



Keith Armstrong
Project Manager

August 4, 2022

Texas Department of Transportation
Attn: Joseph Briones, P.E.
1701 S. Padre Island Drive
Corpus Christi, Texas 78416

SEL: 000810

RE: US 181 Harbor Bridge Replacement Project
CSJ No.: 0101-06-095
Suspension of Work on New Harbor Bridge – Suspension for Convenience

Dear Joseph,

Flatiron/Dragados, LLC (“FDLLC”) received Texas Department of Transportation’s (“TxDOT”) July 21, 2022, letter regarding SEL-000785.

As an initial matter, FDLLC has not “agreed in its July 18 letter to the suspension of work.” Rather, FDLLC will comply with TxDOT’s directive to suspend the work as it must despite the fact TxDOT had no contractual right to suspend Work under Section 16.2.3. FDLLC reserves its right to all available remedies for TxDOT’s decision, including, but not limited to, the position that, under the circumstances described below in this letter, TxDOT’s actions constitute a suspension for convenience pursuant to Section 14.1.

As FDLLC has explained, there are no Developer Defaults. The design works and is fully compliant with the terms of the CDA. This issue has been exhaustively discussed and will not be repeated here, other than to note that because there are no Developer Defaults, TxDOT has no rights under Section 16.2.3.

Section 16.2.3 also has no application because FDLLC has been more than reasonable in responding to TxDOT’s purported concerns. Notably, IBT sent TxDOT a copy of an initial report on or around January 8, 2021 that raised similar design issues to those TxDOT raises now. If TxDOT was concerned by IBT’s initial report, it should have raised those concerns to FDLLC and Arup-CFC back in early 2021. Inexplicably, TxDOT chose not to do so.

Despite the fact that TxDOT had IBT’s initial report alleging significant design defects in 2021 that are substantially the same issues TxDOT has used to recently suspend construction, TxDOT allowed Arup-CFC to continue to design and FDLLC to continue construction of the foundations, footings, tower legs, and the precast segments. In fact, on June 28, 2021, six months after receiving IBT’s initial report, TxDOT returned Arup-CFC’s final designs for the Cable-Stayed Bridge foundations with “received for record.” TxDOT similarly signed Certificates of Compliance for both the delta frames and the tower foundations on June 10, 2021, and June 28, 2021, respectively.

While the Certificates of Compliance do reference TxDOT’s June 10 and June 28 letters, those letters provided TxDOT’s explicit consent for FDLLC to progress construction. Both letters state:

Notwithstanding the preceding concerns and in an effort to move construction of the Project forward, TxDOT provides its concurrence with the Professional Services Quality Acceptance Manager’s Certificate of Compliance for this RFC Submittal, which permits FDLLC to proceed with construction.

After signing the Certificates of Compliance, TxDOT allowed the construction to continue for months. It was not until April 29, 2022, eight months after construction recommenced and days before the Main Disputes hearing, that TxDOT first provided IBT's latest report.¹ Even then, however, TxDOT failed to provide IBT's assumptions about the forces in the stay cables and the bearing reaction combinations, as well as its calculated load combinations and demands in the tower legs and reactions in the shaft. FDLLC and Arup-CFC could not meaningfully review IBT's conclusions without that information. For reasons unexplained, TxDOT did not provide that information until July 19th, after TxDOT suspended the work, and after FDLLC sent its letter in response. Notably, the issues IBT raised about the foundation capacity and the delta frames in its April 2022 report are largely unchanged from its initial January 2021 report. TxDOT's decision not to disclose IBT's work on the project; its decision not to disclose IBT's initial report; and its decision to wait three-month to provide necessary data relating to IBT's April 2022 report are not consistent with current claims of urgency.

We acknowledge TxDOT's confirmation that it "continues to be willing to discuss [TxDOT's] issues with FDLLC's design, including the delta frames". So is FDLLC. However, when FDLLC requested a meeting to discuss the delta frames more than a month ago (Mr. Molina's email to Mr. Briones on June 20, 2022), TxDOT's only response was to say that "TxDOT is not directing FDLLC's means or sequencing of the progression of the Work, including the installation of the delta frames" (TxDOT Letter dated June 22, 2022). Thereafter, TxDOT directed the suspension of the CSB Works on July 15, 2022. Prior to TxDOT's directed suspension, FDLLC asked TxDOT whether delta frames types 2 and 3 were or were not deemed by TxDOT as Nonconforming Work, and if so, why (SEL-000772). The IBT report does not indicate that they are and TxDOT has yet to provide a response. At the time of FDLLC's request, the issue was time critical because the installation of the types 2 and 3 delta frames was imminent. Notwithstanding FDLLC's open question to TxDOT, TxDOT decided to shut down the CSB Works and to wrongfully blame FDLLC for the suspension.

Since the issuance of the Notice of Nonconforming Work, TxDOT has taken the position that only if FDLLC acknowledges that elements of the design are nonconforming can progress then be made, and meetings may occur.² In other words, TxDOT is insisting that, even if FDLLC has a genuine belief that IBT's assertion of an element of design is defective is not correct, FDLLC must accept the incorrect IBT assertion in order to discuss the matter. This position is not conducive to a resolution. While FDLLC's thorough engineering review by its designers and third parties has not found any of IBT's assertions of defects to be correct, FDLLC has been and continues to be willing (indeed, has sought) to engage in a detailed and full engineering dialogue with TxDOT and IBT, while also trying to minimize, to the extent possible, the impacts to the project schedule. That was precisely what FDLLC attempted with its plan for resolution presented to TxDOT (SEL-000763) and the request to discuss the delta frames. Unfortunately, TxDOT ignored these efforts.

¹ The current IBT Report was and still is incomplete, as admitted by IBT, and is based upon only pieces of the design criteria at issue.

² See, e.g., TxDOT's letter dated June 1, 2022 ("The purpose of that meeting should be for FDLLC to make clear which of the 23 items of Nonconforming Work identified in the April 29 Notice FDLLC agrees constitute Nonconforming Work. To the extent that FDLLC agrees that some or all of those items constitute Nonconforming Work, subsequent meetings may be appropriate to discuss how to remove and replace that Nonconforming Work.") or TxDOT's letter dated June 21, 2022 ("A threshold determination in any schedule for correcting Nonconforming Work must be the determination that, in fact, Nonconforming Work exists.")

Based on TxDOT's directive, FDLLC is demobilizing all work associated with the Cable-Stayed Bridge. It is reassigning crews, reallocating resources, and suspending all work on the Cable-Stayed Bridge. It is doing so, however, under protest and while reserving all its rights under the CDA and Texas law.

To be clear, FDLLC stands ready and willing to discuss a plan to move the Project forward and complete the work.

Respectfully,



Keith Armstrong
Project Manager

cc: Kurt Knebel - Flatiron Constructors, Inc.
Justo Molina - FDLLC
Aconex