

Memorandum

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To: DEPUTY DISTRICT DIRECTORS, Construction
DEPUTY DIVISION CHIEF, Structure Construction
CONSTRUCTION MANAGERS
SENIOR CONSTRUCTION ENGINEERS
RESIDENT ENGINEERS

Date: April 2, 2009

File: Division of Construction
CPD 09-2

From: MARK LEJA
Chief
Division of Construction



Subject: Temporary Sales and Use Tax Increase —Assembly Bill 3 (Evans)

Assembly Bill 3 (AB 3) increased the State sales and use tax rate by 1 percent on April 1, 2009. This increase in sales and use tax costs has generated requests for additional compensation by contractors who have already entered into a contract with the Department. Although section 4-1.03, "Changes," of the Standard Specifications allows the Department to make changes to the plans and specifications and to adjust compensation to the contractor accordingly, the construction contract makes no provision to compensate the contractor for changes in tax rates.

Standard Specifications section 7-1.01, "Laws to be Observed," states that the contractor shall keep fully informed of all existing and future state and federal laws as well as county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work.

Standard Specifications sections 9-1.02, "Scope of Payment," and 7-1.03, "Payment of Taxes," state that full compensation to the contractor for all taxes is included in the contract prices. The Department has no contractual authority to provide additional compensation regardless of the impacts AB 3 may have on project costs. Increased sales and use tax costs do not constitute a change in contract provisions.

Additionally, the Department has no legal authority to pay for the increased costs resulting from the sales and use tax increase, as the California Constitution, Article 4, Section 17, states, "The legislature has no power to grant, or to authorize a city, county, or other public body to grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or to authorize the payment of a claim against the State or a city, county, or other public body under an agreement made without authority of law."

Contractor requests for additional compensation due to the impacts of AB 3 should be denied.

If you have questions regarding this directive, please contact Michael Kissel, Division of Construction at (916) 654-2467 or Michael_Kissel@dot.ca.gov.