

REGIONAL DISPUTE REVIEW BOARD RECOMMENDATION

E-Mailed March 05, 2021

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RE: FDOT District 7 RDRB - Orlando R&B Bearing Pad Payment Hearing
Contract No: E7N02
County: Duval

ISSUE:

Dear Gentlepersons:

On January 13th, 2021, the Regional Disputes Review Board (RDRB) received a request¹ for a hearing from Orlando R&B, LLC (Contractor) stating:

Is Orlando R&B, LLC entitled to additional compensation due to the Department misinterpreting the method of measuring bridge bearing replacements. Bridge bearing replacement is shown as Each. The Department is misinterpreting this as Each bent whereas the correct interpretation is Each bearing. The project has been final accepted and this issue has been escalated with unsatisfactory results for Orlando R&B. Further details will be provided in our position paper.

Pertinent issues, correspondence and other information relating to the Department's and the Contractor's positions were forwarded to this Board for review and discussion at the hearing that was held on March 1st, 2021.

CONTRACTOR'S POSITION²:

I. QUESTION TO THE BOARD

Based on these 15 questions below, is Orlando R&B entitled to additional compensation due to the Department misinterpreting the method of measuring bridge bearing repositioning / replacements? Bridge bearing replacement is shown as Each. The Department is misinterpreting this as Each bent whereas the correct interpretation is Each bearing.

1. If Scope of Work calls for bearing reposition or replacement, how unit of measurement could be a bent or abutment?
2. If Specs direct an Engineers to follow ASHTO and Bases of Estimates, is it possible that the EOR change the Pay Item without requesting it from the Department?
3. Is it possible that the EOR, even if he has requested "the change of pay item" does not put that in the Contract?

¹ Dated January 11th, 2021.

² See original position papers for exhibits.

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4. If Bases of Estimates direct EOR-s to:
“**Locate in the Plans. Summarize quantities by location**”, how come that, the Department reads this as summarize locations and not quantities? Please see AttachmentsB – E.
5. Is it bridge rehab practice that, when repositioning one out of 12 bearings at end bent (Br.204, end bent 4.), the Pay Item means 1 bent, and not 1 bearing?
6. Is it correct that Plan shows and Note reads to replace **three** bearings at Pier 2, Br. 226, “Summary Table” (Sheet B-4) shows **zero**?
7. If the Department’s position at Br. 204 is that we have two abutments and they pay for two, instead for three bearings, is it correct then that, at Br. 226, we have three abutments, as per “Summary Table” (Sheet B-4)?
8. Is it normal that for replacement of three 400 pounds steel rotational bearings at Br. 226 end bents, the EOR put in “Summary Table” ... “Neoprene Pad Replacement”?
9. Is it possible that Spec 461-8 “**Method of Measurements**” for Multirotational bearings: “Quantities for fixed and expansion bearings will be the plan quantity number of each of type of bearing constructed and accepted.”, the Department reads as quantity of bents and not bearings? Spec Page 649.
10. Spec 461-9 “**Bases (sic) of Payment**” and 461-9.1 “**Basic Items of Bearings**” say:

“The Contract unit price **per each for bearings** will be full compensation for all work and materials necessary for the complete installation.”

Is it possible that the Department and the EOR are serious when they say it reads as per each bent, or per each location?

11. Spec. 461-9.2 “**Payment Items**”: “Payment will be made under:

Item No. 461-114- Multirotational Bearing Assembly – Expansion – Each

How is it possible that, Department and the EOR read this as bent, and not as bearing assembly? Attachment “F”. Spec Page 650.

12. At Br. 055, the task was “reposition lubricating plate under beam 12”. However, during a pre-bid site check I have noticed that b-12 has no plate at all, but b-11 had a plate that “walked away”, so I figured that is the correct location. I have informed PA in June that the EOR mixed the beams. During the field visit with PA and the EOR, I

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showed them, but the EOR stuck to his Plan, that reposition shall be done under beam-12. He said there was a plate next to beam when he visited the job before design.

Question: Is it possible to “reposition” a plate that is not there, or was removed because of malfunction or damage, or for some other reason; or you reposition the one that moved away under the beam movements? Or, have you ever seen that somebody left a plate next to a beam for future use? Too much from the Designer.

Obviously the EOR miscounted beams, but because of so many mistakes he couldn't allow another one, and I had to do both, 11 and 12, not just beam 12. I had to lift 18” long, 1-1/8” thick bearing plate and install lubricating plate furnished by the Department under b-12 bearing plate and reposition plate under b-11. Lot tougher than in bid.

13. If “as built” Plans show lubricating plate thickness ½”, how come that new Plans show 1-1/8”, when that stands for bearing plate thickness? Person who did copy-paste from “as built” did not pay attention, and showed lack of knowledge. This is not the only mistake. The EOR should have checked the Plans, but it does not seem he did.
14. How is it possible that Plan shows 1” wide joint, when field verification showed more than 2” and 3”? Another Plan error.
15. How the EOR could have approved the “Summary Table” for Br. 226, when the entire Pier#2 is not shown in the table? How could he possibly approve the table which “steel multirotational bearings” calls “neoprene bearings”??? In my 35 years I have not seen an error like this.

II. INTRODUCTION

This maintenance Project was for bearing replacement / reposition for six bridges in Pinellas County, which three of them are subject to the Claim:

- Bridge 150055...US 19 over 49th Street,
- Bridge 150204...US 19 over Ulmerton Road,
- Bridge 150226...US19 over Drew Street.

The Contract time for this project was 140 days. However, the Project duration was from September 9th to November 23rd. Final walk through was on December 8th, and project was accepted on January 5th.

After the first estimate, I've noticed that I was paid one bearing less, than what Plan shows for bridge 204. The Department's explanation was that summary table shows Unit Measurement for bearing replacement is each abutment. The abutment is not a Unit Measurement for anything, and definitely not for bearing reposition. It never was, and it will never be. It is not known to the bridge rehab nor widening practice.

