



Florida Department of Transportation

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DENVER J. STUTLER, JR.
SECRETARY

November 28, 2005

DCE MEMORANDUM NO. 30-05
(FHWA Approved: 11-22-05))

This Memo Has Expired

TO: DISTRICT CONSTRUCTION ENGINEERS

FROM: Brian Blanchard, Director, Office of Construction 

COPIES: Bob Burluson (FTBA), Don Davis (FHWA)

SUBJECT: HURRICANE WILMA IMPACTS

In light of the recent hurricane affecting the State of Florida, the following process will be utilized, pursuant to subarticle 7-14 and subarticle 8-7.3.2, to “standardize” our response to contractors concerning impacts to construction projects in Districts One, Four, Six and the Turnpike.

1. A State of Emergency has to be declared by the Governor of the State of Florida. The Governor declared a State of Emergency due to the threat of Hurricane Wilma through Executive Order No. 05-219. The effective period for such state of emergency was declared on October 19, 2005 and is set to expire after 60 days.
2. During the period of the State of Emergency, the Department elects to pay the Contractor for the following, where the Contractor has taken every reasonable precaution:
 - Damage to material that was incorporated into the projects (Federal-aid participating);
 - Damage to material that would otherwise be permanently incorporated into the project (Federal-aid non-participating);
 - Reconstruction of permanent or temporary erosion control features in accordance with subarticle 104-7.1 (Federal-aid participating);
 - Taking down and replacing Maintenance of Traffic (MOT) devices as directed by the District Construction Office (Federal-aid participating);
 - Repair of damaged post-mounted MOT signs, deemed to be essential by the Engineer and damaged where left in place; and repair of damaged Changeable (Variable) Message Signs that were specifically

directed by the Department to be placed on projects during the storm (Federal-aid participating);

The Project Administrator and the Contractor must establish the extent of damage.

The following are non-compensable:

- Cost to protect/secure work not incorporated in the project;
- Per day MOT devices not in place on a project;
- Damage to MOT devices, whether in place or elsewhere, except under the exception provided above;
- Temporary works or material damage, except under the exception provided above;
- Idle labor;
- Idle equipment;
- Reduced production rates due to effects of the inclement weather;
- Loss of Profits; and
- Home Office, Jobsite, and any other, Overhead

3. Pursuant to subarticle 8-7.3.2, the Department will grant a non-compensable time extension for the effects of the inclement weather.

If project resources (equipment and/or personnel) documented to be allocated to critical path or controlling items of work are diverted for emergency work for other governmental agencies or restoring water and electricity service, the Department will grant non-compensable weather days equal to the duration those resources were reasonably diverted. For project resources that are documented to initially not be allocated to critical path but due to their diversion from the project become critical, the Department may consider granting non-compensable weather days only to the duration equal to the time documented to be on the critical path.

For contracts with No-Excuse Completion/Milestone dates the Chief Engineer delegates authority to the District Construction Engineers (DCE) to approve requests to modify No-Excuse Completion/Milestone dates from October 19, 2005 to November 6, 2005 for a total of nineteen days. The Director, Office of Construction shall be sent copies of all No-Excuse Completion/Milestone dates modified by the DCE.

A request for modification of any No-Excuse Completion/Milestone date **in excess of the nineteen days authorized by this memo and the additional four days authorized under DCE memo 27-05** must be submitted to the Director,

Office of Construction for recommendation to the Chief Engineer for approval/disapproval.

Such No-Excuse Completion/Milestone dates will only be adjusted by the Department in its sole and absolute discretion, by action of the Chief Engineer, based on the following criterion, and then only to the extent of whichever time calculation is greater:

- a. The amount of time that serious adverse conditions existed on the project (i.e. flooding, substantial erosion, etc.); and
- b. The amount of time that the Department suspended the Contractor's operations.

If signal crews documented to be allocated to critical path or controlling items of work are diverted for emergency work for other governmental agencies or restoring electricity service, the Department may adjust the No-Excuse Completion/Milestone days for the duration those resources were reasonably diverted or up to December 15, 2005, whichever calculation is less.

