

DISPUTES REVIEW BOARD RECOMMENDATION
LONGBOAT PASS BRIDGE REHABILITATION, MANATEE COUNTY

HEARING DATE: November 28, 2012

Thomas Quinn

Quinn Construction Inc.

1321 77th St. East

Palmetto, Fl. 34221

Rico Lepore, P.E.

Parsons Brinkerhoff .

2202 N. West Shore Blvd.,

Suite 300

Tampa, Fl. 33607

RE: Financial Project No.: 425414-1-52-01

Contract No.: T-1472

Longboat Pass Bridge Rehabilitation, Manatee County

Gentlemen:

Quinn Construction Inc. (QCI), the Contractor, and the Florida Department of Transportation (FDOT) requested that the District 1, Regional Disputes Review Board (RDRB) meet to hear both parties' position regarding disputes which arose during the construction of the referenced project. The RDRB was asked to make recommendations regarding entitlement. FDOT was represented by Parsons Brinkerhoff (PB) and FDOT staff.

The RDRB received Position Papers and Rebuttals from both parties and on November 28, 2012, 10:00 AM local time. The RDRB heard both sides discuss the issues. Position papers, rebuttals, and attachments are quite

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lengthy. Both parties summarized their positions on 3 issues which are paraphrased here. A 4th issue was resolved before being heard.

Issue #1:

Bearing Repairs Time Extension

Contractor's Position:

The Department modified the Contract 19 days after Contract Time had expired and the Contractor is due a time extension for that time.

The Contractor made a presentation going over the chronology leading up to project final acceptance on May 24, 2012, with 19 days of liquidated damages being charged by the Department.

Some of the key points made were as follows:

- Sheet B-16 of the plans provides repair procedures which state that the existing sole plate will remain and “uniform thickness of the existing sole plate shall be achieved so that full bearing (100%) is made.”
- On January 25, 2012, QCI informed the Department (PB) that existing sole plates have been cleaned per the plans and corrosion is too severe to achieve 100% contact.
- On February 2, 2012, PB responded that no further action was required.

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- Several communications over the next few months were provided showing that there was subsequent conversation regarding QCI using a product called Chockfast Orange to achieve full bearing contact.
- QCI asked that the issue be escalated and when it was not escalated filed a notice of intent to file a claim for cost and time due to extra bearing work on May 3, 2012.
- On May 5, 2012, Contract time expired.
- On May 11, 2012, PB sent a letter to QCI instructing the Contractor to lower the bridge and not epoxy the anchor bolts.
- On May 16, 2012, QCI questioned the correctness of PB's direction to lower the bridge without securing the anchor bolts and states that they will require "direction properly given to us". QCI requires this because of liability caused by following the direction given by PB.
- On May 23, 2012, PB directed QCI to lower the remaining spans and that the Department will assume responsibility of the bridge and bearings.
- On May 24, 2012, QCI lowered the final spans, notified the Department that all work was completed.

Department's Position:

The bearing work was a non-critical path item and therefore, a time extension cannot be granted. Sidewalks were always the controlling item. PB rejected several QCI schedules trying to get schedules breaking down items of work more and finishing on time

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PB explained that the RFI response “no further action required” referred only to the coating of the bearing as indicated by the replica tape, not the bearing thickness.

PB explained that the CPAM gives the CCEI authority under the definition of “Engineer”.

The Contractor’s Rebuttal and verbal rebuttal included pointing out that the Department is now repairing the bearings with an epoxy.

The Department explained that they are repairing the bearings with their “push button” contract, but, using a much less expensive epoxy system.

Issue #1

DRB Findings and Recommendation

- PB acted within its authority in communications with QCI.
- QCI completed sidewalk work, a controlling item of work, on May 24, 2012, 19 days into liquidated damages.
- The bearing work was not a controlling item of work on QCI’s approved schedule.

QCI is not entitled to a Time Extension for Bearing work.

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Issue #2:

Bearing Repairs Pay Reduction

Contractor's Position

QCI is disputing the reduction of payment under pay item 460-1-15, Structural Steel-Rehabilitation (Misc). QCI believes that they performed the steps included in the Contract to achieve full bearing of the Sole Plate shown on Plan Sheet B-16. The lack of further direction by the Engineer of Record indicates he did not anticipate the amount of corrosion to the sole plates that existed. Since they performed the Scope of Work in Repair Procedure 1 and 2, QCI should get full payment for this item.

Department's Position

Since the plan calls for "uniform thickness of the existing sole plate shall be achieved so that full bearing (100%) is made", PB reduced the payment on 460-1-15 by the amount estimated that it would have taken the Contractor to grind the sole plate to achieve full bearing. PB shows several communications asking QCI to make a formal proposal of how to correct the bearing to achieve 100%. The Department never received an actual proposal, only discussion about a product. PB suggested shims and grinding. When the Contract was well into Liquidated Damages, the Department directed the Contractor to lower the spans and they would be paid a reduced amount for the work.

