



Clarification of 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.

Date of Clarification: December 14, 2016

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

1.0 BACKGROUND FOR THE CLARIFICATION

1.1 The Pertinent Background Stated Verbatim From DRB’s Recommendation

The pertinent background as highlighted from the DRB’s Recommendation is stated verbatim as follows: “This type of [Design-Build] Contract contained an **expansive design component** to accommodate future light poles and luminaires, which obviously **does not exactly mirror the contemporaneous construction component [because of RFP Section VI]** .” [Emphasis Added]. As a result of this, the design component for the lighting system did not mirror exactly the construction component as is the case in most other design-build contracts.

1.2 Procedural Background Leading Up To Clarification

The Board issued its Recommendation on December 2, 2016, stating entitlement in favor of the DBF, based on the requisite contractual interpretation in light of the reconciliation, distilling, and crystalizing of the facts and the record that was presented by the Parties. The Board recommendation was based on the facts and the record as presented by the Parties using its “specialized expertise” as required by the DRB Operating Procedures, Section 1.2. There was never any new information presented by the Parties or incorporated into the Board’s Recommendation.

Subsequently, by letter dated December 13, 2016, the Department wrote with reference made to a “Request for Reconsideration of the DRB Recommendation (Issued on December 2, 2016).” Whereby, the Department makes the following request, which is now addressed by this clarification: “The Department respectfully requests clarification of new information on what was assumed to be agreement on factual matters contained within the recommendation that were not introduced during the Hearing.”

2.0 CLARIFICATION

2.1 DRB Operating Procedures Article 8 – Reconsideration of DRB Recommendations

The applicable DRB Operating Procedure for this clarification is stated at Article 8 of the DRB Operating Procedures which states as follows:

8.1 Although both parties should place weight upon the recommendations of the DRB, they are not binding. Either party may appeal a recommendation to the DRB for reconsideration. Reconsideration should **only** be considered when there is **new information** to present or what was **assumed to be agreement** on factual matters turns out to be **incorrect**, and clarification is needed. However, reconsideration should be the exception, not the rule. Rearguing the same issue on the same facts is not productive.

8.2 When the DRB is of the opinion that a request for reconsideration or clarification is meritorious and will likely lead to resolution of the dispute or claim by the parties, it will honor that request. Usually, an additional hearing is not needed. The DRB reviews any new information together with commentary from the parties and, if necessary, prepares a revised recommendation or **clarifies its recommendation** in response to the matters raised. [Emphasis Added].

Emphasis is added to the fact that a reconsideration is only considered when there is new information to present or what was assumed to be in agreement on factual matters turns out to be incorrect, and clarification is needed. The Board has determined there has been no new information introduced by the Parties or considered by the Board at any time before, during, or after the issuance of the Board’s Recommendation. Additionally, there was no assumed agreement on factual matters that turned out to be incorrect. Therefore, there is no need for a reconsideration of the recommendation, however, the Board believes as the Department believes that this clarification of the Board’s Recommendation is necessary and will likely lead to resolution of the dispute, so the Board offers the following clarification below.

2.2 Clarification of the DRB’s Recommendation

The Department highlights the following misinterpretation of the Contract Documents in its request for reconsideration: “The Technical Proposal which includes the Roll Plot is a binding Contract Document and controls the construction effort.” The foregoing point emphasized by the Department does not represent any new information, it is a misinterpretation of the Contract Documents, and was never assumed to be in agreement by the Parties or the Board. In fact, the Board’s statement that the “[r]oll Plot design of the

DBF Technical Proposal...is not controlling on the outcome...” means that the Contract Documents must be read as a whole and the Technical Roll Plot does not solely control the construction effort, in this unique form of design-build contract, it must be read in context with all of the Contract Documents, and namely the: (1) Service point tables introduced at the Hearing; and (2) the express Scope of the construction work, which was restricted by the RFP as per the specified indexes Nos. 17515 and 21210 outlined therein.

Additionally, the Department requests further clarification on the following: “The design scope of the services and the construction scope of work called for by the RFP are not synonymous, [because the scope of the construction was restricted by RFP Section VI], unlike other design-build contracts where the design scope completely mirrors the construction scope, because usually there is no component for incorporating future [lighting system] elements into the project.” However, as previously explained, **this design-build contract was unique as the scope of the design was more expansive, than the restricted contemporaneous construction effort, to cater for the future construction** of the complete lighting system. [Emphasis Added].

2.3 Conclusion

Therefore, the Board’s Recommendation of entitlement in favor of the Design Build Firm as to the final disposition of the first settlement issue stands.

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 [**because in this particular design-build contract the scope of the construction work was restricted by RFP Section VI**]. Specifically, 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.
Bill Deyo, P.E.
Ronnie Klein

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