

Memorandum

To: ALL CONSTRUCTION ENGINEERS
ALL RESIDENT ENGINEERS
ALL BRIDGE CONSTRUCTION ENGINEERS
ALL STRUCTURE REPRESENTATIVES

Date: May 23, 2000

File: Construction Program
Directive CPD-00-5

From: DEPARTMENT OF TRANSPORTATION
CONSTRUCTION PROGRAM
MS 44

Subject: Clarifications to Differing Site Conditions Specifications

Revisions are being proposed to specifications regarding Differing Site Conditions (DSC) to clarify the administrative procedures required for analyzing a notice of a DSC by a Contractor.

Section 5-1.116, "Differing Site Conditions," of the Standard Specifications requires the Engineer to determine whether a Differing Site Condition exists. The current specifications define a differing site when subsurface or latent conditions either differ "materially from those indicated in the contract...", also referred to as a Type 1, or differ "materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract...", also referred to as a Type 2.

When Contractors provide notice of a DSC, Contractors frequently assert that the existing conditions differ from what is indicated on the project plans, specifically the Log of Test Borings (LOTB). It is not uncommon for the districts to respond by referencing Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site Work," of the Standard Specifications, and to inform the Contractor that the LOTB is not part of the project plans, therefore finding no merit in the notice. While it is correct that the LOTB is not part of the project plans, it does not prohibit the use of the LOTB to derive information for the determination of a DSC. The LOTB should not be the sole basis for making such a determination. If other pertinent information is available, such as materials reports and above ground site investigations, that information should also be used in the determination.

A revision is proposed to Section 5-1.116 that will clarify and allow both parties to consider all available information to assist in determining if a Type 1 DSC exists. The specification will be revised to say, "...differing materially from those indicated in the contract, *the log of test borings or other record of geotechnical data obtained by the Department's investigation of subsurface conditions, the 'Materials Information,' or an examination of the conditions above ground at the site...*". Certain paragraphs of Section 2-1.03 affected by this revision have also been amended.

The following instructions are issued to Resident Engineers and Structure Representatives:

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1. The Resident Engineer or Structure Representative will notify the appropriate materials staff (district or ESC, Division of Structures Foundations) both prior to the start of the work and when the Contractor has filed a DSC notice.
2. In reviewing a Contractor's DSC dispute, Resident Engineers and Structure Representatives shall take into consideration all information available to the Contractor, including the log of test borings or other record of geotechnical data, other materials information, and information from above ground site conditions, and shall not reject the Contractor's Notice of Differing Site Condition on the basis that the LOTB is not a part of the contract.
3. Future contracts will contain the revised specifications to Paragraphs 2, 5, and 6 of Section 2-1.03 and Paragraph 1 of Section 5-1.116.
4. Resident Engineers and Structure Representatives shall act to notify the Contractor of Differing Site Conditions in favor of the State, in accordance with the revised specifications, when the conditions encountered are warranted.

Questions regarding this memorandum may be directed to Peter Vacura of the Construction Program at (916) 654-2593, or David Keim of the Division of Structure Construction at (916) 227-8814.

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c: District Division Chiefs, Construction
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