

Recommendation of the Dispute Review Board

Project: SR: SR 70, from 72nd Blvd East to a Point East of Lakewood Ranch Blvd

FIN: 196121-1-52-01

District One

Hearing Date: August 24, 2007

Dispute Number 1

Contractor: Russell Engineering, Inc.

Dispute

The project consists of the widening and reconstruction of SR 70 between the limits described above. Russell Engineering, Inc.'s claim is for work done primarily by their Subcontractor, Highway Safety Devices. Maintenance of traffic was required through seven signalized intersections. The Contractor contends that payment should be at the contract rate per day for all seven locations under Pay Item 102-104-2, Signal, Temporary Traffic Control (Fixed). The FDOT maintains that the four intersections where plans call for existing mast arm and controller assemblies to be used do not qualify for payment under 102-104-2. Any service or maintenance at these four intersections, says FDOT, is properly paid for under Item 102-1, Maintenance of Traffic.

MOT at the intersections required relocating signal heads to align with phase traffic lanes. A plan note clearly calls for signal head relocation at all intersections to be paid for under Item 102-1. This work is not in dispute.

Contractor's Position

The Contractor cites Traffic Control Plan Sheet 354, pointing out that all of the project traffic phases are described on this sheet and that for each phase there is a note stating "Setup temporary signals, see traffic control signalization plans." It is here that the Designer expresses the intent that all intersections be treated as "temporary signals" and paid for under Item 102-104-2.

The Contractor claims that industry practice is to compensate contractors per diem for all intersections on the project for which they inherit a maintenance responsibility once work begins. Further, the point is made that contractors have considerable exposure to litigation from accidents during construction in which it is alleged that a malfunctioning signal caused an injury.

Under Method of Measurement, Article 102-11.20, of the Standard Specifications, the last phrase is highlighted by the Contractor as shown below:

102-11.20 Temporary Traffic Control Signals: The quantity of Temporary Traffic Control Signals to be paid for will be the number of completed installations (each signalized location) of portable traffic signals, **or the number of fixed traffic signals in place and operating on the project, as authorized by the Engineer and certified as in place and in operation on the project.**

The Contractor alleges that all seven intersections qualify as fixed traffic signals and are subject to payment under the item. In further supporting his position, the Contractor emphasizes the Basis of Payment language in 102-13.20, " Price and payment will constitute full compensation for furnishing, installing, operating, **maintaining** and removing temporary traffic control signals....."

As part of his rebuttal, the Contractor presents plan sheets from another project. He points out certain notes in these plans as evidence that intersections in which existing equipment is used for project MOT can be paid for under Item 102-104-2.

Department's Position

FDOT maintains that the plans are clear as to the three intersections requiring the installation of temporary poles, span wire and controllers. It is the Department's position that Standard Specifications 102.11.20 and 102-13.20 both require that signal equipment be furnished and installed, in addition to being operated and maintained, before an intersection qualifies for payment under Item 102-104-2.

The bid quantity of 366 days for Item 102-104-2 is offered by FDOT as evidence that the Designer could not have intended for all seven intersection to come under the temporary signal item. Dividing 366 by seven intersections yields an average of 52 days per intersection – far too short for the MOT phases in this 600 day project.

The Department offers a DRB recommendation from another project in which that Board found no payment due under Item 102-104-2. The difference between the maintenance of existing signals and the furnishing and installing of signals is stated in the recommendation.

Board's Recommendation

The Board is unanimous in reaching a recommendation based on the contract documents of this SR 70 project. No weight was given to the previous board ruling or plans from other projects.

The Board finds that Standard Specification 102-9.14, Temporary Traffic Control Signals, describes the work as to "furnish, install and operate temporary traffic control signals". This requirement to furnish and install is also found in the Basis of Payment Article 102-13.20 cited above.

In reading Method of Measurement Article 102-11.20 the Board reads the phrase "number of completed installations "as applying to both portable and fixed traffic signals.

Given the language of the contract, it is the Board's opinion that the Contractor must furnish and install fixed traffic signal equipment (poles, span wires, signal heads or controllers) in order to qualify for payment under Item 102-104-2. Only the three intersections described in the traffic control plans as requiring temporary equipment meet this condition.

The Board considered the Designer's wording of the instruction to "setup temporary signals" in the traffic plan phasing notes. While a more descriptive phrase may have served better, we find that the language used does not override the clear intent of the three specifications on which the Board's recommendation is based.

The Disputes Review Board recommends no entitlement in this matter. If the Board has not heard from either party within 15 days of receiving this recommendation, the recommendation will be considered accepted by both parties.

Michael C. Bone
John Saltsman
Carson Carner



Michael C. Bone, Chairman