



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JIM BOXOLD
SECRETARY

MEMORANDUM

DATE: October 19, 2015
TO: Specification Review Distribution List
FROM: Daniel Scheer, P.E., State Specifications Engineer
SUBJECT: Proposed Specification: **0040100 Scope of the Work.**

In accordance with Specification Development Procedures, we are sending you a copy of a proposed specification change.

This change was proposed by Amy Tootle of the State Construction Office to modify the language to require all written documentation to be submitted by electronic means.

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 online at <http://www2.dot.state.fl.us/ProgramManagement/Development/IndustryReview.aspx>. Comments received after **November 16, 2015**, may not be considered. Your input is encouraged.

DS/dt
Attachment

SCOPE OF THE WORK.
(REV ~~7-29-10~~ 3-10-16-15)

ARTICLE 4-1 is deleted and the following substituted:

4-1 Intent of Contract.

The intent of the Contract is to provide for the construction and completion in every detail of the work described in the Contract. Furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the Contract Documents.

~~Upon execution of the Contract, the Contractor and Department agree that conduct all informational, contractual and other business required for this project will be through a system of written communication associated with the Contract using a paperless electronic means. When the Specifications require a written submission of documentation, such documents must be submitted and exchanged electronically using the Department provided web-based collaboration site.~~

~~All documents requiring a signature must be executed electronically by both parties in accordance with Chapter 668, Florida Statutes, and have the same force and effect as a written signature. All persons requiring access to the collaboration site shall be identified during the preconstruction conference. Persons may be added or removed during the life of the Contract on an as needed basis. All persons that normally sign paper documents, and will be using the site, signatories must acquire a digital signature certificates.~~

Commented [TD1]: This language was approved by FHWA on 2-27-15 and was implemented for the 7-15WB and eBook as SP0040100ES. We wish to include it in Standard Specification Section 4 for the 7-16WB and eBook.

SUBARTICLE 4-3.2 is deleted and the following substituted:

4-3.2 Increase, Decrease or Alteration in the Work: The Engineer reserves the right to make alterations in the character of the work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in 5-12.2 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely ~~provid~~submitted a notice of intent to claim or preliminary time extension request pursuant to 5-12.2 and 8-7.3.2, submit to the Department a request for equitable adjustment of compensation or time or other dispute resolution proposal. The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data ~~provid~~submitted ~~are~~is accurate and complete to the Contractor's best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be the Department's responsibility. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 5-12.14. While the submittal or review of a duly certified request for

0040100
All Jobs

equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Contractor or the Department, the Department will review the content of any duly certified request for equitable adjustment or other dispute resolution proposal, with any further action or inaction by the Department thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by the Department.

The monetary compensation provided for below constitutes full and complete payment for such additional work and the Contractor shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-12.6.2.1.

SUBARTICLE 4-3.2 is deleted and the following substituted:

4-3.2.2 Subcontracted Work: Compensation for the additional or unforeseen work performed by a subcontractor shall be limited solely to that provided for in 4-3.2.1 (1), (2), (3) and (4)(a). In addition, the Contractor compensation is expressly limited to the greater of the total provided in either 4-3.2.1(4)(a) or (4)(b), except that the Average Overhead Per-Day calculation is as follows:

$$Ds = \frac{As \times C}{B}$$

Subcontract amount(s)* Where As = Original Contract Amount minus Original

B = Original Contract Time

C = 8%

Ds = Average Overhead Per-Day

* deduct Original Subcontract Amount(s) of subcontractor(s) performing the work

The subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional subcontractor bond will only be paid upon presentation to the Department of clear and convincing proof that the subcontractor has actually ~~provided~~ submitted and paid for separate

bond premiums for such additional or unforeseen work in such amount and that the subcontractor was required by the Contractor to acquire a bond.

The Contractor shall require the subcontractor to ~~provide~~submit a certification, in accordance with 4-3.2.1 (1), as part of the cost proposal and ~~provide~~submit such to the Engineer. Such certification must be made by an officer or director of the subcontractor with authority to bind the subcontractor. Timely certification is a condition precedent to any right of the Contractor to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such subcontractor costs.