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I must say that the Inspector submitted three bearings for payment, but PA, Mr. David Gillette, returned her estimate and asked her to change it to two bearings.

Pay Items for neoprene bearings at Bridge 204 are:

400-140-1 Neoprene Bearing Replacement, Pier/Bent EA,
and 400-140-2 Neoprene Bearing, Abutment EA,

where Pier/Bent and Abutment mean Location, not quantity.

If the EOR wanted to do different than what Guidance and Bases of Estimate direct him, then he should have submitted a “Request for Change of Pay Item” and put it in Plans as EP (each pier) and EA (each abutment), but nobody does that on maintenance jobs when bearings are the scope. He did not request it because it does not work for bearings. He knows pay item for bearings is each bearing, but in the middle of the project he changed his mind and called it each bent. He did it because of too many mistakes in the Plans and this one caused around \$147,000 in damage to the Department. I am very surprised they want me to cover the cost. The right address is TY Lin, the designing company.

I was initially told by Mr. Gillette: “The EOR’s thoughts are that “EA” means each pier and each abutment. Well, it is not enough to think or have thoughts. It should have been spelled out in the Plans. But, it’s not.

III. **DISPUTE**

Inconsistency in Pay Item Interpretation

Then, we had a similar situation at Bridge 226. Plan calls for three 400 pounds steel bearings to be replaced at Abutment #1 and #6, and three 1,700 pounds (each) bearings at Pier #2.

Since Mr. Gillette told me for Br. 204 I will be paid per “Summary Table” two abutments, I asked him does it mean for Bridge 226 that we have three Abutments, since the table shows three? I did not get an answer in two weeks.

After two weeks, he told me table is wrong, it should be two, not three. For Pier #2 he told me the Table calls for Neoprene bearings, and we have steel, and since there are no Neoprene bearings, he will not pay me. Well, I could have charged him for steel. Also, the pay item was for Abutment, not for Pier.

After a while he told me table does not show any bearing at Pier #2, and he will not pay for any. I told him no problem, since they are not in the table, I will not install them, and I asked him where he wants me to bring bearings? He sent an email on same day (11-5-2020) saying:

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“The Plan calls out 6 multirotational bearings to be replaced”, and at the end of the paragraph: **“Because the Plans specify 6, the quantity reflects 6.”** This is a self-explanatory. The quantity is 6 bearings, not 3 bents. Attachment “A”: email from Mr. Gillette (11/5/2020).

So, now he is saying Plans specify 6 bearings, which means Plans are in charge over table, and they always were! The latest from Mr. Gillette was that 3 in Abutment row, means 2 for abutments and 1 for pier.????? Does not make a sense at all.

This shows inconsistency in the Department’s interpretation of Pay Item.

Mr. Gillette called me one day and asked how much money I want per bearing at Pier #2, Br. 226, which proves that the Department knew it is a bearing in question, and not bent/pier. My answer was that I have Pay Item for those.

The Department was searching how number of installed bearings can fit to number of bents, but they were not lucky, so they paid what they wanted, to stay within a budget.

Interpretation of Pay Items for Bearing repositioning/replacement

For more than 10 years I’ve been reviewing construction plans for road and bridge, for CEI and Design purposes. The EOR-s would bring plans 30%, 60%, 90% for check, before they were taken to DOT, and I have not seen case like this, ... The Final Plans full of errors. I know this type of Plans are different from New Construction, but regardless, the final review should exist.

I must say that “Summary Tables” are done by technicians, not by EOR-s. That explains our case. Person who did the table was not skilled in takeoffs, and obviously the EOR did not check does it make sense, before he signed and sealed the Plans.

The EOR is required to follow a guidance when he does design. Since the Department does not have a Pay Item for “each bent/pier” nor for “each abutment”, the EOR should have requested “the Change of Pay Item”, if he wanted quantity to paid differently than “Each Bearing”, as “Bases of Estimates” direct him. I am sure that the EOR did not have any intention to pay differently, and he did not. The problem arose because they give technicians to do most of the work (drawings, takeoffs, measurements...).

Otherwise, how to explain that person who did the Plans put “multirotational bearings” for replacement and person who did a “summary table” put “neoprene bearings”. This proves that Plans and Table were not done by same person. The EOR’s lack of checking every detail before signing and sealing the Plans is obvious. The Department shouldn’t address this to me.

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Other Plan Errors

The number of bearings is not the only error. The width of joint at Br. 043 is more than double than in Plans. The thickness of Bearing Plate was shown as thickness of lubricating plate for Br. 055. The beam that needed lubricating plate to be repositioned at Br. 055 is wrong. The height of bearing braces at Br. 204 was wrong. They were larger than clear space, and they couldn't fit in under the girder. I have explained Br. 226 errors above. These prove that the EOR did not pay attention when checking the Plans.

These errors are not the only ones, but there is no point to list them all.

IV. CONCLUSION

As mentioned earlier, if the EOR wanted to change a nature and interpretation of pay item he should have requested a "Change of Pay Item" and send it to the Department for approval. If approved, it should be noted in the Plans, and the Specs. Since it was not in the Contract, then Pay Item for Bearing replacement stays as it always was, ... Each Bearing.

Please refer to the attachments (B, C, D, E) from "Bases of Estimates" for "Neoprene" and "Multirotational" Bearings, as well as the attachment from Spec Book for "Multirotational Bearings" (F), method of measurement and bases of payment.

The "Bases of Estimates" haven't change for bearings replacement, and stay the same for 2007, 2013, 2020 and 2021, so the Department cannot say "the EOR's intention was". Otherwise, how would we interpret this 461. Spec?

461-9.2 Payment Items:

Payment will be made under:

Item No. 461-113- Multirotational Bearing Assembly - Fixed - each.

