

DISPUTE REVIEW BOARD RECOMMENDATION

April 12, 2012

Mr. Tony Landry
Orion Marine Group
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Mr. Ted Rice
District Two Warranty Coordinator
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RE: Contract T2199, FPN: 210697-4-52-01, SR 200/A1A AMELIA RIVER BRIDGE FENDER REPLACEMENT, Nassau County

Subject: Hearing Dated April 4, 2012
Disputes Review Board Recommendation

Dear Sir,

Orion Marine Construction, Inc. (OMCI) and the Florida Department of Transportation (FDOT) requested a Regional Dispute Review Board hearing of a disputed issue. The hearing was held on April 4, 2012 at the FDOT Jacksonville Office. The parties furnished the Board position papers and rebuttal papers prior to the hearing. The Disputes Review Board was requested only to consider the question of entitlement to additional cost compensation. The Disputes Review Board was not requested to address the issue of entitlement to additional time, therefore no opinion is offered with regard to time. In accordance with your request the following recommendation is offered. The dispute included three distinct issues that are addressed separately in this recommendation.

Background

The project scope consists of the removal and replacement of the existing fender system, catwalks, navigational and channel lights, and incidental construction for SR 200 over Amelia River, bridge numbers 740087 and 740088, in Nassau County.

Issue 1: Request for compensation for additional cost resulting from the relocation of the new fender walls as directed by the FDOT

Contractor Position Issue 1

The following summary of the Contractor's position is based upon written materials submitted to the Board and upon the hearing presentation. The complete position is available in the Contractor's submitted written materials.

Key Points

1. The drawings contained an error with regard to the layout location of the new fender wall

The Contract Drawings indicate that the two sides of the existing fender system are 90.0 feet apart as per Plan Sheet No. B-19. The drawings indicate that the 90.0 feet is a minimum clearance; however the Contract Drawings indicate the distance between the walls of the existing fender system is 90.0 feet based on the control points for the respective corners of the existing fender system.

	<u>Offset</u>	<u>Station</u>
Control Point A	77.95' Rt	558+05.11
Control Point C	77.95' Rt	<u>558+95.15</u>
Channel Width According to Contract Drawings		90.04 feet
Actual Channel Width		94.12 feet
	<u>Offset</u>	<u>Station</u>
Control Point B	177.93' Lt	557+97.18
Control Point C	177.93' Lt	<u>558+87.23</u>
Channel Width According to Contract Drawings		90.05 feet
Actual Channel Width		95.74 feet

2. OMCI was directed by the FDOT to relocate the new fender wall

Upon discovery that the existing fender system was not located as detailed in the Contract Drawings, OMCI issued the RFI which resulted in the directive from the FDOT to move the new Fender System to the revised location. The new Fender System had to be relocated approximately 2'-6" into additional debris / rubble / existing foundation that would not have otherwise been encountered.

3. The revised location of the new fender wall resulted in additional work for OMCI

OMCI was directed by the FDOT to relocate the new Fender System which caused OMCI to perform extra work in order to install the piles for the new Fender System. Because of the relocation of the new Fender System, the piles had to be installed through additional rubble and the existing footings. The FDOT failed to address the directive issued to OMCI increasing the clear distance of the new Fender System from 90.0 feet as shown on the

Contract Drawings to the location of the existing fender system which had a clear distance between the two sides that varied from 94.12 feet to 95.74 feet

Contractor Position Summary Issue 1

As a result of the directive from the FDOT, the piles were moved into additional concrete rubble, debris and the bascule foundation. The installation of the battered piles as well as the plumb piles required additional demolition of the bascule foundation in order to install the piles. Due to the revised Fender location, the extent of the demolition necessary to install the piles was increased significantly. OMG request entitlement to compensation for the additional cost associated with this Differing Site Condition.

FDOT Position Issue 1

The following summary of the FDOT's position is based upon written materials submitted to the Board and upon the hearing presentation. The complete position is available in the Contractor's submitted written materials.

