



DRB Recommendation

Ranger Construction Industries, Inc. vs. FDOT District Four

**I-75 Express Lanes-Segment D
(From South of Sheridan Street to North of Griffin Road)**

FDOT Project No. 421707-5-52-01
Federal Aid Project Number: 0754-177-I
Contract No. E4P08
County: Broward County

Date and Time of Hearing: November 21, 2016 from 10:00 a.m. to 3:30 p.m.

DRB Issue: **Whether there is entitlement to additional payment for the lighting conductors within the future pole locations in Segment D of the I-75 Corridor Express Lanes Project.**

Project Information

Type: **Design-Build** DBF: Ranger Construction Industries with Wantman Group Inc.

Date of Award: May 6, 2014 Original Contract Amount: **\$80,437,734.08**

Original Duration: **850 days**

Scope of Work: I-75 Express Lanes-Segment D from South of Sheridan Street to North of Griffin Road

Members of the Dispute Review Board:

Robert Cedeno, P.E., Esq., Chairman
Ronnie Klein, Member
Bill Deyo, P.E. Member

Location of Hearing: 2200 North Commerce Parkway,
Suite 300, Weston, FL 33326

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1.0 BACKGROUND

1.1 The Dispute

Ranger Construction Industries (RCI) with the Wantman Group Inc. (the “Design-Build Firm” or “DBF”) entered into a design-build agreement (the “Contract”) with the Florida Department of Transportation – District IV (the “FDOT” or the “Department”) on 05-06-2014. This type of Contract contained an expansive design component to accommodate future light poles and luminaires, which obviously does not exactly mirror the contemporaneous construction component. The original Contract amount was \$80,437,734.08 and original Contract duration was 850 days. The purpose of the Contract was for the design and construction of the I-75 Express Lanes Improvements to be constructed within the existing 166-foot wide median generally consisting of a barrier wall divided 4-lane tolled roadway (two 12-foot travel lanes in each direction), with 6-foot paved inside shoulders, and 12-foot outside shoulders (the “Project”). The Project also includes the reconstruction of the Sheridan Street Interchange, along with several other improvements of I-75.

The lighting scope of work included the installation of a fully operational conventional lighting system for most of the Project. However, “[t]he Design-Build Firm [was also required to] construct a complete conventional lighting system (except light poles and luminaires) to light the proposed Express Lanes between Sta. 697+00 and Sta. 738+00 along I-75 per FDOT Design Standards Index Nos. 17515 and 21210.”

1.2 DRB Responsibility

The Board's recommendation is based on its reading of the Contract, the Position Papers submitted by the Parties, the Rebuttal Statements, the PowerPoint Presentation, CPAM References 4.1.4 (Role of the Consultant CEI) and 7.3.14 (Executing and Processing Supplemental Agreements) and the information gleaned (review of the full size Lighting Roll Plots with the accompanying pole data and service point tables, Notes made on the White Board in the hearing room, the RFCs, and the Specifications regarding the Coordination of Contract Document) during the course of a one day hearing held at 2200 North Commerce Parkway, Suite 300, Weston, Florida 33326 on Monday November 21, 2016, commencing at 10:00 a.m. and ending around 3:30 p.m. which included several independent caucusing sessions by the Parties. The Board met immediately after the hearing and conferred again after supplemental information was provided by FDOT on December 1, 2016 (the DBF on December 2, 2016 had no further responses to offer), to

reconcile, distill and crystalize this recommendation.

2.0 ISSUE IN DISPUTE

As adopted by the Parties from the Design-Build Firm's email dated July 29, 2016:

The issue is whether there is entitlement to additional payment for the lighting conductors within the future pole locations in Segment D of the I-75 Corridor Express Lanes Project.

3.0 SUMMARY OF THE PARTIES' POSITIONS

3.1 Summary of the Design Build Firm's Position

The RCI Team (RCI/WGI/PDE) allegedly did not include any of the power distribution items (which includes lighting conductors, load centers, and the pole cable distribution system) as part of the bid for the future light poles, which the FDOT has now elected to add to the I-75 Segment D project, as per Section O of the RFP. The Segment D RFP was modified to include a sentence that is inherently contradictory by calling for a "complete conventional lighting system", yet as "per FDOT Design Standards Index Nos. 17515 and 21210" only foundations, conduit, and junction boxes were required for the construction phase without the conductors for which payment for such is at issue.