Item No. 461-114- Multirotational Bearing Assembly - Expansion - each.

Answer: Each Bearing Assembly, of course.

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DEPARTMENT'S POSITION:³

Project Description

This project consists of bearing repairs on Bridge Nos. 150043, 150055, 150203, 150204, 150223 and 150243 in Pinellas County. Each specific bridge has different needs and is described in detail through project and pay item notes.

The scope of the project includes the following for 6 bridges included in this contract:

- Bridge 150043 – SR 60, Clearwater Beach
 - Jack span 5 along bent 5 and replace existing bearing pad and joint replacement.
- Bridge 150055 – US19 over 49th Street
 - Jack all bearings along Pier 4. For bearing 3-12 reposition, weld self-lubricating plate, & then paint the bearing. “3-12” denotes span 3, beam 12. Same nomenclature for “span-beam” below as well.
- Bridge 150203 – SR 580 over Safety Harbor
 - Jack beams 5-2, 5-3, 5-4, 6-2, 6-3, and 6-4 and reposition bearing pad 5-3.
- Bridge 150204 – US 19 over Ulmerton Blvd.
 - Jack End Bents 1 and 4, reposition pads and install painted collars on bearings 1-1 (East) and 1-5 (East) along End Bent 1, and 3-2 (East) along End Bent 4.
- Bridge 150226 – US 19 over Drew Street
 - Jack all beams at End Bents 1 and 6 and Pier 2. At End Bent 1 replace Bearing 1-4. At Pier 2 replace Bearings 2-1, 2-2, and 2-6. At End Bent 6 replace Bearings 5-3 and 5-4.
 - At End Bent 1, snug tighten anchor bolts at Bearing 1-4 and 1-6. At End Bent 6, snug tighten anchor bolts at Bearing 5-2.
- Bridge 150243 – SR 679 Ft. DeSota
 - Along Pier 18 jack beams 17-1, 17-2, 17-3, 18-1, 18-2 and 18-3 and reposition bearing pad 18-2.

³ See original position papers for exhibits.

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The timeline for this issue is as follows:

- Notice of Intent Submitted (Attachment A) October 14, 2020
- Department's Acknowledgment of NOI (Attachment B) November 3, 2020
- Escalation Meeting with DCE November 30, 2020
- Contractor Request for RDRB (Attachment C) January 11, 2021
- Department Agreement to RDRB (Attachment D) January 20, 2021
- RDRB Prehearing Meeting January 29, 2021
- Position Papers Due to all parties February 12, 2021
- Rebuttal Papers Due February 22, 2021
- RDRB Hearing March 1, 2021

Issue Description

The issue for this RDRB Position Paper is simply how THIS project defines how the unit “each” is quantified for the pay items specified below. Specifically, the Department will demonstrate that the contract documents clearly show how “each” (for items 400-140-1 & 2) on this contract is defined. Orlando R&B is alleging “each” is defined in a different way - “each” bearing.

Specifically, the pay items in question are as follows:

| Item Number | Item Description | Unit |
|-------------|-------------------------------------|------|
| 400-140-1 | Neoprene Pad Replacement, Bent/Pier | EA |
| 400-140-2 | Neoprene Pad Replacement, Abutment | EA |

This contract defines the unit “EA” as the number of bent/piers or abutments. For example, Bridge 150204 involves the jacking of both End Bents (Abutments). Therefore, the quantity provided in the contract for item 400-140-2 (Neoprene Pad Replacement, Abutment) is two (2). End Bent (abutment) 1 includes the repositioning and collar installation at one (1) bearing. End Bent (abutment) 4 includes the repositioning and collar installation at two (2) bearings. In the case of Bridge 150204, the contractor believes that there should be an over run of one (1) because there are 3 bearing locations. Bridge 150226 involves the jacking of all beams at both End Bents (abutments) and one intermediate bent, Pier 2. Therefore, the quantity provided in the contract for item 400-140-2 (Neoprene Pad Replacement, Abutment) is two (2) and for item 400-140-1 (Neoprene Pad Replacement, Bent/Pier) is one (1). Like Bridge 150204, the contractor believes that both pay items should be over run because there are multiple bearings at Pier 2 and End Bent (abutment) 6.

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A summary of the quantity dispute is as follows:

| "EA" Defined as Abutment/Pier (Department's Position) | | | |
|--|---------------|---------------|-------|
| | Bridge 150204 | Bridge 150226 | TOTAL |
| 400-140-1 (Neoprene Pad Replacement, Bent/Pier) | 0 | 1 | 1 |
| 400-140-2 (Neoprene Pad Replacement, Abutment) | 2 | 2 | 4 |

| "EA" Defined as Bearing/Beam Location (Contractor's Position/claim) | | | |
|--|---------------|---------------|-------|
| | Bridge 150204 | Bridge 150226 | TOTAL |
| 400-140-1 (Neoprene Pad Replacement, Bent/Pier) | 0 | 3 | 3 |
| 400-140-2 (Neoprene Pad Replacement, Abutment) | 3 | 3 | 6 |

| Difference Between Department and Contractor | | | |
|---|---------------|---------------|-------|
| | Bridge 150204 | Bridge 150226 | TOTAL |
| 400-140-1 (Neoprene Pad Replacement, Bent/Pier) | 0 | 2 | 2 |
| 400-140-2 (Neoprene Pad Replacement, Abutment) | 1 | 1 | 2 |

Department's Position

The scope of work for this project is represented in General Notes A and B, plan sheet B-6 as follows:

A. PROJECT LOCATION:

This project consists of bearing repairs on Bridge Nos. 150043, 150055, 150203, 150204, 150226 and 150243 in Pinellas County.

B. SCOPE OF WORK:

Repair fixed and movable bearings, including replacing and repositioning composite neoprene pads, bearing plates and pot bearings.

