

REGIONAL DISPUTE REVIEW BOARD

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Halley Engineering Contractors, Inc.

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July 12th 2017

CLAIM FOR ADDITIONAL COMPENSATION FOR THE OFF-DUTY TRAFFIC CONTROL OFFICERS

CONTRACTOR: HALLEY ENGINEERING CONTRACTORS, INC. (HEC)
FINANCIAL PROJECT No.: 437503-1-52-01
CONTRACT No.: E4R68
COUNTY: BROWARD

Halley Engineering Contractors, HEC, requested the Regional Dispute Review Board hold a hearing to determine entitlement for compensation on a claim filed on the above project. **"The question presented is whether HEC is entitled to compensation for the use of Off-Duty Law Enforcement Officers on the Project".** HEC

Project Information: "The I-75 Northbound Lane Balancing Project (FPID No. 437503-1-52-01) was let on July 1, 2016. Halley Engineering Contractors, Inc. (HEC) was the low bidder. The improvement implemented for this project was to improve traffic capacity and reduce delays at the I-75/I-595/Sawgrass Expressway Interchange by reconfiguring movements along NB I-75 and the NB Sawgrass Expressway and EB I-595 exit ramp. Improvements to mitigate the congestion include extending the NB I-75 inside and outside auxiliary lanes and reducing the number of NB I-75 lanes at the Sawgrass Expressway/I-595 exit ramp gore from 3 lanes to 2 lanes. Roadway improvements, approximately 1.1 miles in length, consisted of milling, resurfacing, overbuild, widening and new ITS & Sign Structures". FDOT

The RDRB hearing was held June 29, 2017 at Target Engineering's office. A sign in sheet is attached. HEC presented their position followed by the FDOT with rebuttal from both sides. Both parties appear to agree on the following.

Early in the project HEC informed TEG of their work plan and the need for law enforcement, FHP traffic control officers to be provided as per the NON Bid pay item 099-102 listed in the Summary of Pay Items. TEG after discussion with FHP informed HEC that FHP could not guarantee officers for the duration of the shifts that they were being requesting. HEC notified TEG that this was not acceptable and would hire FHP officers to insure proper continuous coverage and safety. HEC filed a NOI stating that they would seek compensation. TEG

acknowledged the NOI, stated that they felt there was no entitlement for payment and both parties proceeded to monitor the use of FHP officers for the duration of the project. Both parties stated in the hearing that FHP officers were not over used.

HEC's position paper and presentation at hearing is that:

1. *Pay item 0999-102 Pay Item; Speed & Law Enforcement Officer, State Furnished, District Contract; 912 MH; Non Bid Item*, was listed on Sheet No. 4 Proposal Summary of Pay Items.
2. Other than the listing there is no other definition, explanation, or clarification in the Contract documents as to the use of the pay item, i.e. Special Provisions, Technical Special Provisions, Plans, Design Standards, Developmental Specifications, Supplemental Specifications, and Standard Specifications.
3. HEC referenced FDOT's Basis of Estimates manual regarding Pay-Item 999-102-2. The Basis of Estimates for FDOT Pay-Item 999-102-2 provides in part as follows:
 1. *This item is used by the Construction Engineer to provide uniformed traffic control officers, including marked law enforcement vehicles, to assist in controlling speed and enforcing traffic laws in the work zone. **Officers should be actively involved in either directing traffic or reducing speeding and traffic violations present in our work zones***

When referencing FDOT's Plans Preparation Manual (PPM), the following is provided regarding the use of law enforcement services and the use of SLEOs:

10.14 Law Enforcement Services

Work zones may require law enforcement services to protect both the workers and motorists during construction or maintenance activities. Evaluate the need for these services during the development of the TTC plans. The service needed must involve a Speed and Law Enforcement Officer for speed and traffic enforcement, a Traffic Control Officer for traffic control, or a combination of the two.

FDOT and the Florida Department of Highway Safety and Motor Vehicles (DHSMV) have a contractual agreement for the use of Speed and Law Enforcement Officers (Central Office Statewide Contract) to exclusively enforce the speed limit in specified work zones (see Contract #BDT99). Each district may enter into their own contractual agreements with local law enforcement agencies to provide additional resources for the use of a Speed and Law Enforcement Officer (District Contract).

Use Traffic Control Officers for traffic control only as described in Specification 102. Acquire the Traffic Control Officer from local law enforcement agencies or the Florida Highway Patrol. Do not use such traffic control law enforcement

services for patrolling or speed enforcement.

