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

"Claim No. 2. Reversing Sheet Piles"

February 23, 2016 1:30 PM

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 land, 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:

"Neither CFER nor ASAP can be properly held accountable for the damages incurred and economic waste resulting from a late direction issued by FDOT, which culminated in damages to CFER and ASAP as well as economic waste. FDOT, as the owner, was the only party in position to direct maintainability preferences related to the layout/arrangement of the Steel Sheet Pile Wall System, and simultaneously the only party with the ability to control layout/arrangement to suit such preferences, when the Steel Sheet Pile Wall System functions properly with the king piles installed on either the channel site or the roadway side. There was no duty owed by CFER nor ASAP neither contractually under the provisions of FDOT Standard Specifications for Road and Bridge Construction 2014 ("FDOT 2014 Spec") nor otherwise to anticipate FDOT's "maintenance purposes" direction, especially when neither CFER nor ASAP had any previous indication, whatsoever, of the maintenance preferences that DFOT had the installation of the Steel Sheet Pile System. The CEI provided a copy of the approved shop drawings to the field inspector to be used for inspection the sheet piling installation. The liability for and the causation of the removal and

reversal of the Steel Sheet Pile Wall System, installed by ASAP, is solely on account of FDOT's failure to timely advise CFER about maintenance preferences, leading to unforeseeable work in reversal of the Steel Sheet Pile Wall System. Alternatively, the damages incurred by CFER and ASAP resulted from the EOR's negligent approval of the general arrangement in Shop Drawings in accordance with Sections 5-1.4.6.1 of FDOT 2014 Specs (the "Shop Drawing Submission") and the CEI's improper supervision and approval of 17,851 square feet of the Steel Sheet Pile Wall System."

FDOT Position:

"It is the Department's opinion that the position paper submitted by the Contractor CFER) is an attempt to deflect and blur the lines of responsibility with respect to the Contract. In the following pages we will demonstrate that the FDOT in fact met its obligations with respect to the contract and CFER, in combination with their subcontractor (ASAP) and supplier (Skyline Steel) were, in fact, negligent in the submittal of their sheet piling shop drawing to the extent that it contained a deviation from the approved Contract plans and such deviation was NOT identified at the time of submittal as required by Contract provisions. The introduction of this initial error by CFER, ASAP and Skyline Steel is the predecessor that set off a chain of events which lead to the necessary reversal of already installed defective work."

DRB Responsibility:

As agreed to by the Contractor and the FDOT, the DRB convened a hearing to determine entitlement for reversing the sheet piles and king piles installed on wall 6.

Sequence of Events:

Shop drawings for the sheet pile wall were submitted by CFER as required by the Contract. The shop drawings were reviewed by the Engineer of Record (EOR) and commented on requiring resubmittals. The shop drawings submitted showed the king piles on the channel side of the sheet pile installation. During the review process an additional king pile was added by the EOR at station 1198+02.03. This pile was also on the channel side of the wall system. Other miscellaneous review comments were made as well. It is significant to note that the sheet pile wall stationing on the shop drawings indicate the king piles installed on the channel side.

CFE began Wall 6 installation on May 20, 2015 and proceeded installing 19,233 SF (380 LF) of wall. During this time Wall 6 was installed and inspected consistent with approved shop drawings. The king piles so installed were on the channel side of the sheet piles.

It was then discovered that the approved shop drawing installation was inconsistent with Section B-B of Drawing BW-13 which showed the king pile on the roadway side. After review, FDOT determined that the installation was unacceptable and the 17,857 SF of wall installed had to be removed and reinstalled with the king piles on the roadway side.

CFE advised that the reinstallation was considered beyond contract scope and submitted a NOI to claim for the extra work involved.

DRB Findings:

1. Sheet pile shop drawings were prepared by Skyline Steel and submitted through the Subcontractor ASAP and the Contractor CFE.
2. Sheet pile shop drawings were submitted with the king piles detailed on the channel side.
3. Shop drawings were reviewed, commented on, revised and resubmitted with king pile installation on the channel side. During the review an additional king pile was added by the EOR at station 1198+02.03. It was shown on the channel side of the sheet piles.
4. Sheet pile installation began consistent with the approved shop drawings and 390 lineal feet were installed with king piles on the channel side. CEI inspection was consistent with the approved shop drawings.
5. During installation it was discovered that channel side king piles were inconsistent with Section BB of drawing BW 13.
6. The contractor submitted alternatives to accommodate section BB of drawing BW13 at the pipe penetration area. Attempts were made by CFE to address the issues without reinstalling all previously driven sheet piles.
7. The contractor was directed to reinstall the previously driven sheet piles with the king piles on the roadway side. The contractor filed a Notice of Intent to claim the cost and time for reversal of the sheet piles.