3.2 Summary of the Department's Position

The Department's position is that the complete conventional lighting system referenced in the RFP includes the installation of the conductors and no separate payment should be made for the conductors as requested by the DBF. RFP Section VI Design and Construction Criteria O. Lighting Plans – Page 75 of 91 bullet # 7 on page 75 of 91 states that: (1) the only items excluded in this section of the Request For Proposals ("RFP") are limited to the light poles and luminaires; (2) conductors are part of a complete conventional lighting system and are not excluded in the RFP. The inclusion of the conductors in the lighting component Roll Plot clearly portrays the DBF understood the intent of the RFP. The FDOT Design Standards Indexes mentioned in the RFP are relevant to the design the Department expected for future lighting as well as other FDOT Design Standards Indexes not expressly stated. Furthermore, there is no specific FDOT Design Standard Index for the conductors, which is the only item in question.

3.3 Summary of the Design Build Firm's Rebuttal Statement in Pertinent Part

If the FDOT Design Standard Indexes mentioned (17515 and 21210) are relevant to the FDOT's expectations for the future lighting, then it is obvious that they were not expecting to have load centers as part of RFP Section VI (O), Bullet #7, pg. 75 of 91, which is an integral part of a complete conventional lighting system. The reason the DBF arrive at this conclusion is because there is a specific FDOT Standard Index, 17504, which covers the load center. Accordingly, one cannot expect to provide conductors unless you specify that load centers (from where conductors originate) are a requirement. The FDOT did not include Index No. 17504, and FDOT also did not question the exclusion of the Pole Cable Distribution System ("PCDS"), which is also another integral part of a complete conventional lighting system. Such exclusions introduce quite a bit of confusion as to understanding what FDOT meant by "a complete conventional lighting system" because a PCDS is also an integral part of any "complete conventional lighting system."

On the other hand, qualification of the future lighting construction as per Index Nos. 17515 and 21210 is allegedly objective and undisputable. The FDOT references verbiage from Article 715-1 of the 2014 Standard Specifications, and related components to provide as part of a Highway Lighting System. This Article of the Standard Specifications is a general description, and the Specifications themselves are the lowest priority in terms of the Governing Order of the Contract Documents, as per Article 5-2 under Control of the Work (Section 5). The introduction of ERC Comment 603, is the first instance when the DBF was confronted with the FDOT's desire to have load centers and conductors included for the future poles. Yet that doesn't change the fact that the RFP's requirements were clear, and that conductors were not called for due to qualification of the construction of the future light poles only as per Index Nos. 17515 and 21210. Hence, there is allegedly entitlement to payment for the conductors at issue for the future lighting poles and luminaires.

3.4 Summary of the Department's Rebuttal Statement in Pertinent Part

The RFP language is clear, it calls for "*a complete conventional lighting system (except light poles and luminaires).*" A complete conventional lighting system is defined in 2014 FDOT Standard Specification Section 715 to include the cable (i.e. Conductors) and the material requirements of a complete conventional lighting system are found in 2014 FDOT Standard Specification Section 992.

A Design Standard Index does not exist exclusively for conductors. As with any design, all pertinent FDOT Standard Indices apply whether called out or not; therefore not including Index No. 17504 and other Indexes in the RFP language at issue does not indicate

the power distribution system is excluded. During the review of the DBF's Technical Proposal (prior to bid) the Department concluded the DBF understood the Lighting System RFP requirements which is demonstrated by the DBF including conductors in the conduits in the Lighting Roll Plot Legend. The Technical Proposal Lighting Roll Plot is a demonstration that the DBF understood, at the time Segment D was bid, the RFP requirements to provide a "complete conventional lighting system." Comment #603 is from a review performed for Segment C and not for Segment D which is at issue. The ERC reviewer (who also subsequently approved the RFCs) has no authority to change the Contract. These comments and subsequent responses were done post bid and therefore are not relevant. The RFP did not exclude the power distribution system; therefore, the power distribution items are required to be included in the DBF design and bid. Hence, there is allegedly no entitlement to payment for the conductors at issue for the future lighting poles and luminaires.

4.0 CONTRACT REQUIREMENTS

The Board finds the following contractual requirements to govern the matter at issue. The parts of the Contract to follow are excerpts in pertinent parts.

