

DISPUTES REVIEW BOARD RECOMMENDATION

HEARING DATE: April 19, 2012

Walter Johnson
Johnson Brothers, Inc.
P.O. Box 588
Lithia, Fl. 33547

Brett Pielstick, P.E.
Eisman and Russo
6455 Towers Ave.
Jacksonville, Fl. 32217

RE: Financial Project No. 195410-1-52-01
Contract No. EIH24
FAP No. ARRA 144B
SR951 over Big Marco Pass, Collier County

Gentlemen:

Johnson Brothers, Inc., the Contractor, and the Florida Department of Transportation requested that the District 1, Regional Disputes Review Board (RDRB) meet to hear both parties' position regarding a dispute which arose during the construction of the referenced project. The RDRB was asked to make a recommendation regarding entitlement.

The RDRB received Position Papers and Rebuttals from both parties and on April 19, 2012 at 1:00 PM local time, the RDRB heard both sides discuss the issue. Position papers, rebuttals, and attachments are quite lengthy. Both parties summarized their positions which are paraphrased here.

Contractor's Position

The Contractor's Position is that the Department's RFP for the project contained soil borings which were incomplete and referenced, but did not include, a 2004 report which discouraged the use of drilled shafts. The Contract allows for added compensation if differing site conditions are encountered. As part of the Design-Build effort, borings were performed by the Contractor. One of the borings in the vicinity of Pier 4 showed a sand seam which the Contractor considered an anomaly. When differing site conditions were encountered during construction of Pier 4, FDOT was given written notice per contract requirements. Chemical stabilization was used to construct Pier 4. Chemical stabilization would not have been used, if conditions had been as anticipated by the Contract. Therefore, the Contractor is entitled to additional compensation.

Much documentation was provided by the Contractor supporting his position which is available upon request.

Department's Position

The Department's Position is that all required information, including soil borings, was provided to the Contractor in the RFP. The RFP discouraged the use of drilled shafts. During the selection process the Contractor was asked specific questions to assure both parties that the Contractor was aware of the risks associated with using drilled shafts on this project. The Contract does allow for added compensation for differing site conditions. However, the soil conditions were not unexpected, unique or isolated. The Contractor's operations, means and methods, included practices which likely caused or contributed to the conditions encountered. All borings, those

provided by the Contractor as his design effort and those done by the Department, show the same variable soil conditions albeit in different orders, which were part of the risk the Contractor took on.

Eisman and Russo presented much information to support the Department's position, also available on request.

Board's Findings

Differing site conditions may be used to add compensation to the contract, if Contract requirements are met.

One report which was referenced in the RFP, which the Contractor says he never saw, would have further discouraged drilled shafts. The Contractor (and Subcontractor) probably would have still used drilled shafts, since the use of drilled shafts provided a competitive advantage to get the Contract.

The chemical grouting used at Pier 4 is a technique which had previously been used by the Contractor on this Contract at Pier 7 at no additional cost to the Department. Chemical grouting was part of a continuum of techniques used to construct stable, non-redundant drilled shafts for this project.

Board's Recommendation

The Contractor is not entitled to additional compensation based on differing site conditions as defined in Subarticle 4-3.7 of the Standard Specifications. Site conditions were highly variable as the borings show. The Contractor accepted the risk and reward, which included a very competitively priced Contract, that he was awarded.

This recommendation was arrived at by unanimous agreement of the Board members.

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

I certify that I participated in the Hearings of the RDRB regarding the Dispute indicated above and concur with the findings and recommendation.

Respectfully submitted,



4-27-2012

Jim Weeks, P.E., Chairman

Allan Adderley, P.E., Member

Tom Shafer, P.E., Member

Cc: Paul Johnson

Scott Woss

Tim Hendrix

Terry Muse

Zach Wiginton