Immediately, the intent of this project is to repair bearings on several bridges involving composite neoprene pads, bearing plates, and pot bearings. Therefore, it is clear from the start that the “Neoprene Pad Replacement” pay items are not being used to simply designate the location and number of neoprene pads to replace. The Department will clearly demonstrate and walk through how these pay items are used and explained in the contract documents.

Since the EOR chose to utilize these two pay items, we will start with what the Florida Department of Transportation Basis of Estimates Manual states regarding the use of the 400-140-x pay items:

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| | |
|-----------------------------------|--|
| Structure ID 400-140- A | Title Neoprene Pad Replacement |
| Unit EA | Plan Quantity? No |
| Notes Details | <p>Intended for rehabilitation and widening projects to replace existing damaged pads. Show locations w/ quantity block in plans. Include pay item note to include cost of neoprene pads, jacking bridge, disposal of old pads, and all other labor and materials required to replace existing bearing incidental to cost of this item. For new bearing pads, refer to pay items 400-147 and 400-148.</p> <p>For Plan Detail/Tech Spec items: The Designer should ensure that the description, materials, construction/installation requirements, method of measurement and basis of payment are available in the contract documents to clearly define the work to be completed for payment under this item.</p> |

For clarity, the notes/details for these pay items state:

Intended for rehabilitation and widening projects to replace existing damaged pads. Show locations w/ quantity block in plans. Include pay item note to include cost of neoprene pads, jacking bridge, disposal of old pads, and all other labor and materials required to replace existing bearing incidental to cost of this item.

For new bearing pads, refer to pay items 400-147 and 400-148.

The first part of the note/details quoted above indicates the reason the 400-140-x pay item is used as the scope is rehabilitation and replacing damaged pads. The second part of the note/details reads as follows:

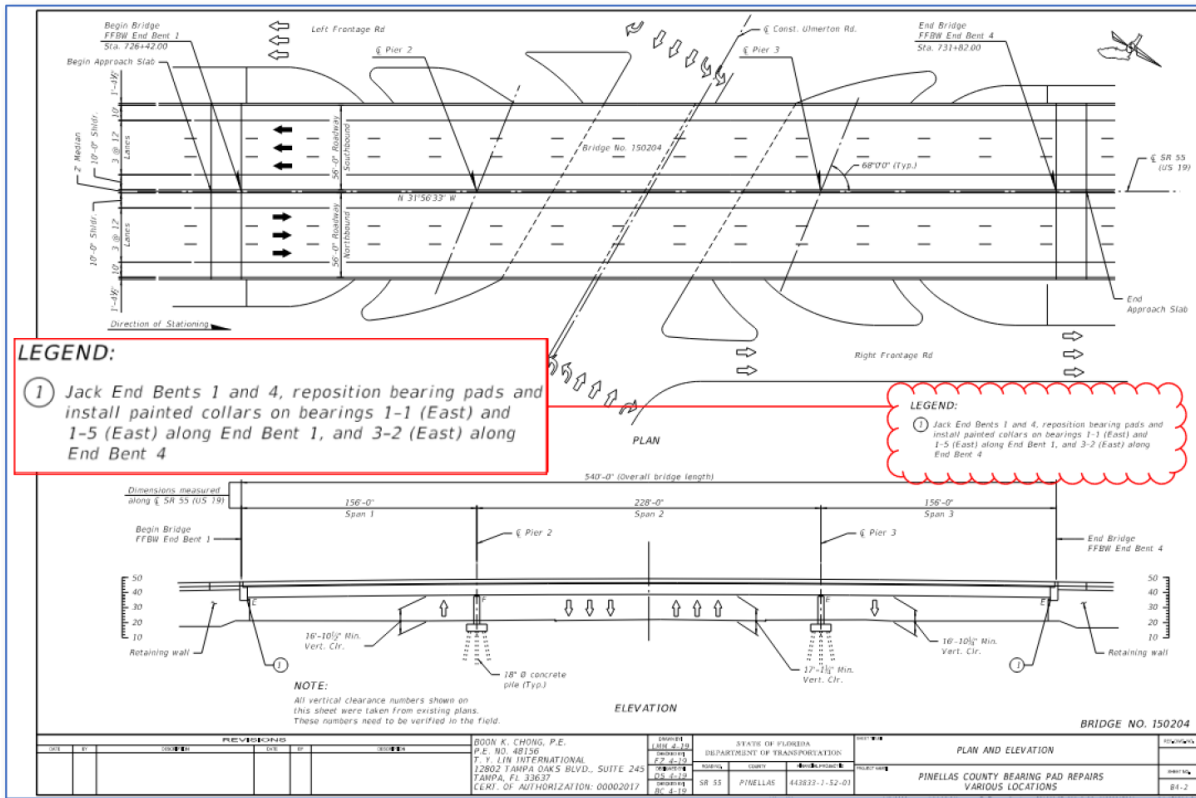
For Plan Detail/Tech Spec items: The Designer should ensure that the description, materials, construction/installation requirements, method of measurement and basis of payment are available in the contract documents to clearly define the work to be completed for payment under this item.

The notes above state that the designer, “should ensure that the description, materials, construction/installation requirements, method of measurement and basis of payment are available in the contract documents to clearly define the work to be completed for payment under this item.” **The plans do indeed provide pay item notes and plan notes for each bridge that clearly defines the method of measurement and basis of payment.** This was accomplished through the use of the payitem and plan notes as described for Bridges 150204 and 150226.

