

**Regional DRB Hearing**

**Russell Engineering, Inc. vs. FDOT District Six**

SR-9A/I-95 “Rigid Pavement Rehabilitation”  
(from NW 125<sup>th</sup> St. to Biscayne Canal Bridge)

FDOT Financial Project No. 427515-1-52-01  
Contract No. T-6363  
County: Miami-Dade

***“Road Ranger Cost Savings Initiative Proposal”***

***February 21, 2014***

**10:00 AM**

**Members of the Regional Disputes Review Board:**

Kenneth E. Fusch, PE, Chairman  
Robert A. Cedeno, PE, Esq.  
James W. MacLaughlin, PE

**Project Information:**

Type: Design, Bid, Build    Designer: Keith & Schnars    CEI: District Six (in house)

Date of Award: 6/11/2013    Contract Amount: \$5,378,636.16    Duration: 350 days

Scope of Work: Repair and Rehabilitation of Existing Rigid Pavements on Interstate Highway

Location: 1.87 miles of I-95 (southbound only) from MP 10.195 to MP 12.065

1<sup>st</sup> Day of Work:    Original: 8/9/2013    Revised: 9/16/2013 (revised by agreement)

The issue in dispute as submitted to the Regional Disputes Review Board is whether or not the Contractor (Russell Engineering, Inc., or REI) is entitled to receive 50% of the net reduction in the cost of performance of the Contract from the FDOT (District Six, or D6) for a proposal that was submitted and subsequently implemented on the project. The proposal involved the Road Ranger services to be provided by Russell Engineering during the life of the project.

Specifically, REI proposed reducing the daily coverage by Road Ranger services from a continuous 24/7 basis for 350 days to a lesser amount of coverage which would be the actual hours the Contractor's crews would be working on the project. The reduction in work hours per week would be approximately 75%. The proposed reduction was feasible because no permanent MOT features would be in place outside of actual working hours. (See Russell Engineering Position Paper and Rebuttal)

While District Six representatives felt the proposal had merit and considered its implementation on the project, they felt that the proposal did not meet the requirements necessary to qualify as a "Cost Savings Initiative".

Specifically, the Department stated that the proposal would result in impairment of essential functions such as safety, service, and reliability; was the result of a plan error by the Designer; and did not encourage innovation in design and construction to achieve an equal or better product or service as required by the contract specifications. (See District Six Position Paper)

**Contractor's Position:** Russell Engineering maintains that the proposal meets all of the requirements for a "Cost Savings Initiative", and therefore is entitled to receive 50% of the amount of cost savings realized by the Department.

**FDOT's Position:** District Six maintains that the proposal does not meet the requirements for a "Cost Savings Initiative" as set forth in the contract specifications.

**Regional DRB Responsibility:** As requested by the Contractor and the Department, the Regional Board convened a Hearing to make a recommendation regarding "entitlement" on the issue in dispute. The Board did not consider the matter of quantum in regard to this issue. Nothing said by the Board during the Hearing, or contained in this written recommendation, should be construed as a recommendation regarding the amount of compensation sought by the Contractor.

The Board's recommendation is based on its reading of the Position Papers submitted by the parties, a Rebuttal Statement submitted by the Contractor, and the information learned during the course of the four and one-half hour Hearing. The Hearing was not recorded.

## **II.**

## **FINDINGS OF FACT**

### **Chronology of Significant Events:**

- 6/11/13 Contract Award Date
- 7/2/13 REI submits CSIP proposal to reduce hours of coverage for Road Ranger services
- 7/5/13 District Six agrees to consider implementing the proposal on the project, but advises REI that the Department does not consider the proposal to meet the specification requirements to qualify as a CSIP
- 7/8/13 REI notifies D6 of disagreement and requests meeting with D6 representatives
- 7/9-22/13 Several meetings held to review the proposal and to discuss various revisions to the TSP which established the work requirements for Road Ranger services.
- 8/7/13 D6 forwards revised TSP to REI and postpones start date from 8/9/13 to 9/16/13 to allow Contractor time to implement revised requirements for Road Ranger services.
- 8/8/13 REI requests meeting with D6 to finalize CSI Proposal. REI requests S.A.
- 9/16/13 Work commences under a “gentlemen’s agreement” that a revised TSP would be implemented on project, and that disagreement on payment to Contractor would be resolved at a later date.
- 10/4/13 REI submits final Cost Savings Initiative Proposal to D6.
- 11/14/13 D6 reaffirms its position that the REI proposal does not qualify as a CSIP
- 12/17/13 REI requests that the 2014 Regional DRB convene a Hearing on “entitlement”

### **Governing Contract Specifications:**

The 2013 *FDOT Standard Specifications for Road and Bridge Construction* contained the governing specifications that had to be met by the Contractor in order for the proposal to qualify as a “Cost Savings Initiative”. There was no disagreement between the parties that this particular specification provided the requirements to be met regarding entitlement for a CSIP. Refer to Section 4-3.9.1, Subarticles (1) and (2).