4.1 RFP Section VI Design and Construction Criteria O. Lighting Plans

RFP Section VI Design and Construction Criteria O. Lighting Plans – Page 75 of 91 bullet # 7 on page 75 of 91 ("RFP Section VI") states the following:

"The Design-Build Firm shall construct a complete conventional lighting system (except light poles and luminaires) to light the proposed Express Lanes between Sta. 697+00 and Sta. 738+00 along I-75 per FDOT Design Standards Index Nos. 17515 and 21210. The Department plans to install light poles and luminaires within these limits at a future date." [Emphasis added].

4.2 The DBF Technical Proposal Lighting Roll Plot Legend

The DBF Technical Proposal Lighting Roll Plot Legend Description of the line symbol (-----) states as follows:

"2 - 2" SCHEDULE 80 PVC CONDUITS (IN BARRIER WALL) WITH THWN-2 CONDUCTORS INSIDE (CONDUIT AND CONDUCTOR INSULATION AS SHOWN ON THE PLAN SHEETS[ROLL PLOT]) INSIDE CONDUIT WITH OTHER

CONDUCTORS. COST IS INCIDENTAL TO CONSTRUCTION OF BARRIER WALL.”
[Emphasis added].

4.3 2014 FDOT Standard Specification 715 Highway Lighting System

2014 FDOT Standard Specification Section 715 Highway Lighting System (“FDOT Spec. 715”) states as follows, in material part:

“Install a highway lighting system in accordance with the details shown in the Plans. Use pole assemblies as shown in the Design Standards when standard aluminum pole assemblies or standard high mast light assemblies are required by the Contract Documents. Include in the system the light poles, bases, luminaires, ballasts, **cable**, conduit, protective devices, and control devices; all as specified or required for the complete facility.”
[Emphasis added].

4.4 RFC Lighting Plan Sheets L-3 (Legend), L-18 and L-19 (Lighting Plan)

The Pole Data and Legend, RFC Sheet L-3 (provided at the hearing), and the Lighting Roll Plot (explained by both Parties in detail at the hearing) has the identical description for the line symbol at issue. Likewise, in pertinent part, the other two sample RFC Sheets (also provided at the hearing), L-18 and L-19, (impliedly compliant with the Contract) depict the same line symbol (-•••-) used on Lighting Roll Plots with labels of “*PULL WIRE*” between future light poles and labels to “*INSTALL FOUNDATION & PULL BOX...*” at the location of future light poles. Additionally, at the termination of the proposed lighting system and the commencement of the future lighting system the RFC Sheet (L-18) is labeled “*NO CONDUCTORS BETWEEN POLES E58 & F1. PROVIDE PULL WIRE.*” Elsewhere on the RFC Lighting Plan Sheets there are specific labels of conductor quantity and size along with the appropriate ground wiring (e.g. “*2-#4, 1-#6 GR*”) for the same line symbol.

5.0 ANALYSIS OF FACTS AND THE CONTRACT

5.1 Uncontested Pertinent Facts at the Hearing

The FDOT did not have its lighting design engineer present at the hearing to either agree or to refute the DBF’s lighting engineer’s contention placed as Notes on the White Board in the hearing room that a complete lighting system consists of six (6) elements (bolded below) under FDOT Spec. 715 as follows:

1. **Pull Boxes/Junction Boxes**—included per Index Nos. 17515 and 21210;
2. **Conductors**—at issue and not depicted on the Lighting Roll Plots when read together with the Pole Data and the Service Points Tables which accompany these Roll Plots. However, conductors are depicted for future use design purposes on the RFCs while correspondingly called out only for “*PULL WIRE*” on the Lighting Plan Sheets used for construction purposes;
3. **Conduits**—not at issue and included per Index Nos. 17515 and 21210 with pull wire inside where applicable on the RFCs;
4. **Light Poles with Luminaires**—not at issue and there is entitlement to extra payment which is presently being negotiated for Segment C and Segment D;
5. **Pole Cable Distribution System**—being negotiated presently in Segment C but not contested by FDOT in its Position Paper, Rebuttal Statement or at the Hearing as being part of the “complete conventional lighting system” for which the DBF should also provide by contract based on FDOT’s stated position; and
6. **Load Centers**—not at issue as the lighting design under the RFC utilizes the proposed load centers to service the contemplated future lighting system F1 through F13 with F14 to F15 utilizing the proposed conductors for design efficiency of the future lighting system.