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Bridge 150204

The scope of the work is indicated on plan sheet B4-2 as illustrated below:



The provided pay items intended to cover the above referenced scope of work is as follows:

| ITEM NUMBER | ITEM DESCRIPTION | UNIT | 44383315201 | BR# 150204 |
|--------------|---|------|-------------|------------|
| 0104- 11- | FLOATING TURBIDITY BARRIER | LF | | |
| 0110- 3- | REMOVAL OF EXISTING STRUCTURES/BRIDGES 44383315201 | (LS) | | |
| 0400-140- 1 | NEOPRENE PAD REPLACEMENT, BENT/PIER | EA | | |
| 0400-140- 2 | NEOPRENE PAD REPLACEMENT, ABUTMENT | EA | | 2.000 |
| 0458- 1- 21 | BRIDGE DECK EXPANSION JOINT, REHABILITATION, POURED JOINT WITH BACKER ROD | LF | | |
| 0460- 1- 1 | STRUCT STEEL- REHAB, CARBON | LB | | 393.000 |
| 0460- 1- 13 | STRUCTURAL STEEL REHAB- BOLTS, NUTS, WASHERS & PLATES | LB | | |
| 0460- 94- | STRUCTURAL STEEL REPAIR- WELDS | LF | | 35.000 |
| 0460-112- | ANCHOR BOLT REPLACEMENT | EA | | 18.000 |
| 0461-114- 14 | MULTIROTATIONAL BEARING ASSEM EXP, F&I, 751- 1000KIPS | EA | | |
| 0561- 2- | COATING EXISTING STRUCTURAL STEEL | SF | | 52.000 |

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To further support and define the pay items, the following pay item notes on plans sheet BQ1-2 are provided:

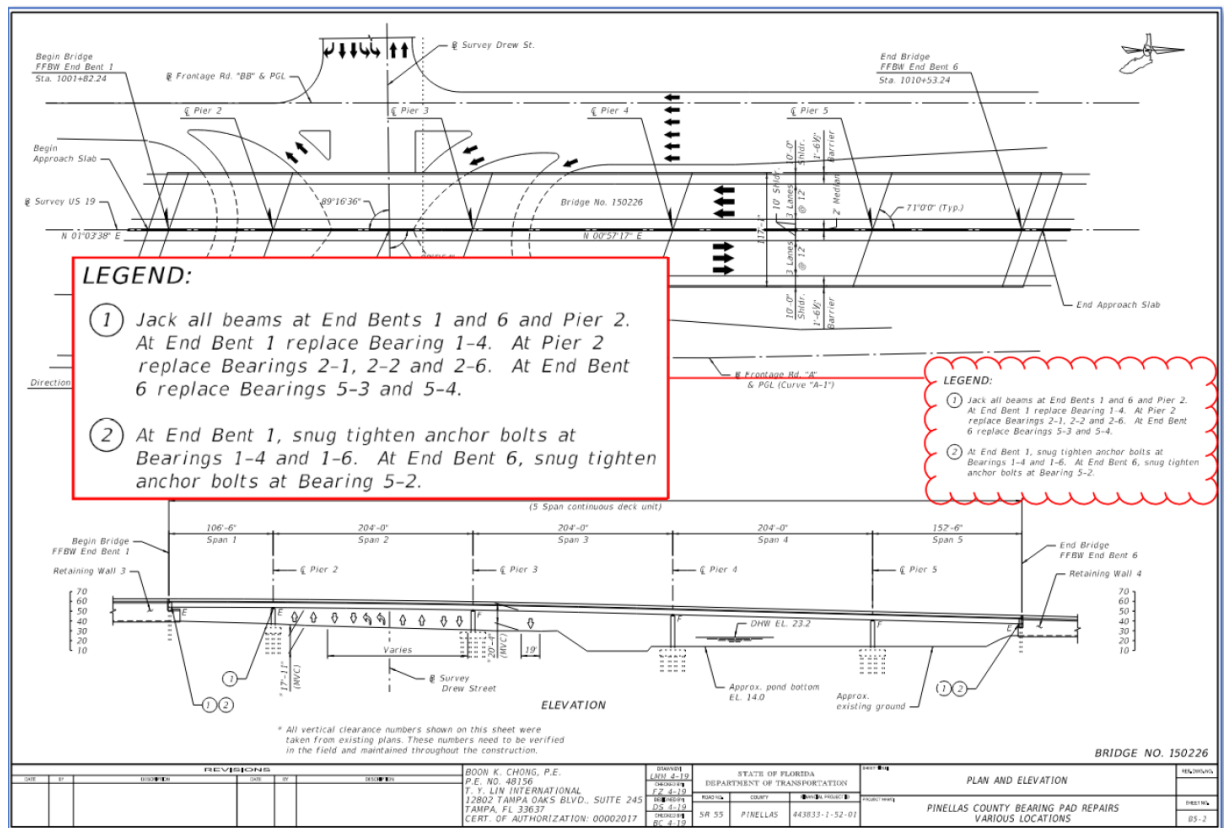
- Bridge 150204:*
1. Pay Item 400-140-2 includes jacking, with all incidental labor, tools, and materials, of all beams along Abutments 1 and 4 and repositioning bearing pads for Beams 1-1 (East), 1-5 (East) and 3-2 (East).
 2. Pay Item 460-1-1 includes the material, bolt connections, and installation of the bearing collar.
 3. Pay Item 460-112 includes locating the existing rebar, drilling, and installation of anchor bolts.

The 400-140-2 pay item is intended to cover the costs to jack all the beams along the specified abutment along with the repositioning of the specified bearing pads. The *repositioning* of the bearing pad is simple by nature and is ancillary in cost perspective to the jacking of the entire abutment.

