

WORKBOOK CHANGE(S)

Add D 0050126
Rev Date 9-26-03
F.A. Date 1-16-04
Letting Date 7-04

Move D _____
To Deleted File _____
Rev Date _____
F.A Date _____
Letting Date _____

Remarks New SS.

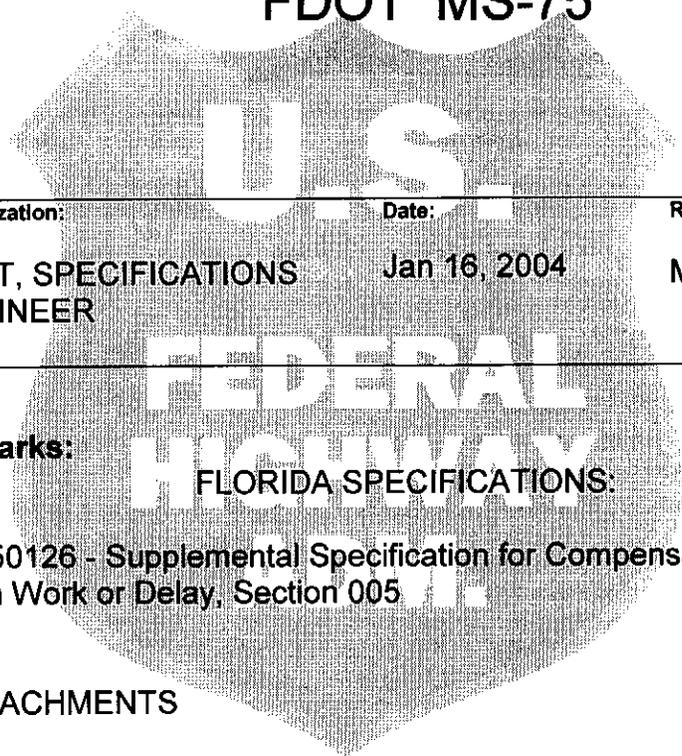
Dates

*Copy of Spec to Paul that Impacts
QPL (ONLY) _____
Added to Nextwb file 1-7-04
Deleted from Nextwb file _____
History File Updated _____
Rolodexed 3/29/04 ah
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



To: MR. DUANE BRAUTIGAM	Organization: FDOT, SPECIFICATIONS ENGINEER	Date: Jan 16, 2004	Routing Symbol: MS-75
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- 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:

FLORIDA SPECIFICATIONS:
D0050126 - Supplemental Specification for Compensation for
Extra Work or Delay, Section 005

ATTACHMENTS

From: FOR: JAMES E. ST. JOHN, DIVISION ADMINISTRATOR	Telephone Number: (850) 942-9650, EXT. 3035	FDOT MS: # 29	Org/Rtg Symbol
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DON Davis: ANN to file in binders cc: 1 (w/specification)

JAN 20 2004



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JOSÉ ABREU
SECRETARY

December 15, 2003

Mr. Donald Davis
Program Operations Engineer
Federal Highway Administration
227 N. Bronough Street, Suite 2015
Tallahassee, Florida 32301

Re: Office of Design, Specifications
Section 005
Proposed Specification: D0050126 – Compensation for Extra Work or Delay

Dear Mr. Davis:

We are submitting, for your approval, two copies of a proposed Supplemental Specification for Compensation for Extra Work or Delay.

This change was proposed by Ananth Prasad of the State Construction Office to expand 5-12.6.2.1 to include indirect costs, expenses and profit thereon, or of from delay, while deleting 5-12.6.2.2 – Compensation for Indirect Impacts of Delay.

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.

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

Sincerely,

Signature on file

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

DFB/sh

Attachment

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

JAN 20 2004

**COMPENSATION FOR EXTRA WORK OR DELAY.
(REV 9-26-03)**

SUBARTICLE 5-12.6 (Pages 42-44) is deleted and the following substituted:

5-12.6 Compensation for Extra Work or Delay:

5-12.6.1 Compensation for Extra Work: Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 4-3.2.

