

Feb 22, 2009

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Contract T2178
FAP No 1853014P/1853015P

RE: Regional DRB Hearing

The Dispute Review Board held a hearing February 13, 2009 for a claim involving cost associated with removal of concrete from an existing manhole and storm sewer. The concrete entered the system during installation of a drilled shaft.

DEPARTMENT'S POSITION

Notice was not given per 5-12.2.1 Claims for Extra Work

First load of Concrete was placed 7/23/09 at 7:14 am. Second load placed 7/23/09 at 8:12 am.

Notice of intent to file a claim was given on 7/23/09 at 10:29 am.

Written notification per 4.3.7- Differing Site Conditions was not given until after two loads of concrete had been placed with a loss of concrete. The Engineer was not afforded an opportunity to investigate the differing site conditions.

The Contractor's means and methods to plug the existing 8 inch PVC pipe was to stuff the pipe with paper bags. The plug did not hold and concrete escaped into the existing 42 inch storm drain.

CONTRACTOR'S POSITION

It is our contention that the discovery of this pipe did not constitute a condition of unusual nature differing materially from those ordinarily encountered. We regularly encounter abandoned pipes and proceed in the same manner as we did in this situation. Once we realized concrete was being lost we knew that something was out of the ordinary. The Prime sent notification to the Owner and we proceeded in cooperation with the owner until being shut down. We later found out that an Unknown Manhole was the cause of the loss of concrete. It is our contention that we did not encounter a condition of unusual nature until concrete was lost, at which time proper notice was given.

FINDINGS

DOT acknowledged the impacts of the PVC line were unexpected but the direct results were due to the Contractor's failure to adequately plug the encountered PVC pipe. The Contractor stated the pipe was plugged with wadded bags, rocks, bricks, etc and this is standard procedure for them and has been used routinely in the past successfully.

There is no specification that addresses how to plug pipe, which weakens FDOT's position. In addition the plug held on the upside and only leaked on the side that had a manhole adjacent to the plug, which supports the Contractor's position.

DOT's position and demonstration at the hearing was not convincing. Placing a plastic cap on a pipe that has been broken at the edge of the shaft is no easy task. The pipe must be cut off cleanly (the photos clearly show the pipe was damaged for quite a distance on either side of the shaft) for a cap to be installed and to do this at the bottom of a drilled shaft eight feet below grade is clearly a difficult feat. DOT's position that the Contractor failed to give notice in writing does not hold up, the Contractor submitted written notice upon becoming aware that extra work would be involved.

RECOMMENDATION

The Board recommends entitlement for this issue. The encountered PVC pipe was a differing site condition that was unexpected and the adjacent manhole not shown in the plans contributed to the leakage of concrete into the storm sewer.

Signed by the Chairman with agreement of the Board members.



Robert D Buser, Chairman