

DRB Hearing

Central Florida Equipment Rentals, Inc. vs. FDOT District Six

FDOT Project No. 249941-4-52-01, 249941-4-560-01, 429014-1-52-01

Contact No, T6344

County: Miami-Dade

“Is the Contractor entitled to time and/or money for installing the JPA WM at a cover of 8’?”

April 26, 2017 10:00 AM

Members of the Dispute Review Board:

Joe Capeletti, Member

Bill Deyo, Member

Charles Wegman, Chairman

Project Information:

Type: Design-Bid-Build Designer: C.H. Perez & Assoc. CEI: Pinnacle Consulting

Contract Amount: \$20,865,766.00 Duration: 850 days

Scope of Work: Upgrade SR 823 Red Road by adding 1 NB and 1 SB travel lane, raised medians, landscaping, intersection access management, lighting signalization, new 54” water main and intersection improvements at W 84th Street.

Location: SR No. 823 NW 57th Ave,/Red Road (From North of W. 65th Street to South of 84th Street)

Contractor’s Position:

The parties disagree on the proper interpretation and import of the following language included in Supplemental Specification No. 4 and on certain drawings:

Note that the approved plans were designed based on the use of ductile iron as the pipe material for the proposed 54” Water Main. The contractor may bid an alternative pipe material (pre-stressed Concrete Cylinder Pipe or Bar Wrapped Concrete Cylinder Pipe). At the contractor’s expense, the plans will need to be revised, signed and sealed by a

Professional Engineer licensed in the State of Florida, and the revised plans approved by MD WASD.

It is CFER's position that, once one of the alternative pipe materials was selected, this provision not only contemplated, but required, CFER to engage a Contractor's Engineer of Record, as that term is defined in the FDOT Standard Specification, to "revise" the referenced previously "approved plans." The required revisions were, of course, required to comply with the applicable FDOT and MDWASD design standards and specifications, but CFER's Contractor's Engineer of Record was not required to sign and seal and exact duplicate of the originally approved plans. If the originally approved plans were to be followed exactly as had been initially presented, then the selection of the alternative pipe material would have simply been recorded on the signed and sealed as-built drawings. Instead, this provision specifically and directly contemplates the previously approved plans being revised to form the new basis for the installation of the 54" water.

Accordingly, CFER's Contractor's Engineer of Record developed revised plans that, among other things, required the 54" water main to be installed with 60" of cover. Ex. 6-1. This minimum cover far exceeded the minimum requirement 48" specified by the relevant MDWASD specifications. *See* CE 4. Nevertheless, FDOT refused to approve CFER's revised plans showing the 60" of cover. Instead, FDOT required the 54" water main to be installed with a minimum cover of 96" solely based upon the originally provided plans that were clearly to be revised by CFER's Contractor's Engineer of Record. *See* Ex. 6-15 (11/5/15 FM 249941-4-56 – CEI sends EOR's rejection of design submittal with comment indicating 'Pipe cover should match original design as requested by MDWASD.'")

FDOT's refusal to approve CFER's revised drawings was based solely on a dimension shown on the original drawings. Ex. 6-15. However, FDOT has refused to recognize the fact the provisions of Supplement Specification No. 4 require the originally approved plans to be revised based upon CFER's Contractor's Engineer of Record's requirements. Therefore, these originally approved plans were to become obsolete in favor of the revised plans to be prepared by CFER. CFER complied with the Contract Documents in designing revised plans and met all FDOT and MDWASD design standards and specifications (including the minimum for 48" of cover). *See* CE 4. If FDOT wished to make the 96" of cover a requirement, then FDOT should have made this requirement a contractual obligation in the Project specifications and outside of the plans to be revised by CFER's Contractor's Engineer of Record. FDOT did not make the 96" of coverage a requirement and instead has wrongfully rejected CFER's revised plans that conformed to all FDOT and MDWASD design standards and specifications. FDOT was within its right to change the cover requirements of the Contract Documents, but FDOT must properly compensate CFER for FDOT's change.

FDOT Position

The Department considers that the Contractor had sufficient information at bid time to understand and anticipate that the 54" WM was to be installed at an 8 ft minimum cover. Although the plans require a revised set of plans to reflect the alternate pipe material, it is negligent for a bidder to assume that the prescribed minimum cover can be reduced without the prior approval of the Engineer and MDWASD.