5-12.6.2 Compensation for Delay: Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 5-12.6.2.1 shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay: For any delay claim, the Contractor shall only be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2(d) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.

Deleted: and 5-12.6.2.2
Deleted: the actual idle labor, equipment,
Deleted: and
Deleted: materials, and other Contract Specific Direct (4-3.2(c))
Inserted: ,
Inserted: , and other Contract Specific Direct (4-3.2(c))
Deleted: , nor shall any indirect costs be recoverable for any delay, except as provided for in 5-12.6.2.2.
Deleted: . . .
Deleted: 5-12.6.2.2 Compensation for Indirect Impacts of Delay: When the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, greater than ten calendar days the Department will compensate the Contractor for jobsite overhead and other indirect impacts of delay, such indirect impacts including but not being limited to unabsorbed and extended home office overhead, according to the formula set forth below and solely as to such number of calendar days of entitlement that are in excess of ten calendar days. No other jobsite overhead and other indirect impacts of delay shall be compensable under any circumstances whatsoever, nor shall the Contractor be entitled under any circumstances to receive compensation for jobsite overhead and other indirect impacts of delay beyond the amount provided for herein. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any
Inserted: and
Deleted: used
Deleted: granted for performing additional work
Inserted: granted
Deleted: , days included in supplemental agreements, and days of suspended work
Deleted: 1

**COMPENSATION FOR EXTRA WORK OR DELAY.
(REV 9-26-03)**

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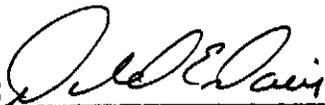
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5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay: For any delay claim, the Contractor shall only be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2(d) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.

5-12.6.2.2 Compensation for Indirect Impacts of Delay: When the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, greater than ten calendar days the Department will compensate the Contractor for jobsite overhead and other indirect impacts of delay, such indirect impacts including but not being limited to unabsorbed and extended home office overhead, according to the formula set forth below and solely as to such number of calendar days of entitlement that are in excess of ten calendar days. No other jobsite overhead and other indirect impacts of delay shall be compensable under any circumstances whatsoever, nor shall the Contractor be entitled under any circumstances to receive compensation for jobsite overhead and other indirect impacts of delay beyond the amount provided for herein. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect impacts for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when cumulatively totaled together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, and days

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount
B = Original Contract Time
C = 8%
D = Average Overhead Per Day

APPROVED:  DATE: 1-16-04
For the Division Administrator



Shirley Harvey

12/15/2003 01:44 PM

To: donald.davis@fhwa.dot.gov
cc: bburleson@ftba.com, acarlisle@ftba.com, Ananth Prasad/CO/FDOT@FDOT, Clay McGonagill/CO/FDOT@FDOT, ann.allshouse@fhwa.dot.gov
Subject: Approval for D0050126 - Compensation for Extra Work or Delay



D0050126.doc

Please review the attached document and return comments/approval as soon as possible.

Thanks for your help in this matter,
shirley harvey
SC 994-4120
(850)414-4120
shirley.harvey@dot.state.fl.us



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JOSÉ ABREU
SECRETARY

December 15, 2003

Mr. Donald Davis
Program Operations Engineer
Federal Highway Administration
227 N. Bronough Street, Suite 2015
Tallahassee, Florida 32301

Re: Office of Design, Specifications
Section 005
Proposed Specification: D0050126 – Compensation for Extra Work or Delay

Dear Mr. Davis:

We are submitting, for your approval, two copies of a proposed Supplemental Specification for Compensation for Extra Work or Delay.

This change was proposed by Ananth Prasad of the State Construction Office to expand 5-12.6.2.1 to include indirect costs, expenses and profit thereon, or of from delay, while deleting 5-12.6.2.2 – Compensation for Indirect Impacts of Delay.

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.

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, appearing to read "Duane F. Brautigam".