There shall be no right of any kind on behalf of the contractor to challenge or otherwise seek review or appeal in any forum of any determination made by the Chief Engineer under this provision.

4. The Contractor will be required to submit, at a minimum, the following below listed items, along with a certification under oath and in writing, in accordance with the formalities required by Florida law, that the request for compensation, time extension and/or modification of a No-Excuse Completion/Milestone date is made in good faith, that any supportive data provided are accurate and complete to the Contractor's best knowledge and belief, and that the amount of compensation and/or days requested accurately reflects what the Contractor in good faith believes to be well founded under the criteria provided above for consideration by the Department. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor. Items required to be provided, and certified as to under oath and in writing, to the Department are:
 - a. A detailed description of the activities and justification, with associated dates.
 - b. A detailed cost estimate for work to be performed or actual costs for work already performed. Work should be priced based on bid items to the maximum extent possible or in accordance with subarticle 4-3.2 of the Standard Specifications.

The above information shall be submitted no later than six weeks after storm impact or two weeks after final acceptance of the contract, whichever is sooner. A timely request is a condition precedent to any right for the Contractor to recover any time and/or compensation. Any request that fails to fully comply with the certification requirements will not be reviewed by the Department.

5. Incorporate the following into the terms of the Supplemental Agreement:

Notwithstanding the provisions of paragraph 4 of this Supplemental Agreement Form, this Supplemental Agreement is entered into pursuant to applicable provisions of the contract including Article 7-14 of the applicable Standard Specifications, and to the extent this Supplemental Agreement covers rebuild, repair, restore and make good costs under 7-14 it is expressly accepted by the Contractor as being the result of the exercise of the Department's District Secretary's discretion under 7-14. Further, it is expressly understood and agreed to by the Parties that any time adjustment or sum to be paid pursuant to this Supplemental Agreement shall have no precedential value for purposes of constituting a basis for determining any potential future grant of time or money on this or any other project, and the facts, basis for, and particulars underlying the granting of any time or money hereunder shall also be inadmissible in any administrative, arbitration or legal proceeding arising out of this project, or any other project, for purposes of or relating to a claim of entitlement to time or money, whether as a settlement document or otherwise. The Department and the Contractor agree that the contract time adjustment, if any, and the sum agreed to in this Supplemental Agreement constitute a full and complete settlement of any and all issues of entitlement to either time or money and the Contractor hereby accepts the terms of this Supplemental Agreement as full compensation for all costs of equipment, manpower, materials, overhead, profit and delay damages and for all their costs, whether direct or indirect, whether incurred now or in the future, related to any of the issues set forth in this Supplemental Agreement.

6. All time extensions and costs paid in relation to this emergency shall be coded as "weather related new work, repairs, overruns or contract changes due to declared emergency", please refer to the SCO website for the specific reason code for each hurricane.

<http://www.dot.state.fl.us/construction/Publications/ManualsMain.htm>

Pursuant to subarticle 8-7.3.2, the Department's determination as to entitlement as to time will be final, unless the Contractor can prove by clear and convincing evidence to a

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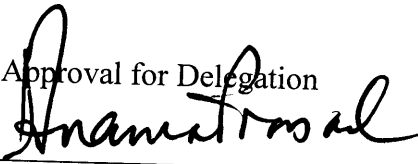
Disputes Review Board that the Department's determination was without any reasonable factual basis.

Pursuant to subarticle 7-14, the Department's determination as to entitlement as to cost will be final and there shall be no right of any kind on behalf of the contractor to challenge or otherwise seek review or appeal in any forum of any determination made by the District Secretary under this provision.

Applicability of this memorandum and/or specific inclusions and/or exclusions of items that are to be compensated for can only be appealed to the Director, Office of Construction.

If you have any questions, please call Tim Lattner at 850-414-4167 or suncom 994-4167.

BB/lw

Approval for Delegation

Ananth Prasad, Chief Engineer