

0010200 DEFINITIONS AND TERMS
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

Art Berger
Office of General Counsel
414-5368

Comments: (10-13-17)

I recommend against including the term "Standard Plans" in the definition of Contract Documents. The Contract Documents should be specific to the Contract. A better approach is for the engineer of record to incorporate the relevant / specific / applicable Standard Plans into the Contract by standard plan number or other reference. This could lead to numerous claims by Contractors that it was not clear which construction detail applied, potential inconsistencies between the Standard Plan and the specific Plans for the project, and added complexity or uncertainty to the preparation of bids.

The Department should hold the engineer of record to the requirement of including all necessary design details in the project's Plans rather than a vague safety net of plans which are likely to be the basis of claims and clarifications. If an engineer of record forgets to include a plan detail, it is likely they will also overlook inconsistencies and incompatibilities between the Plans and the Standard Plans.

Response: (10-13-17: by Tim Lattner)

Just to provide a little insight on this... We are simply changing the name of the Design Standards to Standard plans. We are not changing the process that has been in place for several years with no issues of claims. If it is not clear which Standard Plan applies the EOR will provide that information and if there is a conflict between the Standard Plans and the Plans then the Plans control as laid out in the governing order of contract documents.

Also, In several sections of the Specification Book the Design Standards are referred to as contract documents, which is why we have added them to the definition at the beginning of the spec. book.

Just a couple of examples:

SECTION 5 CONTROL OF THE WORK
<p>5-1 Plans and Working Drawings. 5-1.1 Contract Documents: The Standard Specifications and the Design Standards can be accessed from the Department's website. Have available the Contract Documents on the worksite at all times.</p>
<p>5-2 Coordination of Contract Documents. These Specifications, the Plans, Special Provisions, and all supplementary documents are integral parts of the Contract; a requirement occurring in one is as binding as though occurring in all. All parts of the Contract are complementary and describe and provide for a complete work. In addition to the work and materials specified in the Specifications as being included in any specific pay item, include in such pay items additional, incidental work, not specifically mentioned, when so shown in the Plans, or if indicated, or obvious and apparent, as being necessary for the proper completion of the work under such pay item and not stipulated as being covered under other pay items. In cases of discrepancy, the governing order of the documents is as follows: 1. Special Provisions. 2. Technical Special Provisions. 3. Plans. 4. Design Standards. 5. Developmental Specifications. 6. Supplemental Specifications. 7. Standard Specifications. Computed dimensions govern over scaled dimensions.</p>

Comments: (10-13-17 response by Art Berger to Tim Lattner)

Tim:

Thank you for providing the additional background information. I don't have a problem with "Standard Plans" being in either 5-1 .1 or 5-2 as you have noted below. I continue to strongly

recommend that "Standard Plans" not be added to the definition of Contract Documents. In my opinion, this is a bad idea, and it is my obligation to the Department to clearly point this out.

Response: See response from Tim Lattner above.

Comments: (10-23-17, Industry)

I have previously recommended against including Standard Plans in the definition of Contract Documents. The Standard Plans should be brought into the Contract through the "Plans" by the Engineer of Record. I believe Rudy commented that this is the way it is currently done. When the Engineer of Record includes the Standard Plans in the Plans, it makes them specific to the project, and is an acknowledgement by the Engineer of Record that the Plans and the Standard Plans are consistent with one another.

Response: There is no disagreement with the last sentence of this comment; however, to use that as a reason for not including "Standard Plans" in the definition of "Contract Documents" isn't consistent with the fact that "Standard Specifications" are considered a Contract Document and also included on the Key Sheet of the Contract Plans. The EOR includes this information on the Key Sheet of the Contract Plans for the reason you mentioned, but also because Department Policy requires that they do so. The reference is intended to specify the edition (version) of the documents to be used (i.e. FY 2018-19 vs. FY 2019-20). Finally, there are some items of work that rely on the Contractors understanding of details and descriptions of work included in the Standard Plans that are not explicitly defined in any other Contract Document (e.g. curb types, sidewalk, pavement markings, superelevation, etc). Therefore, if the Standard Plans are not clearly defined as a Contract Document the Contractor cannot be expected to bid or complete certain items of work as intend by the Department.

Comments: (10-24-17, Industry)

Here is another way to look at the proposed specification change of adding the term Standard Plans to the definition of Contract Documents:

1. The proposed change would add Standard Plans to the definition of Contract Documents. Design Standards is not currently in the definition of Contract Documents.
2. The definition of Contract Documents already includes Plans.
3. The definition of Plans does NOT include Standard Plans, however, the definition of approved Plans states that they show the location, character, dimensions, and details of the work.