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

DFB/sh

Attachment

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

**COMPENSATION FOR EXTRA WORK OR DELAY.
(REV 9-26-03)**

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5-12.6.2 Compensation for Delay: Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 5-12.6.2.1 and ~~5-12.6.2.2~~ shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

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~~**5-12.6.2.2 Compensation for Indirect Impacts of Delay:** When the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, greater than ten calendar days the Department will compensate the Contractor for jobsite overhead and other indirect impacts of delay, such indirect impacts including but not being limited to unabsorbed and extended home office overhead, according to the formula set forth below and solely as to such number of calendar days of entitlement that are in excess of ten calendar days. No other jobsite overhead and other indirect impacts of delay shall be compensable under any circumstances whatsoever, nor shall the Contractor be entitled under any circumstances to receive compensation for jobsite overhead and other indirect impacts of delay beyond the amount provided for herein. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect impacts for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite~~

~~overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when cumulatively totaled together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, and days used granted for performing additional work, days included in supplemental agreements, and days of suspended work.~~

$$\underline{\hspace{10em}} \quad D = \frac{A \times C}{B}$$

~~Where~~ A = Original Contract Amount

~~B = Original Contract Time~~

~~C = 8%~~

~~D = Average Overhead Per Day~~

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Judy F Frazier
12/03/2003 03:53 PM

To: Shirley Harvey/CO/FDOT@FDOT
cc:
Subject: Re: D0040032.D01

I guess we'll have to wait a little while longer.

Judy Frazier
(850) 414-4127, SC 994-4127
judy.frazier@dot.state.fl.us
----- Forwarded by Judy F Frazier/CO/FDOT on 12/03/2003 03:52 PM -----



Ananth Prasad
12/02/2003 07:36 AM

To: Judy F Frazier/CO/FDOT@FDOT
cc: Clinton Shaw, Duane Brautigam
Subject: Re: D0040032.D01

I will have this to you after the FTBA Spec meeting on 12/10 other than that, I am all done ...

If you have any questions, please feel free to call me.

Thanks - Ananth

Ananth Prasad, P.E.,
State Construction Engineer,
(850)-414-4140, sc 994-4140
Fax (850)-412-8021
ananth.prasad@dot.state.fl.us
Judy F Frazier



Judy F Frazier
12/01/2003 10:00 AM

To: Ananth Prasad/CO/FDOT@FDOT
cc:
Subject: D0040032.D01

As a reminder, we are waiting on your reply to the below so that we may make any necessary changes and forward the spec to FHWA for their approval/comments. We are holding the draft specification D0050126-Compensation for Extra Work or Delay, which is ready to go to FHWA, so that both specs can be sent together. Thank you.

Judy Frazier
(850) 414-4127, SC 994-4127
judy.frazier@dot.state.fl.us
----- Forwarded by Judy F Frazier/CO/FDOT on 12/01/2003 09:57 AM -----



Judy F Frazier
11/04/2003 11:42 AM

To: Ananth Prasad/CO/FDOT@FDOT
cc:
Subject: D0040032.D01

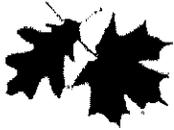
Please review the attached comments from Industry Review and respond to each within one week. Thank you.



D0040032.D01.doc

Judy Frazier
(850) 414-4127, SC 994-4127

judy.frazier@dot.state.fl.us



Shirley Harvey

11/04/2003 10:12 AM

To: Ananth Prasad/CO/FDOT@FDOT, Robert
Robertson/CO/FDOT@FDOT, Jim Mills/CO/FDOT@FDOT

cc:

Subject: Proposed Specs: D0050126 - Compensation for Extra Work or Delay;
D0051441 - Style, Numbering and Material of Submittals - Drawing &
D1100104 - Clearing and Grubbing - Mailboxes

D0050126 - Ananth, there were no comments on your spec.

D0051441 - Robert , there were no comments on your spec.

D1100104 - Jim, there were no comments on your spec.

Thanks,
shirley harvey
SC 994-4120
(850)414-4120
shirley.harvey@dot.state.fl.us



POSTED 10/6/03
J.A.D.

Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JOSÉ ABREU
SECRETARY

MEMORANDUM

DATE: October 6 2003

TO: Specification Review Distribution List

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

SUBJECT: **Proposed Specifications Change: D0050126 – Compensation for Extra Work or Delay**

In accordance with Specification Development Procedures, we are sending you a copy of a proposed specification change to Compensation for Extra Work or Delay.

This change was proposed by Ananth Prasad of the State Construction Office to expand 5-12.6.2.1 to include indirect costs, expenses and profit thereon, or of from delay, while deleting 5-12.6.2.2 – Compensation for Indirect Impacts of Delay.

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 November 3, 2003 may not be considered. Your input is encouraged.

DFB/sh

Attachment

COMMENTS:

Submitted by:

Phone #:

No
Comments
11-4-03
sh

**COMPENSATION FOR EXTRA WORK OR DELAY.
(REV 9-26-03)**

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~~**5-12.6.2.2 Compensation for Indirect Impacts of Delay:** When the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, greater than ten calendar days the Department will compensate the Contractor for jobsite overhead and other indirect impacts of delay, such indirect impacts including but not being limited to unabsorbed and extended home office overhead, according to the formula set forth below and solely as to such number of calendar days of entitlement that are in excess of ten calendar days. No other jobsite overhead and other indirect impacts of delay shall be compensable under any circumstances whatsoever, nor shall the Contractor be entitled under any circumstances to receive compensation for jobsite overhead and other indirect impacts of delay beyond the amount provided for herein. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the~~

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$$\underline{\hspace{10em}} \quad D = \frac{A \times C}{B}$$

- ~~_____ Where A = Original Contract Amount~~
- ~~_____ B = Original Contract Time~~
- ~~_____ C = 8%~~
- ~~_____ D = Average Overhead Per Day~~



Phillip G Davis
10/04/2003 07:23 PM

To: Shirley Harvey/CO/FDOT@FDOT
cc:
Subject: Re: Proposed Spec D0050126 - Compensation for Extra Work or Delay


No comments. Thanks!.....Greg

Phillip "Greg" Davis, P.E.
State Estimates Engineer
Florida Department of Transportation
Email: phillipgreg.davis@dot.state.fl.us
Office: 850.414.4170 suncom 994.4170
FAX: 850.412.8039 suncom 277.4584
Mobile Phone: 850.544.2324

Shirley Harvey



Shirley Harvey
09/29/2003 01:32 PM

To: bburleson@ftba.com, Brian A Blanchard/CO/FDOT@FDOT, William N Nickas/CO/FDOT@FDOT, Phillip G Davis/CO/FDOT@FDOT, acarlisle@ftba.com
cc: Ananth Prasad/CO/FDOT@FDOT
Subject: Proposed Spec D0050126 - Compensation for Extra Work or Delay



D0050126.doc

Please review the attached draft specification and return your comments as soon as possible so that we may continue with the review process.

Thanks,
shirley harvey
SC 994-4120
(850)414-4120
shirley.harvey@dot.state.fl.us



Shirley Harvey

09/29/2003 01:32 PM

To: bburleson@ftba.com, Brian A Blanchard/CO/FDOT, William N
Nickas/CO/FDOT, Phillip G Davis/CO/FDOT, acarlisle@ftba.com
cc: Ananth Prasad/CO/FDOT@FDOT
Subject: Proposed Spec D0050126 - Compensation for Extra Work or Delay



D0050126.doc

Please review the attached draft specification and return your comments as soon as possible so that we may continue with the review process.

Thanks,
shirley harvey
SC 994-4120
(850)414-4120
shirley.harvey@dot.state.fl.us



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JOSE ABREU
SECRETARY

MEMORANDUM

DATE: September 29, 2003

TO: Bob Burluson, FTBA, Brian Blanchard, State Roadway Design Office, William N. Nickas, State Structures Design Office, Greg Davis, State Estimates Office

FROM: Clinton J. Shaw, State Specifications Office 

SUBJECT: **Proposed Specification: D0050126 – Compensation for Extra Work or Delay**

Attached for your review and comments is a copy of the subject Special Provision for Compensation for Extra Work or Delay.

