

DATE: November 6, 2010

To: Miller Electric Company, ITS Div

AIM Engineering & Surveying, Inc.

Attn: Steve Pristas
18810 State Road 84, Suite 104
Fort Lauderdale, Fl 33315

Attn: Tony Chin
5301 Dr. Martin Luther King, Jr., Blvd. Unit 1
Fort Myers, FL 33905

ISSUE:

Is Miller Electric Company due compensation for damages caused by a third party to CCTV Cabinets # 31 and # 34? The third party is alleged by the Contractor to be the FDOT's mowing/maintenance contractor.

CONTRACTOR'S POSITION:

This request for additional compensation is based on the work performed by MECO at the FDOT's request to inspect and repair the damage on CCTV Cabinets # 31 and # 34. MECO inspected the two Cabinets, and checked with the Florida Highway Patrol to determine if there were any reported accidents that could have caused the damage to the Cabinets. The cause of the damage was not specifically known; however, it is most likely that the FDOT's mowing/maintenance contractor, DBI, caused the damage while working in the area.

For the foregoing reasons, Miller respectfully requests that the DRB determine the Department is required to see that Miller is paid for the damage to Miller's ITS work along I-75 caused by the FDOT's maintenance contractor.

DESIRED RULING:

The Contractor requests that the DRB recommend that MECO is entitled to be compensated by FDOT for damage to their facility caused by a contractor working for the Department.

DEPARTMENT'S POSITION:

Article 7-14, "Contractor's Responsibility for Work" of the I-75 project states: *"Until the Department's acceptance of the work, take charge and custody of the work, and take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the nonexecution of the work. Rebuild, repair, restore, and make good without additional expense to the Department."* Although MECO, in their Concise Issue Statement, has alleged that the damage to the cabinets was caused by FDOT's mowing/maintenance contractor, there is no positive proof to corroborate this allegation

The Department is of the opinion that the Article 7-14 language clearly places the responsibility for repairs to the work and the cost of same squarely on the Contractor, and it has long been Industry practice on Department projects that contractors repair damage and then pursue recovery from the party causing the damage, or in the absence of a known party, recovery is normally sought from their insurance provider. Recovery is routinely sought without Department participation.

DESIRED RULING:

Based on FDOT Division I Standard Specification 7-14, the Department requests the Board to rule that there is no entitlement for additional money to the Contractor for damages caused to these facilities. Therefore, the Department requests that the DRB recommend MECO is not entitled to be compensated by FDOT for damage to their facility by the IROC JV.

BOARD FINDINGS:

Article 7-14, "Contractor's Responsibility for Work" of the I-75 ITS Project Specifications states: *Until the Department's acceptance of the work, take charge and custody of the work, and take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the nonexecution of the work. Rebuild, repair, restore, and make good without additional expense to the Department.*" The Board finds that this language clearly places the responsibility for repairs to the work and the cost of same squarely on the Contractor.

It has long been Industry practice on Department projects that contractors repair damage and then pursue recovery from the party causing the damage. They pursue recovery without the Department's participation.

The Board finds that MECO is responsible for repairs to the cabinets under the Contract language, regardless of whether or not it was caused by the FDOT maintenance contractor.

BOARD RECOMMENDATION:

The Board recommends that there is no entitlement for additional money to the Contractor from the Department.

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

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 on behalf of the Board.

A handwritten signature in black ink, appearing to read "Peter A. Markham", written in a cursive style.

Peter A. Markham

DRB Chairman