

January 1, 2008

**To: Miller Electric Company
ITS Div
Attn: Steve Pristas
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Ft. Lauderdale, FL 33315**

**Copy: Tony Chin
AIM Engineering
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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

ISSUE:

Is the Department entitled to a credit for the cost of installing the gas line to the building now that they have directed the Contractor to use electric water heaters.

CONTRACTOR'S POSITION:

The Contractor was directed by CEI Letter #085 to install electric hot water heaters in lieu of gas hot water heaters because the Department could not work out an acceptable easement for the gas line on Department property. The Contractor maintains that the project documents specify "atmospheric water heaters" this definition covers both natural gas and propane gas heaters. They intended to use propane and sent an RFI to the Department asking whether the Department required a fence around the propane tank location. The Department replied that they wanted natural gas, and all preliminary design documents indicated natural gas water heaters. The Contractor replied that they intended to install propane gas heaters unless the Department "directed" them to do otherwise. The Contractor maintains that they always intended to use propane gas water heaters and admitted that their final signed and sealed design drawings showed "natural gas". This was a mistake and was corrected by Field Order #1. The Contractor maintains that the RFP documents do not require "natural gas" they only require "atmospheric water heaters", a term applicable to natural gas or propane gas heaters.

OWNER'S POSITION:

The Department refutes the Contractor's assertion that natural gas is not specified in the RFP documents. The RFP Design/Build documents stipulate that natural gas water heaters are required. All of the Contractor's preliminary design documents indicated natural gas water heaters were being supplied. The final signed and sealed drawings show natural gas though the Contractor indicates this was a mistake and subsequently corrected it. Sheet P-001 shows in the Plumbing Legend the symbol for a "Natural Gas Line" is ----G----. This symbol is further shown on sheet P-112 going to water heaters GWH1 and GWH2 and then outside the building. The owner was unable to negotiate an acceptable easement on their property for TECO to run their natural gas line to the RTMC building. They therefore requested the Contractor to submit pricing for electric water heaters. The Contractor suggested a method of providing the required amounts of hot water without increasing the electric service to the building which was accepted by the owner. The owner processed a SA to cover the additional cost of \$21,000 and requested a credit for the installation of the natural gas line that was not needed now.

BOARD FINDINGS:

The Board has reviewed the submittals and rebuttals by the Contractor and the Department, as well as the oral presentations. The Contractor maintains that the RFP documents do not specify natural gas water heaters and he intended to use propane gas hot water heaters. The Contractor's preliminary and final signed and sealed drawings indicate natural gas although the Contractor maintains that was a mistake and was later corrected.

The Department maintains that it was always the intent of the RFP to require natural gas water heaters and the Contractor's preliminary and final designs all show natural gas water heaters. The RFP documents indicate that natural gas water heaters are required.

The Board finds that the information in the RFP is sufficient to convey the Department's intent to use natural gas water heaters and have natural gas service established for same. Specifically, Section 15486, Paragraph 2.2.A.3.f states "(water heater) Burner: For use with atmospheric water heaters and for natural-gas fuel". In addition, Section 15194, Paragraph 3.3.A.1 calls for the installation of "exterior fuel gas distribution system piping, service pressure regulator and service meter..." A service meter is not required for a propane gas source.

BOARD RECOMMENDATIONS:

The Board recommends that the Department receive a credit for the costs associated with establishing a natural gas pipeline service to the building.

The Board sincerely appreciates the cooperation of all parties and the information presented for its review in making this recommendation. The Disputes Review Board's recommendation should not prevent or preclude the parties for negotiating an 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 in 15 days. Failure to respond constitutes an 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

Peter A. Markham	DRB Chairman
Michael Bone	DRB Member
Felix A. Peguero	DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS



DRB Chairman.

**The Haskell Company
Natural Gas Service Response
DRB Hearing Date December 17, 2007**

The Haskell Company (Haskell) is in receipt of the Board's recommendation with respect to the natural gas service to the RTMC facility. The Board has found that sufficient information was provided within the criteria documents to require the provision of natural gas service. Based on the information presented by the Department and cited by the Board, Haskell is not in agreement with the Board's recommendation.

The Board's summary of the contractor's position included inaccuracies which warrant clarification. These inaccuracies were reflective of the Department's position.

- The Board states that the contractor had "always intended to use propane gas water heaters." Haskell stated that at the time of Construction issue documents, design selection as to natural gas or propane gas had not been made. The responsibility for making this decision was placed on the design-build contractor by the criteria documents.
- The Board states that the Contractor "admitted that their final signed and sealed design drawings showed 'natural gas'." At no time have the Civil drawings shown a natural gas line. The gas line, as indicated by the "G" on P-112 was intended to show as a generic gas line for either propane gas or natural gas. The legend indicating "G" as natural gas was carried over from a previous project. Typically, there is no confusion as to natural vs. propane based on availability and consumption.

The specification of input as natural gas in the Gas Water Heater Schedule was a means for the designer to specify the BTU of the heaters for the purpose of pricing. Once an input selection was made, the designer would make the appropriate drawing change as appropriate.

The above being said, Haskell's intent only speaks to Haskell's interpretation of the criteria documents. Haskell interpreted the criteria documents as being open to both fuel sources. Regardless of what was shown in the design documents, at any time, Haskell is obligated only to provide, or credit, what is required by the criteria documents.

The Board has found that two references were specific to natural gas. Further, said references were sufficient to convey the Department's intent.

- Section 15486 references a burner "for use with atmospheric water heaters and for natural gas fuel." The propane gas water heaters proposed contained burners which fully met this specification.
- Section 15194 specified a service meter. Haskell believes that this specification maintains the generic criteria for fuel fired water heaters. This section included language regarding a service meter in the event the design-build contractor selected natural gas service.

As stated in Haskell's opening statement, natural gas is not the appropriate fuel source for this facility based on cost of connection to the main, projected consumption, facility's need to remain fully functional in the event of natural disaster, and the Department's inability to

**The Haskell Company
Natural Gas Service Response
DRB Hearing Date December 17, 2007**

execute easement agreements. Additionally, based on the number of generic references and missed opportunities to definitively state the intent, the criteria documents should be deemed ambiguous, at best.

Haskell respectfully requests that the Board consider the above and reevaluate their recommendation.

-----Original Message-----

From: PETEMCOL@aol.com

Date: Wed, 23 Jan 2008 16:49:08

To: spristas@mecojax.com, tchin@aimengr.com, Mary.Wiley@dot.state.fl.us

Cc: Mbone@ceconstruct.com, felixpeguero@bellsouth.net

Subject: REQUEST TO RECONSIDER --Entitlement re Natural gas line.

Steve, Tony, Mary,

The Board considered the information provided by Miller/Haskell, the Dispute Review Board Three Party Agreement relative to reconsidering a recommendation, the Specifications and applicable contract provisions and found that no new information has been provided that warrants reconsideration of our original recommendation.

I certify that all members of the Board participated in this reconsideration.

Peter A. Markham, P.E.

Consulting Engineer

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