By way of supplemental information after the hearing, FDOT’s CEI and electrical engineer provided, by email, an interpretation of what represents the typical procedure when there is no reservation in an RFP via particularized requirements that include scope exclusions. However, the RFP here does include scope exclusions to “construct a complete conventional lighting system (except light poles and luminaires)” “per” specifically referenced Indexes, which define what is to be constructed for a limited section of roadway that caters specifically for future lighting scope of work, and a corresponding typical procedure for evaluation of a Technical Proposal. Indexes Nos. 17500, 17501, and 17504 were also referenced in the string of emails but these were never listed to be constructed for RFP Section VI Design and Construction Criteria O. Lighting Plans – Page 75 of 91 bullet # 7 on page 75 of 91 (“RFP Section VI”) which is at the core of the issue.

5.2 Key Findings of Fact by the DRB

The Department's contention, based on a cursory reading of the legend, that the construction scope includes conductors as portrayed by the lighting component Roll Plot is misplaced when read in conjunction with the Pole Data and Service Point Detail Tables in the Technical Proposal. Hence, there is no portrayal from the designed Roll Plots that the DBF understood the intent of the RFP construction scope of work to include the conductors at issue. Furthermore, FDOT's interpretation of "a complete conventional lighting system" as depicted under FDOT Standard Specification 715 to justify the inclusion of conductors while excluding light poles and luminaires from the construction scope of work, fails to consider the PCDS (and arguably the load centers) thereby vitiating the apparent absolute interpretation of "a complete conventional lighting system."

The Design-Build Firm rightly contends that other FDOT Standard Indexes besides those specified by the RFP for the lighting system were available which would clearly define more than just the underground infrastructure was required, specifically, Index No. 17504. Index No. 17504 and others (17500 and 17501) identified by the FDOT's CEI and electrical engineer, which relates to the load center, service point, and conductors should have been clearly listed to avoid falling under the construction scope exclusion of the RFP, if conductors were intended to be included in the construction scope of work. Alternatively, in order to avoid this ambiguity, no FDOT Standard Index should have been used to define the construction scope of work for future lighting scope contemplated under RFP Section VI Design and Construction Criteria O. Lighting Plans.

5.2 Contractual Framework Analysis

The construction scope of the lighting work, as opposed to the design scope for the lighting scope of services, was limited by the following governing provision of the RFP previously quoted herein as follows:

The Design-Build Firm shall **construct** a complete conventional lighting system (except light poles and luminaires) to light the proposed Express Lanes between Sta. 697+00 and Sta. 738+00 along I-75 **per** FDOT Design Standards Index Nos. 17515 and 21210. The Department plans to install light poles and luminaires within these limits at a future date. [Emphasis added].

The expansive design scope of services to accommodate these future light poles and luminaires did not impute the same expansive construction scope of work because the

directive of the provision was to **construct** such per an exhaustive listing of certain Indexes cited above. Specifically, the foregoing provision represents a clear scope exclusion not to construct light poles and luminaires, and further the construction of the lighting system was specifically limited to that between Sta. 697+00 and Sta. 738+00 along I-75 **per** FDOT Design Standards Index Nos. 17515 and 21210. In other words, while the design of the lighting system had to be more expansive to responsibly accommodate the entire future lighting system, the actual construction that was required to be performed by the Design-Build Firm was within a more constricted scope in accordance with the RFP **per** FDOT Design Standards Index Nos. 17515 and 21210.

FDOT Design Standards Index No. 17515 for the most part pertain to steel foundation plates for the lighting systems along with transformers, and conduit in the median, and therefore expressly excluded the provision of wiring details with conductors. So too, does Index No. 21210, exclude the provision of conductors, and deals for the most part expressly with the installation of conduits omitting any reference to the installation of conductors.

Notwithstanding, the crux of the dispute centers around the evident disconnect of what was to be **constructed** as defined by the word “complete” in the phrase “complete lighting system” as qualified in the RFP Section VI. by the words “per FDOT Design Standards Index Nos. 17515 and 21210.”

5.3 Established Facts Applied to the Contractual Framework

The Board holds that the express provisions of the RFP, quoted herein, controls this dispute; namely, RFP Section VI. Accordingly the facts of the current dispute are governed by RFP Section VI., which takes precedence over the FDOT Spec. 715. The Department incorrectly uses the lower governing order of documents in FDOT Spec. 715 to supplement, interpret, and include what is expressly and impliedly excluded from the construction scope by the higher governing order of the RFP instruction to “**construct** a complete conventional lighting system (except light poles and luminaires)... **per** FDOT Design Standards Index Nos. 17515 and 21210.” [Emphasis added]. However, RFP Section VI., is not ambiguous as to what is called for during construction within that controlling provision of the Contract. The following controlling portion of RFP Section VI., is emphasized for interpretive purposes in reconciling what is meant by the word “complete” within the phrase “complete conventional lighting system” in the context of the disputed inclusion of conductors in the construction scope of work as mandated by the RFP.