This change was proposed by Ananth Prasad to expand 5-12.6.2.1 to include indirect costs, expenses and profit thereon, of or from delay, while deleting 6-12.6.2.2 – Compensation for Indirect Impacts of Delay.

Please review and offer your comments.

CS/sh
Attachment

**COMPENSATION FOR EXTRA WORK OR DELAY.
(REV 9-26-03)**

SUBARTICLE 5-12.6 (Pages 42-44) is deleted and the following substituted:

5-12.6 Compensation for Extra Work or Delay:

5-12.6.1 Compensation for Extra Work: Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 4-3.2.

5-12.6.2 Compensation for Delay: Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 5-12.6.2.1 and 5-12.6.2.2 shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay: For any delay claim, the Contractor shall only be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2(d) and solely for the actual idle labor, equipment, and materials, and other Contract Specific Direct (4-3.2(e)) costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken, nor shall any indirect costs be recoverable for any delay, except as provided for in 5-12.6.2.2.

5-12.6.2.2 Compensation for Indirect Impacts of Delay: When the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, greater than ten calendar days the Department will compensate the Contractor for jobsite overhead and other indirect impacts of delay, such indirect impacts including but not being limited to unabsorbed and extended home office overhead, according to the formula set forth below and solely as to such number of calendar days of entitlement that are in excess of ten calendar days. No other jobsite overhead and other indirect impacts of delay shall be compensable under any circumstances whatsoever, nor shall the Contractor be entitled under any circumstances to receive compensation for jobsite overhead and other indirect impacts of delay beyond the amount provided for herein. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect impacts for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite

~~overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when cumulatively totaled together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, and days used *granted* for performing additional work, days included in supplemental agreements, and days of suspended work.~~

$$\underline{\hspace{10em}} \quad D = \frac{A \times C}{B}$$

~~Where~~ A = Original Contract Amount

~~B = Original Contract Time~~

~~C = 8%~~

~~D = Average Overhead Per Day~~



Ananth Prasad

09/29/2003 10:37 AM

To: Shirley Harvey/CO/FDOT@FDOT
cc:
Subject: Re: Proposed Spec D0050126 - Compensation for Extra Work or Delay


Good to go ..

If you have any questions, please feel free to call me.

Thanks - Ananth

Ananth Prasad, P.E.,
State Construction Engineer,
(850)-414-4140, sc 994-4140
Fax (850)-412-8021
ananth.prasad@dot.state.fl.us
Shirley Harvey



Shirley Harvey

09/26/2003 02:47 PM

To: Ananth Prasad/CO/FDOT@FDOT
cc:
Subject: Proposed Spec D0050126 - Compensation for Extra Work or Delay



D0050126.doc

Please review the attached document to make sure that all the changes are made.

If you have any questions please call.

Thanks,
shirley harvey
SC 994-4120
(850)414-4120
shirley.harvey@dot.state.fl.us



Shirley Harvey

09/26/2003 02:47 PM

To: Ananth Prasad/CO/FDOT@FDOT

cc:

Subject: Proposed Spec D0050126 - Compensation for Extra Work or Delay



D0050126.doc

Please review the attached document to make sure that all the changes are made.

If you have any questions please call.

Thanks,
shirley harvey
SC 994-4120
(850)414-4120
shirley.harvey@dot.state.fl.us



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JOSÉ ABREU
SECRETARY

MEMORANDUM

DATE: September 26, 2003

TO: Ananth Prasad, State Construction Office

FROM: Clinton J. Shaw, State Specifications Office 

SUBJECT: **Proposed Specification: D0050126 – Compensation for Extra Work or Delay**

Your proposed specification has been formatted and entered for processing. As the originator for this specification, please review the formatted draft and make any necessary changes.

Additionally, please verify the condition under which this specification is to be used (see usage note under specification number).

