

June 18, 2007

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**I-75 RTMC and I-75 Corridor FMS and ITS Integration Project
414733-1-52-01; 416412-1-52-01; and 416413-1-52-01**

Project DRB Hearing

The Project Dispute Review Board conducted a hearing on June 7, 2007 to allow the parties to make oral presentations regarding entitlement for compensation for "Connection Fees" assessed by Lee County for connecting the project to the Lee County water and sanitary sewer systems.

CONTRACTOR'S POSITION

The Contractor maintained that while it agreed with the Department that the contract required the Contractor to pay for all Permit and Impact fees the contract documents never mentioned "Connection Fees" and therefore the Department should pay for said connection fees. In addition the contractor stated that during the pre-construction conference the question was asked "Are there any inspection fees that the Design-Build Firm must include in our pricing for "agency inspection" of the RMTC"?

RESPONSE: Yes. The Design Build Firm will be required to pay all Permit fees including but not limited to construction and impact fees.

If so, please advise of the following:

Will the Design-Build Firm or FDOT be required to pay the Lee County Building Permit Fees?

Will the Design-Build Firm or FDOT pay any impact or connection fees?

Are the current site drawings based upon the Land Development Regulations of Lee County, specifically, but not limited to, parking space requirements, green space, etc. and will the project be required to go through the Site Planning process for Lee County?

RESPONSE: The Concept Plans meet or exceed the Lee County Land Development Regulations as furnished. The project will not require processing through Lee County Land Development Office.

The Contractor maintains that since the question of “connection fees” was asked but not specifically answered they were entitled to assume that there were no “connection fees” to be paid for by the contractor.

DEPARTMENT’S POSITION

The Contract Documents clearly mandate that any and all costs associated with the Design-Build Team’s responsibility in obtaining all necessary permits for the construction and completion of the RTMC’s facility are to be borne completely and fully by the Design-Build Team, being included in their price to design, procure, install, integrate and test an Intelligent Transportation System and subsystems along the I-75 Corridor in Collier and Lee Counties and in the RTMC in Fort Myers, all as described in the request for Proposal and referenced documents.

As substantiation of their position the Department referenced the following:

RFP Section I. Subsection I. B, last paragraph: “The Design-Build Firm will be responsible for all permit fees required for the work, including but not limited to, connection of the rest area and disposal of the existing waste water treatment facilities. This reference specifically addresses the connection of the rest area.

Design-Build Specifications (Rev. 12-6-04), Section 4-1 Intent of the Contract: The intent of the Contract is to provide for the engineering services, furnishing of materials, construction, and completion in every detail of the work described in this Contract. The Design-Build Firm shall furnish all engineering and all of its associated direct and indirect costs, construction labor, materials, equipment, supervision, tools, transportation, and supplies required to complete the work in accordance with the requirements of the Contract Documents.....The Design-Build Firm shall have all liability and responsibility for all unknowns and/or differing site conditions; and including but not limited to any and all utilities, subsoil conditions, permits, etc. of any nature or kind, unless otherwise stated in the Contract.

Design-Build Specifications (Rev 12-6-04), Section 7-2 Permits and Licenses: 7-2-1 General: Procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. All permits procured by the Department are posted on the Department’s web site...

RFP Section VI. Subsection H: “The Design-Build Firm will be responsible for all fees associated with the acquisition of permits.

The Department referenced several more sections of the RFP and the Design-Build specifications that covered the same information quoted above.

BOARD FINDINGS

The Board has reviewed the submittals and rebuttals by the Contractor and the Department, as well as the oral presentations. The Contractor feels that as “connection fees” were not specifically mentioned in the documents and at the pre-bid question and

answer session they are not responsible for the costs of connection to Lee County water and waste water system.

The Department cited several requirements of the RFP and the Design-Build Specifications that clearly require the Design-Build Firm to be responsible for all costs of any nature to be borne by the Design-Build Firm.

The Board finds that the preponderance of the language in the bid documents supports the Department's contention that the Design-Build Firm is responsible for the connection fees. In particular, the Board gave considerable weight to RFP Section I, Subsection I.B where the RFP specifically includes the fees for "connection of the rest area" under permit fees required for the work and the statement in the RFP Section VI, Subsection H: "The Design-Build Firm will be responsible for all fees associated with the acquisition of permits." Clearly, the connection fee is associated with and required for the acquisition of permits.

The Board does not agree with the Design-Build Firm's contention that the prebid answer, "Yes the Design-Build Firm will be required to pay all permit fees including but not limited to construction and impact fees" does not address connection fees. This is interpreted as a broad response that is consistent with the intent expressed throughout the RFP that the Design-Build Firm is responsible for all fees necessary to construct the project.

The Board recommends no entitlement.

Signed by the Chairman with agreement of all members.

Peter A. Markham, P.E.
Chairman