

Joe Capeletti
DRB Chairman
1895 Merion Lane
Coral Springs, FL 33071

October 7th 2012

Attn. David C. Tinder, PE
1-95 Express Lanes Senior Project Engineer
New Millennium Engineering, Inc.
6101 Orange Drive, Davie, FL 33314

Attn. Anthony Geach
Operations Manager
Hubbard Construction Company
1936 Lee Road #101, Winter Park, FL 32789

RE: I-95 Express Lanes from North of Golden Glades to South of Broward Blvd.

Financial Project ID: 422796-1-52-01 & 422796-2-52-01
State Contract NO: E4K49

Subject: Disputes Review Board Hearing September 20, 2012

Gentlemen,

The Disputes Review Board ("DRB") conducted a hearing September 20, 2012 as requested by Hubbard Construction Company, "DBF/Contractor", July 26, 2012, according to the DRB Guidelines. Hubbard is the Design Build Firm on the referenced contract and requested a formal hearing to resolve four claims regarding entitlement. These claims were outlined in their position papers dated August 31, 2012 as provided to all of the Board Members and New Millennium Engineering, "Department". New Millennium presented their position papers to all parties September 4, 2012.

Hubbard's position papers outlined four claims for entitlement. In Summary:

Claim # 1: Replacement of damaged roadway signs, signal equipment, highway lighting and guardrail as caused by third parties.

Claim # 2: Incident Management and Service Patrol.

Claim # 3: Fuel Spill Clean-Up.

Claim # 4: Routine Maintenance.

Each of the Contractor's claims sought additional compensation for various work activities addressed in the claims, whereas the Department's position was that any compensation due the Contractor for these work activities was already included in the lump sum bid amount.

Hubbard presented each claim separately and New Millennium responded to each issue along with rebuttal from each party and questions from the DRB.

The DRB has met and reviewed the information and presentations given at the hearing and finds as follows.

General Comments

The Owner is Responsible for the Language in the Contract Documents: In cases of conflict, discrepancy, ambiguity, or incorrect/incomplete information in the contract documents, the Board places the weight of responsibility for clarity, completeness, and consistency on the preparer of the RFP, i.e. the FDOT.

Therefore the Board finds:

1. Page v of the RFP states, "The attachments listed in the table of contents are by this reference hereby incorporated into and made a part of this RFP as though fully set forth herein." (Attachments A-Z and AA-FF are listed on page iv and page v of Table of Contents of RFP)
2. Therefore, Division 1 Specifications, 5-2 "Coordination of Contracts Documents... in cases of discrepancy" is no longer a relevant nor useful tool when ascertaining contract language conflicts, as discrepancies within the RFP no longer have a clear contract resolution chain.
3. Therefore, the ***Department's contract is determined to be defective and deficient as it lends itself to unresolvable contradictions and ambiguities,*** creating confusion, and causing the Department and the Contractor to arrive at differing interpretations when attempting to decipher the specific and actual requirements of the contract on the matters that have been presented to the DRB.
4. In that regard, the following claims 1-4 are assessed through this lens.

Claim # 1. Replacement of Traffic Signs, Signal Equipment, Highway Lighting, and Guardrail damaged by Third Parties:

1. The Board rules in favor of the Contractor.
2. Compensation is due the Contractor for replacement of Traffic Signs, Signal Equipment, Highway Lighting and Guardrail damaged by third parties.
3. The Contractor relied upon Section 7-11.4, Attachment K, page 64 of 111 which states (emphasis added), "If the Department determines that damage to such existing installations of traffic signs, signal equipment, highway lighting or guardrail is caused by third party (ies), and ***is not otherwise due to any fault or activities of the Contractor, the Department will, with the exception of any damages resulting from vandalism, compensate the Contractor for the costs associated with repairs.***

Claim # 2. Incident Management Response:

1. The Board rules in favor of the Contractor.
2. Compensation is due the Contractor for deployment costs, for example, additional MOT crews, related to incident management response over and above the 7/24/365 supervisor and the Road Rangers in areas outside the limits of the Contractor's actively current work zones.
3. The Contractor relied upon Section JJ of the RFP, Incident Management and Service Patrol Responsibilities, which states in part (emphasis added), "Incident Management **outside the Design-Build firm's work zones will be the responsibility of the existing FDOT's Incident Management and Road Ranger Contractors(s).** The **Design-Build firm** will be responsible for all activities **within their work zone** from 30 days after NTP until Final Acceptance.
The **Design-Build firm will be responsible for cooperating and coordinating** with FDOT's existing contractor(s) and with the Department's **responsibilities** as identified in the "open roads policy" agreement with FHP. Additionally the **Design-Build** firm shall also provide **two (service patrol "Road Ranger")** vehicles twenty-four (24) hours per day, seven (7) days per week within the project limits to assist the Department's service patrol "Road Ranger" services." The DBF was not by this language replacing FDOT's responsibility in the Open Roads Policy and continues to provide the additional Road Rangers and a Worksite Traffic Supervisor on-call on a 24/7 basis. Any additional MOT should be compensated as addressed in Section 4.16 of Attachment Z of the RFP. It should be noted that the Service Patrol/Road Rangers are subcontractors of the Owner and are not directed by the DBF/Contractor.

Claim # 3. Providing Cleanup Services for Fuel Spills:

The Contractor withdrew this issue during the DRB Hearing.

Claim # 4. Routine Maintenance:

1. The Board rules in favor of the Contractor.
2. Compensation is due the Contractor for deployment costs, for example, maintenance crews, related to Routine Maintenance in areas outside the limits of the Contractor's actively current work zones.
3. The Contractor relied upon Section II of the RFP, Routine Maintenance Responsibilities which states in part (emphasis added), "During the Construction of the I-95 Express Lanes the Design-Build firm shall perform routine maintenance activities for the length of the project in accordance with attachment EE. **The Design-Build firm shall work within defined construction work zones** with the exception of Striping/RPM work,

routine maintenance activities and maintenance of traffic, and will be responsible for routine maintenance from 30 days after NTP until Final Acceptance....

The Design-Build firm shall cooperate fully with the Department's staff, and /or maintenance contractor to allow access to area where the Department is responsible for maintenance activities. In the event that the Design-Build firm can not provide access to an area for routine maintenance (such as mowing, etc.) the Design-Build firm shall be responsible for completing the maintenance activity...

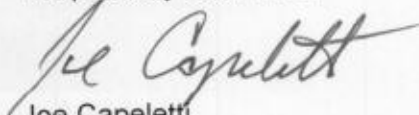
All damage anywhere caused by the Design-Build firm will be the Design-Build firm's responsibility for repair."

4. Therefore **Section II contains contradictory language within itself by first stating the Contractor shall be responsible for routine maintenance activities for the length of the project and then stating that the Department will perform routine maintenance (such as mowing, etc.) provided it has access.**
5. The statement, "In the event that the Design-Build firm cannot provide access to an area for routine maintenance (such as mowing, etc.) The Design-Build firm shall be responsible for completing the maintenance activity", contradicts attachment EE, "I-95 Express Lanes Design-Build Firm Maintenance Responsibilities during Construction."

Closing

The recommendations of the DRB are the unanimous opinion of the members of the Board.

Respectfully submitted,



Joe Capeletti
DRB Chairman