The Contract documents provided at bid time are unambiguous as to FDOT & MDWASD's intent on the minimum required cover over the 54" WM for the following reasons:

1. The original Contract plans clearly and unambiguously show the proposed 54" WM pipe at an 8 ft minimum cover.
2. Note 11 on Page WM-02 states, "The approved plans were designed based on the use of Ductile Iron as the pipe material for the proposed 54" WM. The Contractor may bid an alternate pipe material (pre-stressed concrete cylinder pipe or bar wrapped concrete cylinder pipe). At the Contractor's expense, the plans will need to be revised, and the revised plans approved by MDWASD."

For large diameter pipe this is required to ensure that all the appurtenances are detailed clearly on the design according to the corresponding pipe material. Then a corresponding pipe lay schedule is prepared and submitted detailing the particular connections, restraints, closure pieces, and appurtenances by the pipe manufacturer on behalf of the Contractor.

3. In the Contract Technical Special Provisions Supplement 4 - T4.06 the Contractor is instructed that alternate pipe material shall be installed at the elevations shown on the plans: "Installing Bar-Wrapped Concrete Cylinder Pipe and Fittings" Pg 76 (B.) - All bar-wrapped steel cylinder concrete pressure pipe shall have a minimum of two feet of cover before any small construction equipment is operated over the top. Pipe shall be laid to the elevations shown on the drawings unless approved otherwise by the Engineer.

In this instance, the Engineer is the FDOT Director of the Office of Construction. This term is defined in TSP T1.01 DEFINITIONS- G. "Engineer", See FDOT Specifications, "Section 1-3.- Engineer. The Director, Office of Construction, acting directly or through duly authorized representatives; such representatives acting within the scope of the duties and authority assigned to them.

Note: In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be done, if, as, or, when, or where "acceptable, accepted, approval, approved, authorized, condemned, considered necessary, contemplated, deemed necessary, designated, determined, directed, disapproved, established, given, indicated, insufficient, ordered, permitted, rejected, required, reserved, satisfactory, specified, sufficient, suitable, suspended, unacceptable, or unsatisfactory," it shall be understood as if the expression were followed by the words "by the Engineer," "to the Engineer," or "of the Engineer."

4. The 8 ft. minimum cover shown on the original contract plans exceeds the minimum cover for the pipe material shown on the bid Contract plans according to MDWASD standards. As the owner of the Utility, MDWASD is required to provide a bid set of Contract documents that reflects the expected work to be produced to obtain a responsible bid. The fact that MDWASD clearly and unambiguously showed the required minimum depth in the plans is an indication of their expectation for the constructed project.

DRB Responsibility:

As agreed to by the Contractor and the FDOT, the DRB convened a hearing to determine entitlement for installing 54" Bar Wrapped Concrete Cylinder Pipe with 96" of cover.

Sequence of Events:

8/24/15 FM 249941-4-56, FM 429014-1-56 - CFER submits plans for the redesign of 54" BWCCP WM.

9/16/15 FM 249941-4-56 - CEI sends rejection of design submittal with EOR comments only. Plans not reviewed by MDWASD.

9/22/15 FM 429014-1-56 - CEI sends rejection of redesign submittal and includes note referencing 8 ft cover requirement for 54" WM as per MDWASD.

10/20/15 FM 249941-4-56, FM 429014-1-56. CFE submits revised plans addressing EOR comments.

11/5/15 FM 249941-4-56 - CEI sends EOR's rejection of design submittal with comment indicating "Pipe cover should match original design as requested by MDWASD".

11/23/15 Meeting held with MDWASD to review CFER's request to install the WM at 5 ft cover rather than 8 ft cover.

11/25/15 CEI sends CFE clarification on MDWASD's expectations associated with the consideration of raising the elevation of the 54" JPA WM.

1/18/16 CFE resubmits redesign addressing all comments and at the MDWASD required cover height of 8 ft.

2/4/16 CEI sends CFE approved plans from MDWASD for the redesign of the 54" WM BWCCP to be installed at 8 ft cover.