### **Relevant Facts:**

- 1) The effort to revise the Technical Special Provisions (TSP) for *Incident Management and Service Patrol* (i.e., Road Ranger services) was a collaborative effort with both parties involved in making necessary changes to the TSP to fit the project. (Source: D6 email to REI on 8/7/13)
- 2) The majority of the Contractor's operations were planned for night and weekends. A work plan was developed which included three 7-hour night shifts (Tues, Wed, & Thurs) and two 9-hour night/early morning shifts (Friday and Saturday) for a total of 39 hours. (Source: REI letter to D6 on 10/4/13)
- 3) Temporary MOT that was set up by the Contractor for specific work areas would be removed at the end of each shift, therefore, no "permanent" MOT (e.g., barrier walls, lane shifts, etc) would remain in place throughout the life of the contract. (Source: Comment by REI during discussions at Hearing)
- 4) Additional Road Ranger services are currently being provided by "the existing firm" (i.e., Sunshine Towing) throughout the District under a separate contract on a continuous 24/7 basis. This contract includes the project limits of the REI project, however, the service is not exclusive to the project work area since it covers the entire District. (Source: REI email to D6 on 7/8/13)
- 5) In addition to the TSP which spells out the Road Ranger service requirements, the plans contain a note on Plan Sheet 26, *Traffic Control Plans*, Note 23 which specifies that the Contractor's Road Ranger services would be provided on a continuous 24/7 basis within the project limits for the duration of the contract. (Source: Contract Plans by Keith & Schnars)
- 6) District Six representatives indicated they plan to use this revised TSP for Road Ranger services on other contracts when the circumstances are the same (or similar) since safety would not be compromised. (Source: Comment by D6 during discussions at Hearing)

### **III.**

### ***ANALYSIS OF THE FACTS***

The Board concluded that the primary question in determining whether or not the Contractor is entitled to the benefits of a CSI for its Proposal was based on Section 4-3.9 *Cost Savings Initiative Proposal* of the FDOT 2013 Standard Specifications. In summary, the requirements of this specification that must be met are as follows:

- 1) 4-3.9.1 (1) The specifications apply "to any cost reduction proposal that the Contractor initiates and develops ..... to increase cost effectiveness ..... of the end result"

Comments by the Board: The contractor met this requirement.

2) 4-3.9.1 (1) “A mandatory Cost Savings Initiative Workshop will be held prior to Contract Time beginning.....”

Comments by the Board: Several meetings were held between 7/9/13 and 7/22/13 with representatives from REI and District Six participating to discuss the proposal and make various revisions. The first day of contract work was 9/16/13.

3) 4-3.9.1 (1) Contractor must identify the proposal as a Cost Savings Initiative “at the time of its submission to the Department” .....

Comments by the Board: The Contractor met this requirement on 7/2/13 when its CSI Proposal was submitted.

4) 4-3.9.1 (2) Proposal must result in savings to the Department without impairing essential functions and characteristics such as safety, service, life, reliability, economy of operation, etc.

Comments by the Board: The reduction in Road Ranger services did not impair any essential functions since the Contractor was not working and no permanent MOT remained in place after each shift ended.

5) 4-3.9.1 (2) The contractor is not prohibited from submitting proposals “when the required functions (i.e., Road Ranger services) ..... can be combined, reduced, or eliminated because they are nonessential or excessive.”.

Comments by the Board: The Contractor’s proposal was based on a reduction of Road Ranger services during non-working hours. Such services, when the crews were not working, were considered nonessential and excessive.

6) 4-3.9.1 (2) The Department will not recognize the “correction of plan errors” that result in a cost reduction.

Comments by the Board: The specification to provide Road Ranger services on a continuous 24/7 basis was not considered to be a “plan error.” Rather, this requirement in the bid documents was a choice made by the Department during preparation of the contract plans and specifications. An alternative choice could have been to specify that Road Ranger services would only be provided during the Contractor’s actual working hours (39 hours a week, versus 168 hours).

**Conclusion:** Based on the above analysis of requirements outlined in the contract specifications pertaining to a “Cost Savings Initiative”, and an assessment of whether or not each one was met by the Contractor, the Board has concluded that all requirements were fully met.

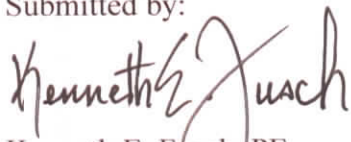
**IV.**

**RECOMMENDATION**

The Board finds that the Contractor is entitled to receive 50% of the amount of cost savings realized by the Department for implementing the reduction in Road Ranger services under the provisions of Section 4-3.9.1. The proposal meets the qualifications for a "Cost Savings Initiative" as found in the Contract Specifications.

This Recommendation is the unanimous decision of the members of the 2014 Regional Disputes Review Board.

Submitted by:



Kenneth E. Fusch, PE  
Chairman, 2014 Regional Board

Date of Recommendation:

3/6/2014

Distribution:

Russell Engineering, Inc.  
FDOT District Six