Therefore, it seems that Standard Plans should be included or incorporate into the Plans rather than Contract Documents. By including Standard Plans in the definition of Plans or by the EOR incorporating the Standard Plans into the Plans, they will become part of the Contract Documents by virtue of being included in Plans.

An example of going forward with the current proposal is the definition of Subgrade which says, in part, that "Where no limits are shown in the Plans, the subgrade section extends to a depth of 12 inches below the bottom of the base or pavement." Here the reference to Plans in the definition of Subgrade would not include the Standard Plans.

Also, many Technical Special Provisions use the term Plans and not Design Standards.

Therefore, the proposed definition of Standard Plans may not cure all instances where the Department wishes to direct the Contractor to refer to the Standard Plans.

Response: The fact that the term "Design Standards" was not previously defined, or included in the definition of Contract Documents, does not justify its continued exclusion. The Specifications current, and consistently, use the terms "Plans" and "Standard Plans" to differentiate between two different documents, which would imply that they are not the same

thing (i.e. Standard Plans are not included in the Contract solely through the Plans, but yet something different entirely). This is done extensively throughout the Specifications. Additionally, it is already implied that the Standard Plans are a Contract Document via Article 5-2, Governing Order of Documents; therefore, adding it to the definition of Contract Documents simply provides a concise explicit inclusion rather relying on a secondary or implied reference. I agree that for some time now the reference to the Design Standards on the Contract Plans Key Sheet was the mechanism for including them in a Contract, but is just a roundabout way of considering them a Contract Document. This change strengthens the implied and referenced inclusion by directly including the "Standard Plans" in the definition of "Contract Documents".

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Comments: (10-13-17)
Some information to consider.

The reference to "Plans" in the definition of "Contract Documents" has been relied upon to include the Design Standards. This is supported by the reference to the Design Standards on the Key Sheet of the "Plans" and "Plans" is a defined term. This probably goes back to when the Design Standards were not referenced on the Key Sheet but actually included in the plan set.

Changes to the Contract forms may be needed to be consistent if this change moves forward since "Plans" will no longer include the Design Standards or in this case, the Standard Plans. See below.

The Department has a unique way of building its contracts which sometimes is subject to misunderstandings and disputes. There is a need to be careful when any changes are proposed to these type definitions or new definitions are proposed.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

375-020-26
CONTRACTS ADMINISTRATION
OGC - 08/15

**CONTRACT
Central Office**

This Contract, is entered into between the State of Florida Department of Transportation, hereinafter called the Department, and

of _____, herein called the Contractor.

The Contractor agrees with the Department, for the consideration herein mentioned, and at its own proper cost and expense, to do all the work and furnish all the materials, equipment, supplies and labor necessary to carry out this Contract in the manner and to the full extent as set forth in the Proposal, Standard Specifications as Amended by the Specifications Package and any Supplemental Specifications Packages, and the Plans, under security as set forth in the attached bond, all of which are hereby adopted and made part of this Contract and incorporated by reference herein, and to the satisfaction of the duly authorized representatives of the Department of Transportation, who shall have at all times full opportunity to inspect the materials to be furnished and the work to be performed under this Contract.

The Contractor shall also maintain such insurance as will protect the Department from any or all claims for property damage, personal injury and bodily injury including death, which may arise from operations under this Contract. Certificates of such insurance shall be filed with the Department and shall be subject to its approval for adequacy of protection.

It is agreed that the work to be done under this Contract is to construct or otherwise improve the road(s), bridge(s), and building(s) described as:

Response: The change has been coordinated with the Contracts Administration Office and any changes deemed appropriate will be made.

Art Berger

Comments: (10-13-17)
Art Berger response to Rudy Powell comments above:

I like the point made by Rudy that the Design Standards (now Standard Plans) were made a part of the project by reference in the Plans (e.g. Key Sheet). This means that the Engineer of Record has knowingly made the decision to include the Design Standards (Standard Plans) as part of the Plans and presumably has considered how those Standard Plans "fit" with the details on the plans sheets prepared by the Engineer of Record. This also means that the Engineer of Record cannot claim that the Department has interjected plans into his/her design without his/her knowledge or approval. This approach makes the Standard Plans part of the Plans and other Department documents such as the "Contract" referenced by Rudy will not need to be revised.

It may be possible to even improve this approach by including wording in the Plans (e.g. Key Sheet) to instructing the Contractor to refer to the Standard Plans whenever a specific detail has not been included in the plan sheets.

Response: See above responses.