SUBARTICLE 4-3.6 is deleted and the following substituted:

4-3.6 Connections to Existing Pavement, Drives and Walks: Generally adhere to the limits of construction at the beginning and end of the project as detailed in the Plans. However, if the Engineer determines that it is necessary to extend the construction in order to make suitable connections to existing pavement, the Engineer will authorize such a change in writing.

For necessary connections to existing walks and drives that are not indicated in the Plans, the Engineer will ~~provide~~submit direction regarding the proper connections in accordance with the Design Standards.

SUBARTICLE 4-3.7 is deleted and the following substituted:

4-3.7 Differing Site Conditions: During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.

Upon receipt of written notification of differing site conditions from the Contractor, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly. The Engineer will notify the Contractor whether or not an adjustment of the Contract is warranted.

The Engineer will not allow a Contract adjustment for a differing site condition unless the Contractor has ~~provid~~submitted the required written notice..

The Engineer will not allow a Contract adjustment under this clause for any effects caused to any other Department or non-Department projects on which the Contractor may be working.

SUBARTICLE 4-3.9.3 is deleted and the following substituted:

4-3.9.3 Data Requirements: As a minimum, submit the following information with each Proposal ~~in accordance with 4-1:~~

1. a description of the difference between the existing Contract requirement, including any time extension request, and the proposed change, and the comparative advantages and disadvantages.
2. separate detailed cost estimates for both the existing Contract requirement and the proposed change. Break down the cost estimates by pay item numbers indicating quantity increases or decreases and deleted pay items. Identify additional proposed work not covered by pay items within the Contract, by using pay item numbers in the Basis of Estimates Manual. In preparing the estimates, include overhead, profit, and bond within pay items in the Contract. Separate pay item(s) for the cost of overhead, profit, and bond will not be allowed.
3. an itemization of the changes, deletions or additions to plan details, plan sheets, design standards and Specifications that are required to implement the Proposal if the Department adopts it. ~~Provide~~Submit preliminary plan drawings sufficient to describe the proposed changes.
4. engineering or other analysis in sufficient detail to identify and describe specific features of the Contract that must be changed if the Department accepts the Proposal with a proposal as to how these changes can be accomplished and an assessment of their effect on other project elements. The Department may require that engineering analyses be performed by a prequalified consultant in the applicable class of work. Support all design changes that result from the Proposal with ~~prints of drawings and computations signed and sealed by the Contractor's Engineer of Record~~ and submit in accordance with 4-1. Written documentation or drawings will be ~~provided~~submitted clearly delineating the responsibility of the Contractor's Engineer of Record
5. the date by which the Department must approve the Proposal to obtain the total estimated cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule.
6. a revised project schedule that would be followed upon approval of the Proposal. This schedule would include submittal dates and review time for the Department and Peer reviews.

SUBARTICLE 4-3.9.4 is deleted and the following substituted:

4-3.9.4 Processing Procedures: Submit ~~two copies of each~~ Proposal~~s~~ to the Engineer or his duly authorized representative ~~in accordance with 4-1.~~ The Department will process Proposals expeditiously; however, the Department is not liable for any delay in acting upon a Proposal submitted pursuant to this Subarticle. The Contractor may withdraw, in whole or in part, a Proposal not accepted by the Department within the period specified in the Proposal. The Department is not liable for any Proposal development cost in the case where the Department rejects or the Contractor withdraws a Proposal.

The Engineer is the sole judge of the acceptability of a Proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the Department reserves the right to disregard the

0040100
All Jobs

Contract bid prices if, in the judgment of the Engineer, such prices do not represent a fair measure of the value of work to be performed or to be deleted.

Prior to approval, the Engineer may modify a Proposal, with the concurrence of the Contractor, to make it acceptable. If any modification increases or decreases the net savings resulting from the Proposal, the Department will determine the Contractor's fair share upon the basis of the Proposal as modified and upon the final quantities. The Department will compute the net savings by subtracting the revised total cost of all bid items affected by the Proposal from the total cost of the same bid items as represented in the original Contract.

Prior to approval of the Proposal that initiates the supplemental agreement, [provide submit](#) acceptable Contract-quality plan sheets revised to show all details consistent with the Proposal design.