Additional pay items were included to cover the fabrication, painting, and installation of the collars and the installation of the anchor bolts. **Again, the 400-140-2 (abutment) pay item is intended to cover the costs of jacking ABUTMENTS 1 and 4, for a quantity of two (2).**

Bridge 150226

The scope of the work is indicated on plan sheet B4-2 as illustrated below:



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The provided pay items intended to cover the above referenced scope of work is as follows:

| ITEM NUMBER | ITEM DESCRIPTION | UNIT | 44383315201 BR# 150226 |
|--------------|---|------|------------------------|
| 0104- 11- | FLOATING TURBIDITY BARRIER | LF | |
| 0110- 3- | REMOVAL OF EXISTING STRUCTURES/BRIDGES 44383315201 | (LS) | |
| 0400-140- 1 | NEOPRENE PAD REPLACEMENT, BENT/PIER | EA | |
| 0400-140- 2 | NEOPRENE PAD REPLACEMENT, ABUTMENT | EA | 3.000 |
| 0458- 1- 21 | BRIDGE DECK EXPANSION JOINT, REHABILITATION, POURED JOINT WITH BACKER ROD | LF | |
| 0460- 1- 1 | STRUCT STEEL- REHAB, CARBON | LB | |
| 0460- 1- 13 | STRUCTURAL STEEL REHAB- BOLTS, NUTS, WASHERS & PLATES | LB | |
| 0460- 94- | STRUCTURAL STEEL REPAIR- WELDS | LF | |
| 0460-112- | ANCHOR BOLT REPLACEMENT | EA | 3.000 |
| 0461-114- 14 | MULTIROTATIONAL BEARING ASSEM EXP, F&I, 751- 1000KIPS | EA | 6.000 |
| 0561- 2- | COATING EXISTING STRUCTURAL STEEL | SF | 131.000 |

To further support and define the pay items, the following pay item notes on plans sheet BQ1-2 are provided:

Bridge 150226:

1. Pay Item 400-140-2 includes jacking, with all incidental labor, tools, and materials, of all beams along Abutments 1 and 6, and Pier 2.
2. Pay Item 460-112 only includes hand tightening of anchor bolts on bearings 1-4, 1-6, and 5-2.
3. Pay Item 461-114-14 includes all incidental labor, tools and materials for both the Multidirectional Pot Bearings and the Transversely Restricted Pot Bearings.

The 400-140-2 pay item is intended to cover the costs to jack all the beams along the specified abutment.

*Note: The Department has acknowledged that there is an error in this case due to having a quantity of three (3) for the 400-140-2 (abutment) item as there are only two (2) abutments to a bridge.

Furthermore, the Department has over ran quantity of one (1) from 400-140-2 (abutment) to 400-140- 1 (bent/pier) to cover the jacking of Pier 2.

Additional pay items were included to cover the replacement of the multi-rotational bearings and snug tightening of bolts. **Again, the 400-140-2 (abutment) and 400-140-1 (bent/pier) pay items are intended to cover the costs of jacking ABUTMENTS 1 and 6 and Pier 2, for a quantity of two (2) for pay item 400-140-2 (abutment) and one (1) for pay item 400-140-1 (bent/pier).**

Contract Documents vs. the FDOT Basis of Estimates

The case brought forward to the RDRB so far has focused on the contract plans. While the Basis of Estimates was referenced in this paper, it is not a contract document. The January 2020 Standard Specifications for Road and Bridge Construction defines “contract documents” as follows:

The term “Contract Documents” includes: Advertisement for Proposal, Proposal, Certification as to Publication and Notice of Advertisement for Proposal, Appointment of Agent by Nonresident Contractors,

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Noncollusion Affidavit, Warranty Concerning Solicitation of the Contract by Others, Resolution of Award of Contract, Executed Form of Contract, Performance Bond and Payment Bond, Specifications, Plans (including revisions thereto issued during construction), Standard Plans, Addenda, or other information mailed or otherwise transmitted to the prospective bidders prior to the receipt of bids, work orders and supplemental agreements, all of which are to be treated as one instrument whether or not set forth at length in the form of contract.

The Department has demonstrated how the applicable contract documents, the plans in this case, intend to quantify the 400-140-1 (pier/bent) and 400-140-2 (abutment) pay items; which is also in compliance with the FDOT Basis of Estimates.

Pay Item and Bid Evaluation – Contract Amount vs. Actual Costs Analysis

Although the Department has stated that the unit “each” for the 400-140-x pay items for this contract is **clearly and consistently** defined as each bent/pier or abutment; the Department analyzed the contractor’s unit price against the Item Unit Cost report and the actual Time and Material calculation for said work in order to determine if the bid amount is consistent with intended use of said pay items.

The Tabulation of Bids (attachment E) for these two pay items are as follows:

| Tabulation of Bids | | | | | | | | | | Page 2 of 4 |
|--|-----------|-------------------|----------------------|------------|-------------------------------|------------|---------------------------------|------------|--|-------------|
| Letting: | | 07200311 | March 11, 2020 | | Call Order: 003 | | Contract: E7N02 | | | |
| Line No / Item ID Item Description () indicates item is bid as Lump Sum | Alternate | Quantity Units | (1) ORLANDO R&B, LLC | | (2) JONES BENITEZ CORPORATION | | (3) SOUTHERN ROAD & BRIDGE, LLC | | | |
| | | | Unit Price | Ext Amount | Unit Price | Ext Amount | Unit Price | Ext Amount | | |
| SECTION: 0001 Structures | | | | | | | | | | |
| 0005 | 0104 11 | 197.000 | 20.00000 | 3,940.00 | 12.00000 | 2,364.00 | 15.00000 | 2,955.00 | | |
| FLOATING TURBIDITY BARRIER | | LF | | | | | | | | |
| 0010 | 0110 3 | (6.000) | 10,000.00000 | 10,000.00 | 14,000.00000 | 14,000.00 | 25,000.00000 | 25,000.00 | | |
| REMOVAL OF EXISTING STRUCTURES/BRIDGES 44383315201 | | SF (LS) | | | | | | | | |
| 0015 | 0400140 1 | 4.000 | 35,000.00000 | 140,000.00 | 50,000.00000 | 200,000.00 | 2,850.00000 | 11,400.00 | | |
| NEOPRENE PAD REPLACEMENT, BENT/PIER | | EA | | | | | | | | |
| 0020 | 0400140 2 | 5.000 | 21,000.00000 | 105,000.00 | 8,000.00000 | 40,000.00 | 2,850.00000 | 14,250.00 | | |
| NEOPRENE PAD REPLACEMENT, ABUTMENT | | EA | | | | | | | | |

