

RECOMMENDATION OF DISPUTE REVIEW BOARD

I-4/US 98 INTERCHANGE-SEGMENT 8

FIN PROJ. ID NO: 201213-1-52-01 PROJECT NO: 16320-3409
W.P.I. NO: 1147951 CONTRACT NO: 21403
F.A.P. NO: 0041 173 I SWFWMD NO: 43011896.019
FDEP NO. FLR10K482

Dispute No. 1, District No. 1
Hearing Date – 31 January 2003 Hubbard Construction Company

DISPUTE

Hubbard Construction Company (HCC) has presented, on behalf of subcontractor, Highway Safety Devices (HSD), the issue of payment for the foundations of the Highmast Lightpole Foundations.

CONTRACTOR'S POSITION

The Contractor (HCC/HSD) submits that the Florida Department of Transportation (FDOT) erred in the preparation of Contract Documents for this project. They further submit that this has caused the preparation of "unclear" contract documents that does not provide for payment of certain portions of the contract, specifically; concrete drilled shafts for high mast light poles.

HSD further maintains that a method of payment for these concrete drilled shafts be added to the contract.

DEPARTMENT'S POSITION

Metric Engineering, Inc & the Department (MEI/FDOT) submits that HSD has not shown that the Contract Documents are flawed. They maintain that the intent of the documents clearly show that the price of the concrete drilled shafts were to be included in the Pay Item for Complete High Mast Poles. They also contend that the contractor has selectively applied the contract documents in arriving at their conclusion.

MEI/FDOT have reviewed the request for additional pay items by HSD to cover the cost of the concrete drilled shafts and has found no reason to revise the pay items. It is their opinion that the plans and specifications are complete as submitted.

RECOMMENDATION:

It is the opinion of the Board that the Contractor is not entitled to additional compensation. The decision was not unanimous; therefore we have included both the majority decision opinion and the dissenting opinion.

Majority Decision:

It is our opinion that the plans were clear as to the intention that the contractor include the foundation with the payment of "High Mast Light Poles Complete". This opinion is based on the fact that the plans on Sheet L-4, Payment Notes #7 stated that "Item 2715-191-35: includes the cost of the foundation." Also on Sheet L-19, Plans for "High Mast Foundations", included a note; "PAYMENT: The cost of the foundations shall be included in the pay item for providing the Complete High Mast Pole".

Since there is no discrepancy in the plans, there is no need to invoke the Special Provisions clause to take precedence over any other part of the contract drawing or specifications.

We do agree that typically, Payment for foundations is a separate pay item, however this does not preclude the designer from combining the payment for "complete" structures. The plans clearly indicated this intent.


Dissenting Opinion:

Having the positions of both sides, the Department of Transportation and Highway Safety Devices, this Board Member agrees with the Contractor's position that he should be paid for the foundations for the following reasons:

1. The Florida Department of Transportation operating under the Standard Specifications for Road and Bridges (2000) Section 715-16(k) in the past has determined that this Item does not include the foundations, and has provided in the Bid Documents Bid Items 455-88-5, 455-1, and 455-22-5, and the Contractor has been paid for the foundations under these items.
2. The plan notes pages L-4 and L-19 that say the foundations are included in the Lump Sum Payment for the Bid Item 2715-191-36 have created an ambiguity in the method of payment for these foundations between the Standard Specs and the plan notes.
3. The ambiguity is resolved in Standard Specifications 5-2, Coordination of Contract Documents, whereby the governing specifications is the Special Provisions. Page 56 provides the identical words for Item 715-16(k) and does not provide the foundations be included.
4. In my opinion, the Florida Department of Transportation has failed to provide a Bid Item in their coordination of the contract documents for the High Mast Light Pole Foundation.

END

Submitted for the Dispute Review Board


Robert P. Bayless, Chairman

Date 1-5-03