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Case 11-12

DATE: March 4, 2012

TO: MAG Specifications and Details Committee Members

FROM: Peter Kandaris, SRP Representative
Outside of Right-of-Way Working Group

RE: **Modifications to Regulatory Requirements, MAG 107**

Purpose: Section 107.1 selects arbitrary state statutes to highlight and has not kept up with changes to state statute changes. Delete specific ARS references and keep the general requirements. This section is typically covered by agency T&C, but should be kept to act as a generic default.

Revisions: (1) Delete all paragraphs after the first in MAG 107.1. Modify the language to include materials. Simplify the indemnification language as there is a separate section for indemnification (Section 103.6.2). Provide language to allow the agency the option to request information verifying contractor compliance.

(2) Modify Subsection 107.2 to require the contractor to insure that permits are maintained and closed.

Note: Subsections 107.3 through 107.14 are not modified by this case.

SECTION 107

LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC

107.1 COMPLIANCE WITH LAWS TO BE OBSERVED:

The Contractor shall keep fully informed of, observe and comply with all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. ~~He shall at all times observe and comply~~ The Contractor warrants that all items supplied and work performed under the contract have been sold, produced, delivered and furnished in strict compliance with all such laws, ordinances, regulations, codes, orders and decrees; ~~and to which the items, work and Contractor are subject. Upon request, Contractor shall execute and deliver to the Agency such documents as may be required by the Agency to evidence compliance with such laws, ordinances, regulations, codes, orders and decrees.~~

~~shall protect and indemnify~~ Because the Contractor will be acting as an independent contractor, the Contracting Agency and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees assumes no responsibility for the Contractor's acts.

~~The attention of the Contractors is directed to the provisions of the following sections, Arizona Revised Statutes:~~

~~(A) Arizona Revised Statutes 23-373. Contracts negotiated between public Contractors and public employers shall contain the following contractual provisions:~~

~~In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provision of the nondiscrimination clause.~~

~~The Contractor further agrees to insert the foregoing provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.~~

~~(B) When Federal aid funds are used on a project, the prevailing basic hourly wage rates and fringe benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis Bacon Act, shall be the minimum wages paid to the described classes of laborers and mechanics employed to perform the contract.~~

~~(C) Arizona Revised Statutes 40-360.22 Excavations: determining location of underground facilities; providing information. This statute requires that no person shall begin excavating before the location and marking are complete or the excavator is notified that marking is unnecessary and requires that upon notification, the owner of the facility shall respond as promptly as practical, but in no event later than two working days. The "Blue Stake Center" (263-1100) was formed to provide a more efficient method of compliance with this statute.~~

~~This section is not applicable to an excavation made during an emergency which involves danger to life, health or property if reasonable precautions are taken to protect underground facilities.~~

~~(D) Arizona Revised Statutes 40-360.23. Making excavations in careful, prudent manner: liability for negligence. This statute states that obtaining information as required does not excuse any person making any excavation from doing so in a careful and prudent manner nor shall it excuse such persons from liability for any damage or injury resulting from his negligence.~~

~~(E) Arizona Revised Statutes 40-360.28 Civil penalty; liability. If the owner or operator fails to locate, or incorrectly locates the underground facility, pursuant to this article, the owner or operator becomes liable for resulting damages, costs and expenses to the injured party.~~

~~(F) Arizona Revised Statutes 32-2313. Business license; business name; branch office registration; renewal. No person, partnership, corporation or association shall engage in the business of general pest or weed control without being duly licensed/certified by the Structural Pest Control Board.~~

107.2 PERMITS:

Permits, bonding and insurance requirements shall be as required by the Contracting Agency's statutes, codes, ordinances or regulations.

The Public Agency, when acting as the Contracting Agency, will attempt to obtain the required permits, but it is the duty of the Contractor to determine that all necessary permits have been obtained, maintained and closed. The Contractor shall, at his own expense, obtain all the required permits which have not been furnished.

If the permits not included in the proposal pamphlet materially affect any condition, specification, quantity, etc. contained in the proposal pamphlet, the Contracting Agency shall issue an appropriate change order pursuant to Subsection 109.4.

In all cases, the Contractor or the person supervising the authorized work shall notify the appropriate permit agency so as to insure proper inspection by the agency concerned.