DRB Conclusion:

The DRB has reviewed CRE's position and is aware of their position regarding installation of king piles on the channel side including positions stating:

1. No structural deficiencies result from king piles on the channel side.
2. Channel side sheet piles are properly suited for the intended purpose.
3. The direction to reverse the sheet piles was untimely.
4. The FDOT reviewed the shop drawings and had 5 opportunities to modify.
5. The approval process was negligent.

The DRB understands the FDOT position that the king pile must be on the roadway side for maintenance, aesthetics and channel flow. King pile installation must be consistent with section BB of drawing BW-13.

The DRB recognizes that during the shop drawing review process there was ample opportunity for both FDOT and the contractor to recognize that channel side king piles were inconsistent with section BB of drawing BW13. The failure to recognize this discrepancy during the shop drawing review process and initial wall installation resulted in the reversal of the initial sheet pile installation.

The DRB recognizes that channel side king piles would have met structural criteria.

The DRB has reviewed all submittals and has determined that section 5-1.4.6.1 and 5-1.4.6.2 govern. These sections state:

5-1.4.6 Processing of Shop Drawings:

5-1.4.6.1 Contractor Responsibility for Accuracy and Coordination of Shop Drawings:

Coordinate, schedule, and control all submittals, with a regard for the required priority, including those of the various subcontractors, suppliers, and engineers, to provide for an orderly and balanced distribution of the work.

Coordinate, review, date, stamp, approve and sign all shop drawings prepared by the Contractor or agents (subcontractor, fabricator, supplier, etc.) prior to submitting them to the Engineer of Record for review. Submittal of the drawings confirms verification of the work requirements, units of measurement, field measurements, construction criteria, sequence of assembly and erection, access and clearances, catalog numbers, and other similar data. Indicate on each series of drawings the specification section and page or drawing number of the Contract plans to which the submission applies. Indicate on the shop drawings all deviations from the Contract drawings and itemize all deviations in the letter of transmittal. Likewise, whenever a submittal does not deviate from the Contract plans, clearly state so in the transmittal letter.

Schedule the submission of shop drawings to allow for a 45 day review period. The review period commences upon the Engineer of Record's receipt of the valid submittal or valid re-submittal and terminates upon the transmittal of the submittal back to the Contractor. A valid submittal includes all the minimum requirements outlined in 5-1.4.4.

Submit shop drawings to facilitate expeditious review. The Contractor is discouraged from transmitting voluminous submittals of shop drawings at one time. For submittals transmitted in this manner, allow for the additional review time that may result.

Only shop drawings distributed with the "red ink" stamps are valid and all work that the Contractor performs in advance of approval will be at the Contractor's risk.

5-1.4.6.2 Scope of Review by Engineer: The Engineer of Record's review of the shop drawings is for conformity to the requirements of the Contract Documents and to the intent of the design. The Engineer of Record's review of shop drawings which include means, methods, techniques, sequences, and construction procedures are limited to the effects on the permanent works. The Engineer of Record's review of submittals which include means, methods, techniques, sequences, and construction procedures does not include an in-depth check for the ability to perform the work in a safe or efficient manner. Review by the Engineer of Record does not relieve the Contractor of responsibility for dimensional accuracy to ensure field fit and for conformity of the various components and details.

DRB RECOMMENDATION:

The DRB concludes that the channel side sheet pile installation as detailed on the submitted and approved shop drawings was the initiating cause of the incorrect sheet pile installation. The shop drawing submittal that did not "Indicate on the shop drawings all deviations from the Contract drawings…" as required in 5-4-1.4.6.1 above. This submittal incorrectly detailed king piles being installed on the channel side of the wall.

Further, as stated in 5-1.4.6.2 "Review by the Engineer of Record does not relieve the Contractor of responsibility for dimensional accuracy to ensure field fit and for conformity of the various components and details." Responsibility for the subsequent incorrect king pile installation and required reversal remains with the Contractor as stated in the Standard Specification section noted. Approval by the EOR does not eliminate the Contractor's responsibility.

After thorough consideration of the submittals and contract provisions, the DRB agrees with the FDOT position that CFE is not entitled to the time and cost of reversing a portion of sheet pile wall 6.

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
February 29, 2016