The Item Average Unit Cost from 2020/01/01 to 2020/12/31, Area 8 (Attachment F) is as follows:

| Item | No. of Conts | Weighted Average | Total Amount | Total Quantity | Unit Meas | Obs? | Description |
|-----------|--------------|------------------|--------------|----------------|-----------|------|-------------------------------------|
| 0400140 1 | 2 | \$2,698.41 | \$510,000.00 | 189.000 | EA | N | NEOPRENE PAD REPLACEMENT, BENT/PIER |
| 0400140 2 | 2 | \$3,489.80 | \$171,000.00 | 49.000 | EA | N | NEOPRENE PAD REPLACEMENT, ABUTMENT |

Orlando R&B and the second-place bidder both bid significantly higher than the Item Average Unit cost. The Average Item Unit Cost does reflect that this method of measurement for the two contracts within this search parameter to be for each bearing/beam location. **However, as illustrated by numerous**

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plan notes, the method of measurement for this project is different. The fact that Orlando R&B bid significantly higher than the Item Average Unit Cost is evidence that the contractor understood that these items represented the jacking of the entire bent/pier/abutment.

In addition, there were no bid questions or errors or omissions submitted by Orlando R&B concerning this issue. Please see attachment G and H for the Bid Questions and Answers and Orlando R&B's Errors and Omissions submittal.

Furthermore, in an effort to determine if the contractor has been damaged in any way, the Department analyzed the actual costs to perform the work and how it compares with the compensation provided by the contract. The results of this analysis are as follows:

Bridge 150204

- Engineer's estimate based on Time and Materials calculates to be \$10,848.71. The Engineer's Estimate can be found in Attachment I.
- The work on Bridge 150204 took 1 day.
- The amount paid via pay items is \$42,000.

| Pay Item # | Pay Item Description | Unit | Qty | Unit Price | Total |
|------------|------------------------------------|------|-----|--------------|--------------|
| 400-140-2 | Neoprene Pad Replacement, Abutment | EA | 2 | \$ 21,000.00 | \$ 42,000.00 |

- Orlando R&B Request: \$63,000

| Pay Item # | Pay Item Description | Unit | Qty | Unit Price | Total |
|------------|------------------------------------|------|-----|--------------|--------------|
| 400-140-2 | Neoprene Pad Replacement, Abutment | EA | 3 | \$ 21,000.00 | \$ 63,000.00 |

Bridge 150226

- Engineer's estimate based on Time and Materials calculates to be \$18,710.76. The Engineer's Estimate can be found in Attachment J.
- The work on Bridge 150204 took approximately 29 hours.
- The amount paid via pay items is \$77,000.

| Pay Item # | Pay Item Description | Unit | Qty | Unit Price | Total |
|------------|-------------------------------------|------|-----|--------------|--------------|
| 400-140-1 | Neoprene Pad Replacement, Bent/Pier | EA | 1 | \$ 35,000.00 | \$ 35,000.00 |
| 400-140-2 | Neoprene Pad Replacement, Abutment | EA | 2 | \$ 21,000.00 | \$ 42,000.00 |

- Orlando R&B Request \$168,000:

| Pay Item # | Pay Item Description | Unit | Qty | Unit Price | Total |
|------------|-------------------------------------|------|-----|--------------|---------------|
| 400-140-1 | Neoprene Pad Replacement, Bent/Pier | EA | 3 | \$ 35,000.00 | \$ 105,000.00 |
| 400-140-2 | Neoprene Pad Replacement, Abutment | EA | 3 | \$ 21,000.00 | \$ 63,000.00 |

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Summarizing the numbers above:

| Department Paid | Actual Costs Plus Markups | Contractor Requesting |
|-----------------|---------------------------|-----------------------|
| \$119,000 | \$ 29,559.47 | \$ 231,000.00 |

It is important to note that the relatively low amount calculated via time and materials can be attributed to the fact that the Department approved the contractors RFM's and jacking plans which allowed the contractor to lift a significantly lower number of beams. The plans require that ALL beams at all the abutments and pier/bents to be jacked. The Department approved these requests without requesting a refund or to submit a cost savings initiative (CSI.)

The Department presented Orlando R&B the detailed records supporting the above referenced Engineer's Estimates on December 18, 2020 (attachments I and J) and requested Orlando R&B to review the backup and to advise if there was anything missing or inaccurate. Mr. Campbell also requested Orlando R&B to evaluate this analysis in separate emails (attachment K). Orlando R&B never provided any documentation disputing the time and materials documentation/analysis.

As can be seen, Orlando R&B was paid 4 times more than what it cost to complete this work (with markups), and yet is still requesting additional compensation. If Orlando R&B is granted entitlement to this over run, the total compensation would be 7.8 times the actual costs (including markups).