If you have any questions, please contact Clinton Shaw at (850) 414-4129 or Suncom 994-4129. Your response within two weeks will be appreciated, as further processing is dependent upon your response. We will continue to update you as we process this request for implementation.

CS/sh

Attachment

**COMPENSATION FOR EXTRA WORK OR DELAY.
(REV 9-26-03)**

SUBARTICLE 5-12.6 (Pages 42-44) is deleted and the following substituted:

5-12.6 Compensation for Extra Work or Delay:

5-12.6.1 Compensation for Extra Work: Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 4-3.2.

5-12.6.2 Compensation for Delay: Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 5-12.6.2.1 and 5-12.6.2.2 shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay: For any delay claim, the Contractor shall only be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2(d) and solely for the actual idle labor, equipment, and materials, and other Contract Specific Direct (4-3.2(e)) costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken, nor shall any indirect costs be recoverable for any delay, except as provided for in 5-12.6.2.2.

~~**5-12.6.2.2 Compensation for Indirect Impacts of Delay:** When the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, greater than ten calendar days the Department will compensate the Contractor for jobsite overhead and other indirect impacts of delay, such indirect impacts including but not being limited to unabsorbed and extended home office overhead, according to the formula set forth below and solely as to such number of calendar days of entitlement that are in excess of ten calendar days. No other jobsite overhead and other indirect impacts of delay shall be compensable under any circumstances whatsoever, nor shall the Contractor be entitled under any circumstances to receive compensation for jobsite overhead and other indirect impacts of delay beyond the amount provided for herein. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect impacts for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite~~

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$$\underline{\underline{D}} = \frac{A \times C}{B}$$

~~Where~~ A = Original Contract Amount

~~B~~ = Original Contract Time

~~C~~ = 8%

~~D~~ = Average Overhead Per Day

SPECIFICATION PROCESSING AND STATUS FORM

Begin date: September 22, 2003

File Number: D0050126

Projected completion date: December 22, 2003.

Implementation team member: Shirley Harvey

Schedule of activities: Internal, (No legal review needed, Clay has already reviewed and commented. See 'Origination DFB app.') Industry and FHWA reviews.

Resource needs: None identified at this time.

Implementation schedule: Beginning with the July 2004 letting.

Proposed solution: Expanding 12.6.2.1 to include Indirect Costs, Expenses and Profit thereon, of or from Delay, while deleting 5-12.6.2.2 – Compensation for Indirect Impacts of Delay.

Recommended Usage Note: All jobs

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

5-12.6 Compensation for Extra Work or Delay:

5-12.6.1 Compensation for Extra Work: Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 4-3.2.

5-12.6.2 Compensation for Delay: Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 5-12.6.2.1 and 5-12.6.2.2 shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay: For any delay claim, the Contractor shall only be entitled to monetary compensation *for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2(d) and solely for the actual idle labor, equipment, and materials, and other Contract Specific Direct (4-3.2(e))* costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken, ~~nor shall any indirect costs be recoverable for any delay, except as provided for in 5-12.6.2.2.~~

~~**5-12.6.2.2 Compensation for Indirect Impacts of Delay:** When the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, greater than ten calendar days the Department will compensate the Contractor for jobsite overhead and other indirect impacts of delay, such indirect impacts including but not being limited to unabsorbed and extended home office overhead, according to the formula set forth below and solely as to such number of calendar days of entitlement that are in excess of ten calendar days. No other jobsite overhead and other indirect impacts of delay shall be compensable under any circumstances whatsoever, nor shall the Contractor be entitled under any circumstances to receive compensation for jobsite overhead and other indirect impacts of delay beyond the amount provided for herein. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the~~