6/30/16 CFE and Ricman International (CFE subcontractor) mobilize to site to commence WM installation

DRB Findings:

1. The approved plans were designed based on the use of ductile iron pipe material for the proposed 54" water main. The Contractor was allowed to bid either pre-stressed concrete cylinder pipe or bar wrapped concrete cylinder pipe as an alternative.
2. Should an alternate pipe material be chosen, the Contractor was required to submit revised plans, signed and sealed by a Florida professional engineer and revised plans approved by Miami Dade Water and Sewer District (MDWASD). Note 11 of sheet WM-02
3. The as-bid Contract Plans show 96" MIN as cover for the ductile iron pipe
4. The MDW&SD Standard Detail #2 of GS 0.5 states "COVER OVER WATER OR SEWER FORCE MAINS SHALL BE 4'0" MIN."
5. Section T4.06 of Supplement Four (Technical Special Provision for Installation of Water Transmission Main) states in part "All pipe and fittings shall be thoroughly cleaned before laying, shall be kept clean until they are used in the work, and when laid, shall conform to the lines and grades shown on the drawings." It also states " All bar-wrapped steel cylinder concrete pressure pipe shall have a minimum of two feet of cover before any small construction equipment is operated over the top. Pipe shall be laid to the elevations shown on the drawings unless approved otherwise by the Engineer."
6. During the plan review process Central Florida's original submittal indicating 60" cover was rejected and resubmitted at 96" cover. The 96" cover submittal was approved by all concerned and the 54" bar wrapped concrete cylinder pipe (BWCCP) was laid with 96" cover.

DRB Conclusion:

The DRB has reviewed CFER's position and is aware of their position regarding required cover for 54" BWCCP which includes:

1. Design efficiencies that resulted from the submittal of signed and sealed plans for the installation of 54" bar wrapped concrete cylinder pipe with less than 96" of cover were transferred to the Contractor (CFER). The Contract required CFER to submit signed and sealed drawings for the optional pipe type shown (BWCCP).
2. CFER's design complied with all contract documents and specifications.
3. FDOT rejected the revised CFER signed and sealed plans (60" cover) based on plan criteria showing 54" ductile iron pipe with 96" cover.
4. MDWASD withholding of approval was improper.

The DRB has reviewed the FDOT position regarding the review and approval of revised signed and sealed drawings for the installation of 54" BWCCP which includes:

1. The original Contract plans clearly and unambiguously show the proposed 54" WM pipe at an 8ft cover.

2. Revised plans for BWCCP will need to be submitted for approval by MDW&SD.

3. Pipe shall be laid to the elevations shown on the drawings unless approved by the Engineer. The Engineer is the Director, Office of Construction, acting directly or through duly authorized representatives...

4. The 8 ft minimum cover shown on the original contract plans exceeds the minimum cover for the pipe. MDWASD clearly showed that the required minimum depth in the plans is an indication of their expectation for the constructed project

DRB RECOMMENDATION:

The DRB concludes that the project plans, specifications and associated documents clearly indicate that the required cover for 54" ductile iron pipe is 96" minimum.

**The Contract requires that the revised signed and sealed plans shall meet the requirement "Pipe shall be laid to the elevations shown on the drawings unless approved otherwise by the Engineer."
(Contract Special Provisions Supplement 4-T4.06)**

The DRB finds that the requirement that the original design plans for 54" ductile iron pipe adequately define the required minimum cover (96") for the installation of any of the three types of allowed by the bidding documents. The DRB does not find that CFER's engineer has been empowered by the Contract to change the cover below 96" minimum. The fact that the Contract requires signed and sealed drawings for an alternate pipe material does not concur to the Contractor the option of reducing the minimum cover requirement.

FDOT and MDWASD did have the authority to reduce the minimum cover requirement. The fact that they chose not to is consistent with the Contract.

The DRB finds that there was adequate contractual provisions at the time of bid requiring that all three types of 54" pipe would be laid with 96" minimum cover.

After thorough consideration of the submittals, contract provisions, the DRB agrees with the FDOT position that Central Florida Equipment Rental is not entitled to time and/or money for the cost of installing 96" Bar Wrapped Concrete Cylinder Pipe with 96" cover.

The DRB recommendation is the unanimous decision of the Dispute Review Board Members.

Charles Wegman, DRB Chairman
Joe Capeletti, DRB Member
Bill Deyo, DRB Member
May 4, 2017