Key Points

1. The intent of the scope was to remove and replace the existing fender

The intent of the scope was to remove and replace the existing fender. The scope did not dictate the relocation of the fender.

2. The width of the Department's fender system had to align with the existing railroad fender.

The channel width for the FDOT's fender system could not differ from that of the railroad fender. If the ends of both fenders were not in line, a collision hazard would be created. Plan Sheet B-19 depicts the channel width with a minimum horizontal clearance of 90'-0". The 90'-0" is the minimum channel width requirement of the Coast Guard. This is required to be placed in the plans to insure that minimum widths are not encroached during the construction process.

FDOT Position Summary Issue 1

There was not an error in the contract documents as indicated by OMCI. OMCI was provided clarification of the intent of the scope. This did not relocate the fender 2'-6" into the rubble and existing debris, as indicated by OMCI, but confirmed the location intended by the scope of work. The new fender system was installed as indicated on the drawings. The OMCI did not encounter a differing site condition.

Disputes Review Board Findings Issue 1

1. Plan Sheet B-19 shows the new fender wall to be installed in the location of the existing fender wall, which is to be removed.
2. Plan Sheet B-19 shows the new fender wall to be installed in alignment with the existing railroad fender wall, which is to remain.

3. The station layout information given on plan sheet B-19 indicated a clear width between fender walls of 90'-0". The station location information given in the drawings was in error. The actual clear width between existing fender walls was approximately 94 feet.
4. Installing the fender wall at the station locations given in the plans would have resulted in an offset from the existing railroad fender wall and would have required an extension of the catwalk to reach the fender wall.

Disputes Review Board Recommendation Issue 1

The interpretation offered by OMCI, that the incorrect station location information justified installing the new fender wall out of alignment with the existing railroad fender wall with the required offset and the modification to the catwalk, is not reasonable.

When all of the contract information concerning this issue is considered, a reasonable interpretation is that the new fender wall is to be installed in the approximate location of the existing fender wall which is to be removed and that the new fender wall is to be installed in alignment with the existing railroad fender wall. This interpretation is consistent with the direction given to OMCI by the FDOT.

Accordingly, it is the DRB's recommendation with regard to Issue 1 that OMCI is not entitled to compensation for additional cost related to a differing site condition.

Issue 2: Request for compensation for additional cost associated with encountering oversized concrete rubble which constitutes a differing site condition

Contractor Position Issue 2

The following summary of the Contractor's position is based upon written materials submitted to the Board and upon the hearing presentation. The complete position is available in the Contractor's submitted written materials.

Key Points

1. The drawings indicated that the existing rubble was to be no larger than 2'-0" in diameter

Drawing B-04 indicates the Contractor is to anticipate "existing debris" which may include partial existing bascule foundations, partial existing cofferdams, timber pile stubs, scattered rock rubble and scattered concrete rubble with rebar. The existing debris was to be expected starting at Panel-1 and extending to Panel-13. The rubble was to be no larger than 2'-0" in diameter and was partially buried.

2. OMCI encountered rubble that was significantly larger than the indicated maximum size

The concrete rubble was up to 3'-0" in diameter which is 50% greater than the maximum size indicated would be encountered. OMCI has produced photographs showing the actual existing rubble and debris removed by OMCI which was in well in excess of 24 inches in diameter

3. The oversize rubble resulted in additional cost for OMCI

The existence of rubble larger than 2'-0" in diameter made the pile installation more difficult, resulting in additional cost for OMCI.

Contractor Position Summary Issue 2

The contract drawings clearly indicated that the maximum rubble size was to be no larger than 2'-0" in diameter. OMCI encountered rubble as large as 3'-0" in diameter, which is a differing site condition. Accordingly OMCI is entitled to compensation for resulting additional costs.

FDOT Position Issue 2

The following summary of the FDOT's position is based upon written materials submitted to the Board and upon the hearing presentation. The complete position is available in the Contractor's submitted written materials.