10.14.1 Use of Speed and Law Enforcement Officers

Conditions to evaluate the use of Speed and Law Enforcement Officer include, but are not limited to:

- 1. A work zone requiring reduced speeds*
- 2. Work zones where barrier wall is used adjacent to through traffic*
- 3. Night time work zones*
- 4. A work zone in which workers are exposed to nearby high speed traffic.*

Halley further argued that all four of the conditions outlined above, in 10.14.1, existed on the project.

Based on the information provided at bid HEC relied on the 099-102, NON Bid Item/FDOT to provide Law enforcement Officers as need and did not include any money for this in their MOT Pay Item 102-1.

FDOT's argument at the hearing and in their position papers was as follows.

HEC originally requested FDOT pay for the use of off duty FHP officers hired by HEC under Pay Item 102-14. FDOT responded that Pay Item 102-14 did not exist on the contract and there was no funding available FDOT further stated that the use and payment of the off duty officers should have been covered under Item 102-1, as per FDOT Specifications, Section 102-1 Description, HEC is responsible for the following:

“Maintain traffic within the limits of the project for the duration of the construction period, including any temporary suspensions of the work. Construct and maintain detours. Provide facilities for access to residences, businesses, etc., along the project. Furnish, install and maintain traffic control and safety devices during construction. Furnish and install work zone pavement markings for maintenance of traffic (MOT) in construction areas. Provide any other special requirements for safe and expeditious movement of traffic specified in the Plans. MOT includes all facilities, devices and operations as required for safety and convenience of the public within the work zone.”

Do not maintain traffic over those portions of the project where no work is to be accomplished or where construction operations will not affect existing roads. Do not obstruct or create a hazard to any traffic during the performance of the work, and repair any damage to existing pavement open to traffic.

Include the cost of any work that is necessary to meet the requirements of the Contract Documents under the MOT pay item, when there is not a pay item provided.”

The FDOT further argues that: “This “Do Not Bid” pay item in the contract clearly establishes that HEC has no role in scheduling of Off Duty Officers to direct traffic and enforce speeding in

the work zone. Upon execution of this contract, FDOT initiated an internal work order with the Florida Highway Patrol (FHP) to provide the above noted services. A total of 312 man hours was allocated and expended by FDOT as part of the I-75 Northbound Lane Balancing Project”.

Both HEC and FDOT agreed at the hearing that Item 102-14 does not apply to this project.

FDOT conclusion, in part: “The Contract and Specifications have clearly separated the intent and use of these two distinctly different pay items. The Pay Item No. 999-102-2 is a “Do Not Bid” pay item in the contract”. “ Per the Contract Documents, FDOT has neither made any misrepresentation as to the clarity of pay items nor requested HEC to bid on the Pay Item Number 102-14. It appears that the basis of HEC’s claim is the performance of FHP. The Contract does not provide HEC any authority over FHP. HEC is not authorized to unilaterally make substitutions of pay items to serve its own means and methods of operation.”

Regional Dispute Review Board conclusion:

1. The failure of the Department to include specific direction, a clear one-way-street, towards the use of the speed and law enforcement officer, created pre-bid uncertainty.
2. The Department, the drafting party, is in the best position to put what it truly means into the contract. Thus, any uncertainty in the Contract, which the Department drafted, is interpreted against it.
3. HEC’s interpretation of the project-specific use of law enforcement officers furnished by the Department was founded on the Basis of Estimates Manual and the Plans Preparation Manual.
4. HEC’s interpretation is reasonable and HEC relied on its reasonable interpretation in submitting its bid.

RDRB Decision

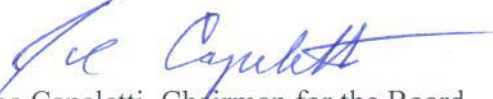
As to the question: Is HEC entitled to compensation for the use of Off-Duty Law Enforcement Officers on the Project? **The Regional Dispute Review Board finds HEC is entitled to compensation for the use of Off-Duty law Enforcement Officers on the Project.**

During the Hearing the Board was provided copies of the Special Provisions Titled **8-13.1 “Bonus” Payment and Waiver of Contractor Claims. (REV 4-12-06) (FA 4-25-06) (1-07)**

This reads in part on page 24 (3) that “ The determination of the Disputes Review Board as to any such 5-12.3 claims will be fully binding on both the Department and the contractor, with no right of any kind of challenge, review or appeal, in any forum, by either party”.

The same language is included in 8-13.2 Incentive-Disincentive, (REV 2-9-06) (FA 4-25-06) (1-07) on page 27 (3).

The above decision was unanimous.



Joe Capeletti, Chairman for the Board
James Guyer, Member
Geoff Waite, Member

July 12th, 2017

Via: Email
 U.S. Mail