The Contractor's rebuttal included communication from an expert in the field dated April 27, 2012, which stated:

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“that the State did not anticipate the degree of deterioration of the sole plates,” and that “an unforeseen condition exists, and the contractor has entitlement for additional materials and labor,”
if methods beyond those in the plans are required.

The Department’s rebuttal was that in this type of work these types of issues are common and are normally dealt with successfully.

Contractor rebutted that he could not possibly have anticipated from the plans what would be required, and pointed out that the Department was doing the repairs with epoxy, not grinding.

The Department said they believed the bearing could have been achieved by grinding.

Issue #2:

Bearing Repairs Pay Reduction

DRB Findings and Recommendation:

- QCI performed all the work spelled out on sheet B-16.
- The note requiring “full bearing” is ambiguous and confusing.
- The Department’s “push button” contractor is not grinding as a repair technique, but, using a more economical version of what QCI proposed.

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QCI is entitled to full payment of this item, 460-1-15, Structural Steel-Rehabilitation (Misc).

Issue #3

Maintenance of Traffic (MOT) Claim

Contractor's Position:

QCI is entitled to a time extension and additional compensation due to a design error in the Traffic Control Plans.

While setting up temporary traffic control devices, QCI found that the 11' wide temporary lanes which were called for across the bridge could not be achieved with devices required in the Traffic Control Plans and on the Qualified Product List. QCI demonstrated that with constraints from their subcontractors, times they were not allowed to work on the bridge, and a lack of a response from a responsible party, they were delayed.

The Department's position:

QCI had adequate time to start on this work before January 4, 2012, when it became critical. The Contractor was confused when he came out to the site to set up the MOT. The Contractor should also have been aware that 10' width temporary lanes are allowed by the Roadway Standards. The Contractor is responsible for the coordination of his subcontractors. The majority of the time requested is scheduling delays which are the Contractor's responsibility. The Contractor was aware that this contract

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time required “the need to aggressively pursue the work”, which he did not do.

The Contractor rebutted that this work was on the approved schedule for that day all along and was on the critical path. QCI had pursued work under the bridge in December not requiring MOT, and planned to start work requiring MOT in January. This is exactly what they tried to do. After several hours of trying to make everything fit and provide two 11’ lanes, QCI was directed that if they left MOT devices where less than 11” wide lanes were provided, PB would issue a Deficiency Letter (1:00 AM+/-, January 5, 2012). PB directed QCI at 2:00PM+/-, January 5, 2012, that since the Standard Index allows minimum lane width of 10’, they were to proceed. QCI refers to the Standard Index as a “subordinate document”. QCI said there should be a signed and sealed plan sheet revising the sheet showing 11’ lanes.

The Department’s rebutted that the Contractor should have verified all existing field conditions and dimensions. MOT was a controlling item of work but was not even begun until day 33 of a 140 day Contract.

Department stated that these kinds of issues come up routinely and are not a big deal.

QCI’s rebuttal was to show pictures of the results of an accident that occurred on this bridge on January 10, 2012. QCI concluded that they

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believed MOT and doing it specifically according to the plans to protect against liability was a very big issue.

QCI pointed out that if it was up to them to recognize that this was a “time sensitive” contract, it should also be true that the Engineer of Record should be held to the same standard to ensure there are no plan errors to slow down the Contractor.

QCI stated “FDOT has an obligation to give proper direction. An email the next day is not proper direction”.

Issue #3

Maintenance of Traffic (MOT) Claim

DRB Findings and Recommendation:

- PB employees acted within their authority. However, QCI received conflicting direction. On the night of January 4, 2012, the Inspector advised that a Deficiency Letter would be issued if they left lanes less than 11’ wide during the night. With no other clarifying direction available QCI subsequently stood down and demobilized. On the next afternoon of January 5, 2012, the Project Administrator directed QCI to proceed with 10’ minimum width lanes. QCI then advised that rescheduling crews or subs for that night would be difficult. QCI was forced to re-mobilize the traffic switch to a later date thus incurring additional costs and a delay to this critical item of work.

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- The RDRB knows that safety is the highest concern to both the Department and the Contractor, but modifications to the TCP which meet the Standard Index should be able to be worked out routinely.

The Disputes Review Board recommends entitlement to a delay to the Contractor for the MOT plan error.

Issue #4

Sway Beam Painting Reduction

The Department agreed to entitlement on this issue without either side making presentations, therefore,

The Disputes Review Board did not hear Issue 4 and makes no recommendation.

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The Regional Disputes Review Board recommendations on Issues 1, 2 and 3 were 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,

A handwritten signature in green ink, appearing to be 'J. Weeks', is written over the text 'Respectfully submitted,'.

Jim Weeks, P.E., Chairman
Allan Adderley, P.E., Member
Tom Shafer, P.E., Member

Cc: Terry Muse
Zach Wiginton