Key Points

1. The drawings provided notice to OMCI that debris would be encountered in the vicinity of the new fender pile locations

Plan Sheet B-04; the intent of the note was to inform the contractor that there was debris in the area that may interfere with the installation of the new fender piles. The note states, "may include but is not limited to..." rubble up to 2'-0" in diameter. Additionally, the note states, "No additional compensation will be given to the contractor for the installation of piles past potential debris in the river bed." The FDOT contends that the photos of debris larger than the 2'-0" submitted by the contractor were actually large pieces of the bascule foundation.

2. Independent dive survey report verifies that the existing conditions were not different from those indicated in the drawings

FDOT requested and paid for an independent underwater services company to perform an underwater survey of the fender system to determine if there were any changed conditions from that described in the plans. The diver's findings confirmed that the notes describing the various types of debris in the plans were indeed accurate.

3. The rubble encountered that was larger than 2'-0" was actually pieces of the existing bascule bridge foundation demolished by OMCI

OMCI had to remove portions of the existing bascule bridge foundation. Therefore the rubble that was larger than 2'-0" came from the foundation demolition performed by OMCI.

FDOT Position Summary Issue 2

The debris encountered by OMCI was not different from that represented by the information given in the drawings. Therefore, there was no differing site condition and OMCI is not entitled to additional compensation.

Disputes Review Board Findings Issue 2

1. Plan Sheet B-4 provides the following plan note:

“EXISTING DEBRIS

The Contractor shall be aware that there is existing debris around the existing fender system. The existing debris around both fenders may include but not be limited to partial existing bascule foundation, partial existing cofferdam, lumber pile stubs (see table below for location), rock rubble, and scattered concrete rubble with rebar starting at panel 1 and extending to panel 13. Rubble is up to 2'-0" in diameter and is partially buried.”

2. OMCI encountered rubble larger than 2'-0" in diameter. Photographs of rubble larger than 2'-0" in diameter were provided by OMCI in their position documentation.
3. Dive survey of the site condition performed at the request of the FDOT found concrete debris up to 2'-0" in diameter and in one location concrete debris up to 3'-0" in diameter. The survey noted debris visible on the river bottom but did not perform excavation. The Disputes Review Board notes that a visual survey may not accurately report the diameter of partial buried rubble.

Disputes Review Board Recommendation Issue 2

The second sentence of the plan note referenced in item 1 above describes the types of debris that may be encountered providing a listing of the possible types.

“The existing debris around both fenders may include but not be limited to partial existing bascule foundation, partial existing cofferdam, lumber pile stubs (see table below for location), rock rubble, and scattered concrete rubble with rebar starting at panel 1 and extending to panel 13.”

The third sentence is an affirmative statement specifically addressing the possible size of rubble.

“Rubble is up to 2'-0" in diameter and is partially buried.”

The wording “*but not limited to*” in the second sentence provides notice to the reader that other types of debris may be encountered but does not modify the affirmative representation made in the third sentence as to the maximum size of rubble.

Factual information presented indicates that OMCI did encounter rubble larger than 2'-0" in diameter, which is significantly different from the condition represented in the drawings. Accordingly, it is the DRB's recommendation with regard to Issue 2 that OMCI is entitled to compensation for additional cost related to a differing site condition.

Issue 3: Request for compensation for additional cost associated with the condition of the bascule foundation was not accurately reflected in the contract documents which constitutes a differing site condition and resulted in extra work.

Contractor Position Issue 3

Key Points

- 1. The drawings indicated that a portion of the foundation of the existing bascule bridge pier had been previously removed.**

Drawing No. BX-08 provides a detail of the work that was performed in order to install the existing fender system with regard to demolition of the existing bascule footing. The detail directs the contractor to "remove the portion of the existing bascule pier foundations that conflict with the construction of new fenders." Contrary to the detail, it is now known that the existing bascule footings were intact and had not been demolished or partially demolished by the previous contractor. It is also OMCI's understanding that the condition of the existing bascule foundations had been reviewed during a previous repair contract. As such, the FDOT was fully aware that the information being provided to the Contractor for this Project was inaccurate. In addition to this detail on Drawing BX-08, there are additional details in other drawings furnished to the Contractor by the FDOT which provide details of these existing footings which reaffirm that the existing footings had been demolished or partially demolished.

