

May 17, 2007

Mr. Hal L. Jones III
Hal Jones Contractor, INC.
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Mr. John Kemp
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RE: SR-9 (I-95) from a point South of Moncrief Creek to a point North of Heckscher Drive

The Contractor, Hal Jones Inc., requested a hearing to determine entitlement on three issues, two of which primarily deal with their subcontractor, J. B. Coxwell. All parties prepared detailed position papers and rebuttals. The board has reviewed the material and heard oral presentations at the hearing on Friday May 11, 2007 at the Office of Hal Jones Construction.

Issue 1: This issue deals with the deletion of a portion of roadway at the north end of the project in an effort to coordinate with an adjoining project.

The contractor's position is that the material lost by the deletion of this work had value, and that they should be compensated for the loss of that material.

The FDOT position is that it was necessary to delete certain portions of the work to coordinate with an adjoining project, that the applicable Specification is 4-3.1, and that under that specification none of the items qualifies as a "major item of work". Since none of the items qualify as major items of work they are not required to adjust the unit price.

Discussion: In order to coordinate between two adjacent contracts the Department chose to delete a portion of the work on the Trout River Project and add the work to the adjacent projects contract. The Department believed that this was a deletion of work at existing unit prices and that since none of the items met the criteria for major item of work specified in 4-3.1 there should be no adjustment in the prices. Clearly there was a reduction in the material available to the subcontractor, and he would have planned to use this material to augment that brought to the job.

In order to meet the criteria for "major item of work" the items had "an original Contract value in excess of 5% of the original Contract amount" or the deletions must represent a change in the character of work". Specification 4-3.1 says that to be considered a change in the character "the work as altered differs materially in kind or nature from that involved or included in the original proposed construction".

Recommendation: The board determined that 4-3.1 is the applicable specification, and that the deletion does not represent a change in the character of work and that the contractor is not entitled to a price adjustment. The board makes this recommendation with the recognition that the subcontractor on this project may have been adversely affected.

Issue 2: This is an issue that deals with large material overruns of Type B Stabilization and Optional Base Group 8. The contractor believes he is entitled to additional time and money for these overruns.

The FDOT position is that none of the items in question qualifies under Specification 4-3.1 as a "major item of work".

Discussion: There is no question in this dispute about the majority of the facts. There were in fact major material overruns not shown in the advertised bid quantities. There were no changes in the plans of any significant nature. It is the magnitude of the overruns that has created the dispute. The Department initiated a large unilateral supplemental agreement in order to pay for the increased quantities. The DRB believes that the operative specification is 4.3 Alteration in the character of work. This specification allows the DOT to alter the quantities of work at bid unit prices unless the item is a major item of work or the changes represent a change in the character of work. Both sides agree that these quantities do not meet the criteria of a major item of work since neither of them had "an original Contract value in excess of 5% of the original Contract amount". Even when the new quantities were included the items still did not reach the 5% threshold. The board was then left to determine whether these large overruns represent a change in the character of work.

The issue of change in the character of work was discussed at length at the hearing. The board considered dictionary definitions, previous DRB recommendations, and their own opinions of what would represent a change in the character of work. There were no plan revisions to cover the overruns, but clearly the contractor had to import much more material than anticipated in the bid documents. These items were not added to the project. Specification 4-3.1 says that it is a change in the character of work when "the work as altered differs materially in kind or nature from that involved or included in the original proposed construction".

Recommendation: The board after much discussion and debate determined that these large quantity changes do not represent a change in the character of work and the DOT does not have to change the unit price. The board makes this recommendation with the recognition that the subcontractor on this contract may indeed have been adversely affected. The board in this matter is not attempting to aim for fairness, but to best evaluate the issue within the context of the contract.

Issue 3: The Contractor, Hal Jones Inc. has requested additional payment for maintenance and repair of failed temporary erosion control features. The Department has denied this request.

It is the contractor's position that, if the erosion control measures are installed properly and approved by the Engineer per section 104-5 of the Standard specifications, and are properly maintained, and unanticipated conditions arise that cause unforeseen additional work, the Contractor will be compensated. If erosion control features fail, the Contractor will continue to repair and replace

damaged items and accept unit price costs for these contractual items. If additional work outside these items occurs, outside the scope of work, then compensation is due. Section 104 does not say the contractor will not be paid for unforeseen work when measures are installed properly, but were not adequate. The Engineer reviewed and approved the Erosion Control plan per Section 104, which was followed by the Contractor.

Hal Jones Contractor is seeking entitlement for additional costs over and above routine maintenance of temporary erosion control devices; the entitlement they seek is for factors beyond the control of the contractor.

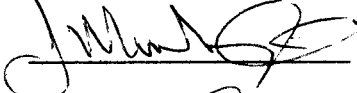
The Department's position that under Specification 104-1 and 104-2 is the contractor is to "construct and maintain temporary erosion control features to ensure economical, effective, and continuous control of erosion and water pollution throughout the life of the contract. Specification 104-6.4.10.3 requires the contractor to immediately correct any deficiencies and ensure that the silt fences are properly located for effectiveness. Furthermore the specification states "remove sediment deposits when the deposit reaches approximately $\frac{1}{2}$ of the volume capacity of the temporary silt fence or as directed by the Engineer" and to dress any sediment deposits remaining in place after the temporary silt fence is no longer required to conform with the finished grade. Section 104-10 states, "prices and payments will be full compensation for all work specified in this section, including construction and routine maintenance of erosion control features and for mowing".

Recommendation: Section 104-10 states contract pay items will be full compensation for routine maintenance of temporary erosion control features. Removal of sediment would normally be considered routine maintenance. Section 104-7 states the department will pay for replacement or reconstruction of failed erosion control features under the appropriate contract pay items if necessary due to factors beyond the control of the contractor. Section 104-6.4.10.3 requires the contractor to ensure silt fences are properly located for effectiveness. Per section 104-2 the contractor is entitled to payment for additional erosion control features or methods other than those included in the contract if directed by the engineer.

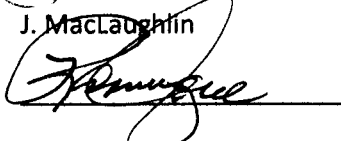
The weather conditions during the period in question do not appear to be abnormal and the erosion control plan sheets and specifications clearly call for removal of sediment deposits when $\frac{1}{2}$ the volume of the silt fence is reached, so sediment removal should have been anticipated. However, if there were continual or repeated failures of properly installed and maintained features in the same area and the design and placement of the erosion control features were contributing to the failures and redesign solved the problem, the Board recommends entitlement for additional repairs after the first failure until the revised design and or placement was implemented.

In the future the Contractor and CEI should seek to identify potential problem areas prior to them becoming troublesome as erosion control is a shared responsibility. The plans and specifications provide guidance to the contractor and the contractor is responsible for providing an erosion control plan and ensuring that erosion control features are properly located for effectiveness.

Submitted for:



J. MacLaughlin



Rammy Cone



Bill Downs