

## RECOMMENDATION OF REGIONAL DISPUTE REVIEW BOARD

Dispute No. 1

District IV

Hearing Date: December 11, 2019

Contractor: Carr Construction LLC

FDOT FPID # 432883-3-52-01 & 432883-3-52-02

Contract No.: T4496

Palm Beach Country SR-706 Indiantown Rd. ATMS Project

**DISPUTE:** Is the Contractor entitled to compensation for both Lighting Conduit Directional Bore Item (FPID 432883-2-52-02 – 630-2-12- Lighting and Signal/ITS Conduit Directional Bore Item FPID 432883-2-52-01-630-2-12-Signal/ITS) when they are installed in a single bore path.

**BACKGROUND:** At approximately 11 AM the Chairman of the Board, Geoff Waite, opened the hearing, greeted the attendees and encouraged both parties to resolve all issues among themselves at the lowest level. The RDRB had received a written request for a hearing by Carr Construction who provided an issue statement outlining the dispute/claim and describing entitlement to the dispute/claim. This claim was in compliance with 5-12.3 and was accompanied by a summary of the issue on which the claim was based. After receiving a copy of this issue statement, the Department submitted their issue statement. Subsequently both parties submitted full position papers and rebuttals.

It was then noted that in both the position papers and rebuttals presented by both parties that there were numerous issues regarding proper and customary construction administration procedures, additional costs incurred and definitions of various pay items. The Chairman asked if it was the intent of the parties that the Board address all these items. Both parties agreed that it was their intent in calling for this hearing that the Board address only the single issue as stated.

**DISCUSSION:** The Board listened to the presentation of the issue from both parties; which is covered in great detail in both the position papers of both the Contractor and the CEI. Upon questioning both sides by the Board the following facts were established:

- The disputed compensation involved signal and lighting installations at only three of thirteen intersections in the contract. The other 10 were installed satisfactorily and compensated with no residual issues to either party.

- Although exact costs have not yet been tallied, estimated withheld costs for the disputed installations amount to approximately \$14K per plan and \$16K per final installation utilizing existing conduit directional bore pay items and other additional costs incurred amounting to approximately \$8k for additional conduit installed by trenching, pull boxes, etc. due to the contractor's unauthorized work in relocating the conduit at the three disputed intersections. The Contractor has offered to withdraw some unspecified extra costs incurred as a result of their unilateral actions.
- At the 3 intersections the Contractor installed signal and lighting conduit in different locations from plan location for his own convenience, contrary to specific direction from the Department, and in so doing not only added costs to the installation for the Department while reducing construction costs for himself, but created significant bookkeeping difficulties for the Department in tracking and accounting for the expenditure of contract funds from multiple sources.
- Notwithstanding the additional physical and accounting costs, the finished installations are functionally operational, technically correct and completely satisfactory to both the Department and to the operational entities to whom they will be delivered upon completion of the contract.

The Department's objections to payment for the Contractor's installation of the lighting conduit in the same directional bore path as the Signal/ITS's are based upon three sections within **Specification 630 CONDUIT**

1. **Specification 630-3.1 General:** "...obtain the Engineer's approval for all major deviations in conduit locations from those shown in the Plans."...
2. **Specification 630-4 Method of Measurement: Article 630-4.2 Furnish and Install:** "The Contract unit price per foot of conduit will include...all labor, casings, removal of excavated materials and spoils, removal and disposal of drilling fluids, locate wire, trenching, boring, backfilling, flowable fill and restoration materials necessary for a complete and accepted installation. ...Payment for conduit placed underground will be based on ...the horizontal length ...measured in a straight line...regardless of the ...number of conduits installed."
3. **630-5 Basis of Payment.** "No additional payment will be made for multiple conduits in the same trench. No payment adjustment will be made if the Contractor chooses to use an alternative method approved by the Engineer."

#### **ANALYSIS:**

**Item 1.** Despite the Contractor's unilateral actions in rerouting the conduit at the three intersections, the Department de facto approved the relocations as evidenced by the acceptability of the finished work to the maintaining agencies.

**Item 2.** By definition the Contractor's unit price for lighting conduit must include the costs of directional bore. That directional bore was not employed in installing the conduit does not negate that some cost for directional bore must be included in the unit price of the installed conduit. However, **Specification 555-6 Compensation** states that "No direct payment will be

made for directional bore". Its cost is included in the price for the item (conduit) being installed. Consequently there is no cost identified as being tied directly for directional bore, whether or not it was employed.

The requirement that payment be made on the straight line length, regardless of number of conduits installed does not contravene two separate types (signal and lighting) of conduit, each a different pay item, being measured separately for payment within the same bore path. Each is still measured along the horizontal length in a straight line in conformance with the specification. The Contract specification does not anticipate two separate types of conduit in the same path. It is addressing multiple conduits of the same function, which makes sense when accounting for the same pay item, but not when two different pay items are involved.

**Item 3.** No **additional** payment for multiple conduits in the same trench is involved or in dispute. The only items in discussion are the original pay items, nothing additional. Neither is any payment **adjustment** involved when the Contractor used alternative methods (locations) even though they were approved by the Engineer in retrospect, not at the time of installation.

**CONCLUSION:** The intent of the specifications was met, i.e., a finished, technically sound traffic and lighting system was installed which is satisfactory to the maintaining agencies. Whether or not separate directional boring was employed to install the lighting conduit is irrelevant, and a successful installation was achieved without it. The Contractor's lack of cooperation and failure to follow accepted norms in the management of the contract created additional accounting and administrative burdens upon the Department and forced the Department to react to a fait accompli instead of controlling the progress of the work beforehand.

**FINDINGS:**

The Board recommends entitlement on this dispute.

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

Submitted by and for,

Date of Recommendation: December 11, 2019



R. Geoff Waite, Chairman  
Kurt T. Stone, P.E., Member  
Felix A. Peguero, P.E., Member