- 2. The foundation of the existing bascule bridge pier had not been removed as indicated.**

The information provided by the FDOT with regard to the existing footings was incomplete and inaccurate. According to Drawing BX-08, which is provided in Appendix No. 10, the previous contractor was to demolish the footing to the extent necessary to install the piles (as per Drawing BX-08). If the previous contractor had performed the demolition as directed, the majority of the existing foundation would have been removed unless the previous contractor had made saw cuts to limit the area of demolition. Saw cutting would have been impossible which means the bulk of the footing in the cross-hatched area as per Drawing BX-08 would have been removed because of the quantity of reinforcing steel in these foundations. However, the previous contractor did not demolish any of the existing footing to install the piles and left the existing footing intact. The changes by the previous contractor, which were not noted in the Contract Documents, are a differing site conditions and resulted in extra work to OMCI.

Contractor Position Summary Issue 3

The contract plans indicated that a portion of the existing bascule bridge pier foundation had been previously removed, permitting the installation of the new fender system piles without conflict. In fact the existing foundation had not been removed as indication. OMCI encountered conflicts with the existing foundation. OMCI is entitled to compensation for the additional cost associated with this differing site condition.

FDOT Position Issue 3

The following summary of the FDOT's position is based upon written materials submitted to the Board and upon the hearing presentation. The complete position is available in the Contractor's submitted written materials.

Key Points

- 1. Information on the existing bascule pier foundation is provided for information only.**

Plan Sheet BX-08; the plan sheet was provided in the contract plans, "FOR INFORMATION ONLY".

- 2. The plans do not indicate the amount of existing bascule pier foundation that has been removed.**

The notes on the plan sheet state, "Existing bascule pier foundations to remain... Remove the portion of the existing bascule pier foundation that conflicts with the construction of the new fenders."

FDOT Position Summary Issue 3

The conditions encountered by OMCI were not different from that represented by the information given in the drawings. Therefore, there was no differing site condition and OMCI is not entitled to additional compensation.

Disputes Review Board Findings Issue 3

1. Drawing BX-08 represents the as-built condition of the previous fender system installation.

The following plan notes are given on drawing BX-08 regarding the existing bascule pier foundation:

"Existing Bascule Pier Foundation to Remain in Place Except for the portion that will conflict with new fender construction"

"Remove the portion of Exist Bascule Pier Foundation that conflicts with construction of new fenders"

2. The existing fender timber piles were to be removed and new concrete piles were to be installed for the new fender system.
3. The contractor is advised in the plan note given on plan sheet B-04 that partial a "*partial existing bascule foundation*" may be encountered.

Disputes Review Board Recommendation Issue 3

The as-built condition given in the drawings indicates that the previous contractor was to remove that portion of the existing bascule bridge pier foundation that conflicted with the new timber pile installation. The representation is that the previous contractor would have removed that portion of the foundation that conflicted with the previous timber pile installation. There is no representation that the amount of foundation previously removed would eliminate conflict with new concrete piles to be installed in different positions. Accordingly, it is the DRB's recommendation with regard to Issue 3 that OMCI is not entitled to compensation for additional cost related to a differing site condition.

The Board appreciates the cooperation of all parties and the information presented for review in order to make this recommendation.

I certify that I have participated in all meetings and discussions regarding the issues and concur with the findings and recommendation.

Respectfully submitted,
Disputes Review Board

Ralph Ellis Jr. – Chairman
Jimmy Lairscey – Member
Robert Robertory - Member

Signed for all with the concurrence of all members.

Ralph D. Ellis, Jr.

Ralph D. Ellis, Jr.
Chairman