

DISPUTE REVIEW BOARD RECOMMENDATION

May 22, 2000

FAXED May 22, 2000

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RE: SR A1A, Evans Crary Bridge
Fin. Project No. 228821-1-52-01; 228821-1-56-01
WPI No. (Old) 6151891
County Martin

Issue No. 1: 355mm Pile Elimination at Fender System

Gentlemen:

On May 09, 2000, at the request of the Contractor, PCL Civil Constructors, Inc., the Disputes Review Board (DRB) held a hearing to consider an issue over payment for allocated overhead requested by Gate Concrete Products Company (Gate), PCL's piling supplier. PCL, Gate, Figg Construction Services, Inc. (Figg) and the Florida Department of Transportation, (FDOT) presented testimony and copies of documents and data prior to and during the hearing. These documents include:

- Gate Concrete Products letter dated March 31, 2000.
- Figg Construction Services letter dated January 24, 2000.
- Revised fender system drawing B-18A, B-19A.
- Original fender system drawing B-18, B-19.
- Gate Concrete Products letter dated January 10, 2000.

ISSUE:

To resolve a dispute concerning payment for allocated overhead caused by the reduction of 355mm piling for the fender system on the above referenced project. The fender system was redesigned by the Department and thus reduced the quantity of piling a significant amount (from approximately 15,171 lineal feet to approximately 8,255 lineal feet). Gate is requesting compensation for overhead that cannot be recovered.

Contractor's Position:

On March 31, 2000, Gate wrote PCL presented his arguments:

"The redesign for 14" pile fender system has created an overhead short fall of \$34,926. Our justification of entitlement is contained in Article 4-3.2.1 and 4-3.2.1(A) in the standard specification. This item of work is not 5% of the original contract amount, consequently 4-3.2.1(B) does not apply.

We are in agreement that the owner has the right to make changes to satisfactorily complete the project. When owner changes, significantly change the character of the work under contract, an adjustment must be made to the contract. The term significant

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change shall apply when the character of the work as altered differ materially in kind from that included in the original proposed construction. Case in point, the 14" piles (355mm) furnished was only 55% of quantity bid. That certainly qualifies as a significant change. As you are aware there were no 14" test piles. Lengths were established prior to bids being received. Consequently, Gate should not have been at risk for quantity. When the contract was executed, Gate personnel, forms, and facilities were all dedicated to this project.

We established overhead at bid time and was spread over the project. Gate feels that any overhead eliminated by Florida Department of Transportation's unilateral redesign decision should be reimbursable. Gates actual overhead, which includes fixed cost, average a little over \$100.00 per cubic yard during 1999. Our records indicate that 6916/LF of 14" prestressed piles were eliminated by The Florida Department of Transportation's redesign. Based on the \$100.00 per cubic yard the unit price would be \$5.05/LF for each foot eliminated. To calculate the money we are owed multiply 6916 x \$5.05 to obtain \$34,926.00."

Department's Position:

On January 24, 2000, Figg wrote PCL:

"We have reviewed your proposed cost impacts due to the revision to the fender system. We do not agree with these costs, our comments are as follows:

...

- **Fender Piling**

The contract clearly allows for the modification of quantities without having to alter the bid unit prices...."

On April 14, 2000, the Department stated its position to the DRB:

"In addition to the documents provided in PCL's position paper, we provide a copy of the specification, Section 4-3 which deals with alterations to the project.

Section 4 – Scope of Work

4-1 Intent of Contract

The intent is to provide for the construction and completion in every detail of the work described in the contract. The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies, required to complete the work in accordance with the plans, specifications and terms of the contract.

4-2 Work Not Covered by Standard Specifications

Proposed construction and any contractual requirements not covered by these Standard Specifications may be covered by notes shown on the contract plans or by Supplemental Specifications or Special Provisions for the contract, and all requirements of such Supplemental Specifications or Special Provisions shall be considered as a part of these Specifications.

4-3 Alteration of Plans or of Character of Work.

4-3.1 General: *Alterations provided for herein shall not be considered as a waiver of any conditions of the contract or the bond, nor to invalidate any of the provisions thereof.*

4-3.2 Increase or Decrease in Quantities:

4-3.2.1 Significant Changes in the Character of the Work: *The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.*

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If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

The term "significant change" shall be construed to apply only to the following circumstances:

(A.) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or

(B.) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125% or decreased below 75% of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original contract item quantity, or in case of a decrease below 75%, to the actual amount of work performed...."

"We do not agree with PCL and their supplier's interpretation that an alteration in quantity is a change to the character of the work."

FINDINGS:

Both the Contractor and the FDOT cite the same specification as operable. At the hearing both parties agreed that by the re-design of the fender systems the **nature and character** of the "work" of the **entire fender system** was altered. It would seem appropriate then that all the elements of the system are considered as one change rather than analyzing each element to determine if the nature of the "work" of that element was changed. The net effect of all the elements would then be included in the supplemental agreement.

Although it appears that this system approach was not taken in the negotiations by the Contractor and Department, we can assume that had it been, there may have still been a dispute regarding the piling, although **at this point it is more of a quantum issue for the individual element than entitlement for the entire system**. Since it appears the quantum of all the other elements have been agreed upon without consideration given to include the piling, what we are really evaluating is quantum of an individual element.

The 14-inch piling in the "as-bid design" and "redesign" are the same length, only the number of piling changes. The 14-inch pile is standard in the FDOT fender system and could be considered a "stock and trade" item by the industry. Also it appears that sufficient notice of the change was given so the supplier had time to adjust his casting schedule to other jobs.

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RECOMMENDATION:

Based upon the Board's review of all documents presented by both parties to this subject dispute, **it is our opinion that no adjustment for the 14-inch piling furnish price is warranted.**


The Board appreciates the cooperation by all parties involved and the information provided to make this recommendation.

I certify that I participated in all of the meetings of the DRB regarding the Dispute indicated above and concur with the findings and recommendations.

Respectfully Submitted,

Disputes Review Board
John H. Duke, Sr., DRB Chairman
J. B. Michael, Jr., DRB Member
Jim D. Vest, DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



John H. Duke, Sr.
DRB Chairman