The Design-Build Firm shall **construct** a complete conventional lighting system (except light poles and

luminaires) to light the proposed Express Lanes between Sta. 697+00 and Sta. 738+00 along I-75 **per FDOT Design Standards Index Nos. 17515 and 21210**. The Department plans to install light poles and luminaires within these limits at a future date. [Emphasis Added].

RFP Section VI speaks of the construction of a complete lighting system (except light poles and luminaires) as per specifically expressed Indexes. Therefore, by excluding light poles and luminaires, the RFP Section VI expressly excludes the construction of an entire functioning lighting system under FDOT Spec. 715, and the expression “as per” along with the exhaustive listing of Index Nos. 17515 and 21210, implies the exclusion of any other Indexes besides Index Nos. 17515 and 21210, for a constructed lighting system that is complete in accordance with Index Nos. 17515 and 21210 as Black’s Law Dictionary, Seventh Edition, Page 1156 defines “per” to mean “[i]n accordance with the terms of[,] when used in the contractual context.

Sound canons of contractual construction (correspondingly, contract interpretation) are applicable to this dispute. Specifically, nothing is to be added to what the text states or reasonably implies, that is, a matter not covered is to be treated as not covered; and, the specification of one thing implies the exclusion of others. As applied to the present dispute, these canons of contractual interpretation mean that the RFP *construction* scope for the Lighting System work in the section designated for future lighting shall be solely in accordance with the exhaustively listed Index Nos. 17515 and 21210, to the exclusion of any other unmentioned FDOT Indexes that were not specifically covered by RFP Section IV., even if the *design* element scope of services for the lighting system was more expansive in order to be responsive to the RFP’s requirement for future construction of a complete conventional lighting system. Therefore, the fact that the Roll Plot *design* of the DBF Technical Proposal may have been more expansive than the *construction* that was called for by the RFP, is not controlling on the outcome when it comes to what was to be actually constructed by the DBF for the provision of the *construction* lighting scope of work.

If the intent of the RFP Section VI. for the construction of the lighting system entailed the provision of conductors, then Index Nos. 17500 and/or 17504 would have been included as a matter specifically covered in RFP Section VI., or conversely, there would have been no Index specifications included and, the guidelines of FDOT Spec. 715 would be instructive as to what would need to be included for the construction of a “complete lighting system.” The Board cannot insert into any provision of the RFP what was omitted or to interpret a construction of the provision that is expressly or impliedly excluded.

6.0 RECOMMENDATION

6.1 Recommendation Background

The Board's primary task in issuing this recommendation is determining the Design-Build Firm's entitlement to additional payment for the lighting conductors within the future pole locations between Sta. 697+00 and 738+00 along the I-75. The Board was called upon to make this recommendation pursuant to an e-mail dated July 29, 2016, where the Department quotes from the following Issue Statement presented by the Design-Build Firm:

“the FDOT has elected to add the future light poles to the project as outlined in in Section O – pages 74 and 75 of 91 of the RFP documents. A DRB hearing is hereby requested to resolve a dispute over entitlement for additional payment for the lighting conductors within the future pole locations.”

The Board first reviewed and analyzed the Parties' respective Position and Rebuttal Statements as supplemented at the hearing after which the Board heard and analyzed the entirety of the Parties' respective positions as put forth at the Hearing, and subsequently, the Board jointly finalized its recommendation that forms the subject matter herein.

6.2 Conclusion

The Board finds the following in regards to the final disposition of the first settlement issue:

The design scope of services and the construction scope of work called for by the RFP are not synonymous, as such the design element does not automatically entail construction work commensurate with the design. RFP Section VI., expressly excludes the construction of a complete lighting system under FDOT Spec. 715 with among other things, conductors, and the specification for construction in accordance with the terms of the exhaustively listed Indexes, unrelated to conductors, impliedly excludes the provision of conductors for the Lighting System construction scope of work.

Therefore, the Board recommends entitlement in favor of the Design Build Firm.

This Recommendation is the unanimous decision of the members of the Dispute Review Board.

Submitted by and for:

Date of Recommendation: December 2nd, 2016



Robert Cedeno, P.E., Esq.

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