content:

Take responsibility to, locate, including physical exposure as necessary, all Department-owned underground facilities as shown on the pPlans that are affected by the scope of the Contract work. Department-owned underground facility locations shown in the pPlans are approximate. This work is considered incidental to the other work being performed and no direct compensation will be provided. Unless otherwise shown on the pPlans, Department-owned underground facilities will not be ~~are not~~ located by the Department nor through notification to "Sunshine 811".

Response:

The version that was sent out for Industry is below. The only comment not addressed is capitalizing the "P" in the first sentence, which will be done. ft

Contractor). ¶
 → → ~~Take responsibility to locate, including physical exposure as necessary, all Department owned underground facilities as shown on the plans that are affected by the scope of the Contract work. Department owned underground facility locations shown in the plans are approximate. This work is considered incidental to the other work being performed and no direct compensation will be provided. Unless otherwise shown on the pPlans, Department owned underground facilities will not be located by the Department nor through notification to "Sunshine 811". ¶~~
 → → Whenever the Contractor's activities damage such existing property, immediately

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Comments: (5-27-14)

I understand the revised specification 7-11.1 Legal Requirements and Responsibility to the Public - Preservation of Existing Property, has the effect of incorporating the Turnpike **TSP Blanket MSP** – Utility Work.

However, I recommend keeping the sentence that is struck from the revised spec. Take responsibility to locate, including physical exposure as necessary, all Department owned underground facilities as shown on the plans that are affected by the scope of the Contract work.

This line provides specific direction that is clear and applicable to the contractor's responsibility. The revised spec says the Department will not locate, rather than stating the contractor's responsibility to locate. Our plans list Department contacts for our underground lines. Contractors often construe the contact list as the person to call to locate. This is also confused by the revised spec which states the Department will not locate unless otherwise shown in the plans. Plan notes will need to be scrutinized to ensure there is no conflict.

Response:

The first line of the specifications says "Preserve from damage all existing property within the project limits" Therefore the contractor is responsible for damage of any underground facilities. The contractor decides how they will preserve the underground facility from damage and protect themselves from liability. When the Department deems the level B locate information will be provide by the Department a special provision will be added to instruct how Level "B" locates are to be provided. tb
