

DISPUTE REVIEW BOARD RECOMMENDATION
HEARING NO. 6, Issue No. 1

November 27, 2006

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Ref: FIN # 201213-1-52-01
 State No.: 16320-1409
 I-4/US 98 Interchange

Subject: Hearing #6-1 Dated 17 November 2006,
 Issue: Compensation for Concrete Pavement Grinding
 Disputes Review Board Recommendation

Gentleman,

Hubbard Construction Co. (HCC) and the Owner, Florida Department of Transportation (FDOT) requested a Dispute Review Board Hearing on the above referenced project. The I-4 / US 98 Project is a complete rebuild of the interchange, including bridges, roadway asphalt and concrete paving, utilities, drainage facilities and noise barrier walls.

ISSUE OVERVIEW

Original Contract Plans included grinding of concrete pavement that was partially deleted and placed in adjacent contract. In addition the Plans Note that called for Grinding "all new and existing concrete pavement" was also deleted. The Contractor and the FDOT had differing opinions and how the remaining grinding payment was to be paid. After several attempts to resolve the issue failed, the contractor filed notice of intent to claim for payment for the change to the plans and the payment item.

The DRB held a Hearing (28 April 2005) on the original Issue which was, "Should the Contractor be paid for grinding concrete pavement placed on the project. The Board rendered a unanimous opinion that, "Hubbard Construction is entitled to payment for grinding pavement as noted on the Plans Sheet 8, Note #6 that was present at the time of Bid". The Board did not recommend additional costs incurred by Hubbard for this grinding as stated in HCC's Position Paper.

Contractor Position – Hearing # 6-1

The contractor's position is summarized as follows:

"The board previously recommended for entitlement to the additional costs incurred by Hubbard for the concrete pavement grinding required to meet the straightedge requirements under Section 350 (corrective grinding) after hearing the issue on April 28, 2005. Hubbard and the Department have been unable to come to an agreement regarding the amount of compensation to which Hubbard is entitled. The engineer unilaterally elected to measure the areas where grinding was evident and provide compensation at the unit price included in the contract for profile grinding of the entire surface. Corrective grinding requires multiple mobilization and, unlike profile grinding of the entire surface, has an undetermined quantity. These cost elements inhibit the efficiency of the corrective grinding as compared to profile grinding, and as such is priced differently by grinding subcontractors. Hubbard's position is that the corrective grinding efforts are of a substantially different nature from the profile grinding on which the contract unit price was based. The compensation at the unit price as measured and determined by the engineer does not provide compensation for the actual costs incurred. Attempts by Hubbard to negotiate the issue have been unsuccessful."

Hubbard Construction has asked for entitlement for additional compensation in accordance with Section 4-3.2 (Extra Work) of the Contract documents.

FDOT Position – Hearing #6-1

The Department's position is stated in their conclusion of the position paper:

"As both the HCC's position statement and the Dispute Review Board's rational (from previous hearing) dictate that Note 6, on Plan Sheet 8, applied to all concrete pavements, existing and proposed at the time of bid, it can only be concluded that the unit price provided by HCC was for that of all concrete pavement grinding to be performed. It seems reasonable that both surface tolerance grinding and profile grinding are included in Pay Item Number 2352-70, Grinding Concrete Pavement, as outlined in Note 6. In addition, as the increased quantities of the pay item do not meet the requirements of Supplemental Specification 4-3 as a significant change a unit price adjustment is not warranted.

Consequently, based on all the above, it is the Department's position that the Dispute Review Board should rule that there is no entitlement for HCC's request for a unit price adjustment or additional compensation and should uphold the Department's original denial of the request based on the facts and the language contained within the pertinent contract documents."

Dispute Review Board Recommendation:

- a. The board is not recommending a change of unit price or additional time on this project for this issue.
- b. With respect to this Issue, "Compensation for Concrete Pavement Grinding", it is the opinion of the DRB that the Contractor is entitled to compensation for grinding ALL of the measured quantity in the project. There is a difference of opinion to the measured quantity, found in HCC's Position Paper, Exhibit #4, which the parties are encouraged to review and come to an agreement.

Rationale:

The Board supports the Contractor's claim that, with Note 6 on Plan Sheet 8, they did not include grinding cost in the pay item for Concrete Pavement. The Specification Section 4-3.2, Extra Work, is not substantiated by the Contractor's claim in their Position paper, as surface correction was never eliminated. In addition, the Board is in agreement with the Department that the increased quantities of the pay item for grinding do not meet the requirements of Supplemental Specification 4-3 as a significant change, therefore a unit price adjustment is not warranted.

Conclusion:

The Board sincerely appreciates the cooperation of all parties and the information presented for review in order to make this recommendation. The Disputes Review Board's recommendation should not prevent or preclude the parties from negotiating and equitable solution (should it be appropriate) to any issue pursuant to their partnering agreement.

Please remember that a response to the DRB and the other party of your acceptance or rejection of this recommendation is required within 15 days. Failure to respond constitutes acceptance of this recommendation by that party.

I certify that I have participated in all of the meetings of this DRB regarding this Issue and concur with the findings and recommendations.

Respectfully Submitted
Disputes Review Board
Robert P. Bayless, DRB Chairman
Tom Shafer DRB Member
Dallas Wolford, DRB Member

Signed for and with the concurrence of all Members:

Sent by e-mail, hard copy will be mailed.

Robert P. Bayless

Robert P. Bayless
DRB Chairman

Cc: Dallas Wolford
Tom Shafer