~~Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect impacts for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when cumulatively totaled together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, and days used granted for performing additional work, days included in supplemental agreements, and days of suspended work.~~

$$\underline{\hspace{10em}} \quad D = \frac{A \times C}{B}$$

~~_____~~ Where A = Original Contract Amount

~~_____~~ B = Original Contract Time

~~_____~~ C = 8%

~~_____~~ D = Average Overhead Per Day

5-12.7 Mandatory Claim Records: After giving the Engineer notice of intent to file a claim for extra work or delay, the Contractor must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or delay. These daily records must identify each operation affected by the extra work or delay and the specific locations where work is affected by the extra work or delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by the extra work or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide the Engineer a copy of the Contractor's daily records and be likewise entitled to receive a copy of the Department's daily records. The copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

5-12.8 Claims For Acceleration: The Department shall have no liability for any constructive acceleration of the work, nor shall the Contractor have any right to make any claim for constructive acceleration nor include the same as an element of any claim the Contractor may otherwise submit under this Contract. If the Engineer gives express written direction for the Contractor to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to the Department's approval of the documents.

5-12.9 Certificate of Claim: When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

5-12.10 Non-Recoverable Items: The parties agree that for any claim the Department will not have liability for the following items of damages or expense:

- a. Loss of profit, incentives or bonuses;
 - b. Any claim for other than extra work or delay;
 - c. Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
 - d. Acceleration costs and expenses, except where the Department has expressly and specifically directed the Contractor in writing "to accelerate at the Department's expense";
- nor

- e. Attorney fees, claims preparation expenses and costs of litigation.

5-12.11 Exclusive Remedies: Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under 5-12. In the event any legal action for additional compensation, whether on account of delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Department's liability will be limited to those items which are specifically identified as payable in 5-12.

5-12.12 Settlement Discussions: The content of any discussions or meetings held between the Department and the Contractor to settle or resolve any claims submitted by the Contractor against the Department shall be inadmissible in any legal, equitable, arbitration or administrative proceedings brought by the Contractor against the Department for payment of such claim. Dispute Resolution Board, State Arbitration Board and Claim Review Committee proceedings are not settlement discussions, for purposes of this provision.

5-12.13 Personal Liability of Public Officials: In carrying out any of the provisions of the Contract or in exercising any power or authority granted to the Secretary of Transportation, Engineer or any of their respective employees or agents, there shall be no liability on behalf of any employee, officer or official of the Department for which such individual is responsible, either personally or as officials or representatives of the Department. It is understood that in all such matters such individuals act solely as agents and representatives of the Department.

5-12.14 Auditing of Claims: All claims filed against the Department shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of this State. The audit may be performed, at the Department's sole discretion, by employees of the Department or by any independent auditor appointed by the Department, or both. The audit may begin after ten days written notice to the Contractor, subcontractor, or supplier. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the Contractor, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records, to allow the Department's auditors to verify the claim and failure to retain sufficient records of the claim or failure to provide full and reasonable access to

such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Contractor submitting a written claim, the Department shall have the right to request and receive, and the Contractor shall have the affirmative obligation to provide to the Department, copies of any and all documents in the possession of the Contractor or its subcontractors, materialmen or suppliers as may be deemed relevant by the Department in its review of the basis, validity or value of the Contractor's claim.

Without limiting the generality of the foregoing, the Contractor shall upon written request of the Department make available to the Department's auditors, or upon the Department's written request for copies provide copies at the Department's expense, any or all of the following documents:

1. Daily time sheets and foreman's daily reports and diaries;
2. Insurance, welfare and benefits records;
3. Payroll register;
4. Earnings records;
5. Payroll tax return;
6. Material invoices, purchase orders, and all material and supply acquisition contracts;
7. Material cost distribution worksheet;
8. Equipment records (list of company owned, rented or other equipment used);
9. Vendor rental agreements and subcontractor invoices;
10. Subcontractor payment certificates;
11. Canceled checks for the project, including, payroll and vendors;
12. Job cost report;
13. Job payroll ledger;
14. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
15. Cash disbursements journal;
16. Financial statements for all years reflecting the operations on this project;
17. Income tax returns for all years reflecting the operations on this project;
18. All documents which reflect the Contractor's actual profit and overhead during the years this Contract was being performed and for each of the five years prior to the commencement of this Contract;
19. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based;
20. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim;
21. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.