Conclusion

The Department has demonstrated that the entitlement for plan quantity over runs is unsubstantiated for the reasons summarized below:

- 1. The contract plans clearly define what costs should be included in the 400-140-1 (Neoprene Pad Replacement, Bent/Pier) and 400-140-2 (Neoprene Pad Replacement, abutment) pay items** – The pay item notes clearly indicate that the above pay item were intended to cover the costs for jacking for this particular contract and how "each" is defined. The pay item notes on plan sheet BQ1-2 read:

Bridge 150043:

- 1. Pay Item 400-140-1 includes jacking, with all incidental labor, tools, and materials, of Span 5 along Bent 5 and removal and replacement of existing Asbestos Graphite Bearing Pads with a Neoprene Bearing Pad. The replacement bearing pad may be continuous or in broken lengths of 2'-0" minimum.*

Bridge 150055:

- 1. Pay Item 400-140-1 includes jacking, with all incidental labor, tools, and materials, of all beams along Pier 4, along with cleaning and repositioning the self lubricating plate and painting bearing assembly for bearing 3-12 along Pier 4.*

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Bridge 150203:

- 1. Pay Item 400-140-1 includes jacking, with all incidental labor, tools, and materials, of beams 5-2, 5-3, 5-4, 6-2, 6-3 and 6-4 and repositioning the bearing pad of beam 5-3.*

Bridge 150204:

- 1. Pay Item 400-140-2 includes jacking, with all incidental labor, tools, and materials, of all beams along Abutments 1 and 4 and repositioning bearing pads for Beams 1-1 (East), 1-5 (East) and 3-2 (East).*

Bridge 150226:

- 1. Pay Item 400-140-2 includes jacking, with all incidental labor, tools, and materials, of all beams along Abutments 1 and 6, and Pier 2.*

Bridge 150243:

- 2. Pay Item 400-140-1 includes jacking, with all incidental labor, tools, and materials, for beams 17-1, 17-2, 17-3, 18-1, 18-2, and 18-3 along Pier 18 and the repositioning of bearing pad 18-2.*

- 2. Bid analysis indicates that Orlando R&B understood the intent of these two pay items and the cost associated with them.** – Orlando R&B bid \$35,000/ea for 400-140-1 and \$21,000/ea for 400-140-2. These bid prices are 13 and 6 times, respectively, the Item Average Unit Cost from 2020/01/01 to 2020/12/31.
- 3. The Contractor was adequately compensated for the work through the contract pay items.** – The Department’s own Time and Material analysis reveals that the actual cost to perform the work was four (4) times **lower** than what was paid through the contract pay items. The contractor has not presented any information to dispute this assertion despite multiple requests.

We respectfully request that the Regional Disputes Review Board find that the contractor is “Not Entitled” to a quantity over run of pay item 400-140-1 and 400-140-2 (which would compensate the contractor 7.8 times more than the actual costs plus standard markups) and that the contract documents do accurately and clearly define the method of measurement, basis of payment, and clearly define the work to be completed for payment under these items.

CONTRACTOR’S REBUTTAL:⁴

I. TO THE BOARD

Gentlemen, I’ve originally thought to put comments to the Departments Position Paper in this letter, by asking you to refer to such and such paragraph, and that would cause a lot more work for you, flipping over and over so many pages multiple times; so, I have changed my mind and decided to put comments in red or blue text next to Department’s statements. In that case you don’t need to go anywhere to find my comments. It is under Attachment “A”.

Other attachments are to prove that this item was never “each bent”.

⁴ See original rebuttal for Attachments.

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II. REBUTTAL

When I saw in my phone 47 pages of Department's Position Paper, first thing I thought was what did they talk about on 47 pages, and who will answer to all of that? Then, when I opened it in my lap-top I noticed Bridge Plan sheets over and over, emails, and nothing special. So many repeated false statements, trying to justify what they were saying, and what they are trying to imply.

That is not what they really think. They know I am right. They couldn't find any job that was paid in the way they are officially saying, so, they are saying it is just for this job. Well, nothing indicates that is the case for this job.

This should've been an easy case, couple of sentences. Since the Department made so many repetitive statements, I had no option but answer to most of them in same way. Repeating myself over and over.

By how it was written, I can tell it's been done by Mr. Gillette, who told me that the most of my frustrations come because they are not a "bridge people". That explains a lot.

How come that people who have no bridge background wants to teach and interpret bridge Plans to a "bridge person"?

A person who was selected by the USACE as number one pick to oversee Design, Construction, CEI, QC and Shop Drawings on multibillion project.

To person who worked in Design Office reviewing Plans for 30%, 60%, 90% before they were handed to the Department.

To person who did plan reviews for multiple CEI companies, which I've never worked for.

To person who did comments for the Tampa "Links" project, for company that did not get the work, but the Department requested from Mr. Vogel (VP of HNTB) my comments.

To person who was told by Mr. Pepe Garcia (former D1, D7 Structure Office) after spent about 45 minutes by the bridge, in the field, "get your license, you can open any door".

To person who was approached by Mr. Jim Jacobson, offering me PM position and pay for training and license.

To person who was asked 7 times by Mr. Zep..."why don't you come work for me?" Mr. Zep is very much a "bridge guy", and I went to work for him in 2008. Got 7 jobs in 9 months. That is how I do the estimates.

To person who was approached by D2 Bridge Manager, Mr. Ibrahim Yasar, when I was doing stringer/beam stud repairs on 1.5 miles Mathews Bridge in down town Jacksonville, who came to me around 2:00 AM and said: "Mr. "Z" thank you very much, we all learned lot from you!"

And now we have "no bridge people" who are saying bearings are not paid by bearing, but per bent! Too much from them, too much.

The Department claims that Bases of Estimates **clearly say Each Bent or Abutment**, which is not correct, but then they attached a Historical Prices sheet, which **clearly is showing that bearings are paid per Each Bearing**??? It is Attachment "B" in this Rebuttal.

Attachment "B1" is showing the most current project "Bid Table". That job was let yesterday 2/17/21. It **clearly shows that bearings are paid by Each Bearing, and not per Each Bent.**

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This is a simple prove that Unit of Measurements and Bases of Payment have never changed. It was always Each Bearing.

How Department does things? On Page 12, second paragraph (Departments A-32) Mr. Gillette is saying I never responded to Mr. Campbell. He just did not want to show my response. Please see Attachment "E". My first response was I will let them know which DRB member I would pick. My second response was that I do not accept T&M, when I have Pay Item. **This is simple increase of quantity, not T&M.** Mr. Gillette did not attach my response. I would never do something like this! Period!

He missed to say that I asked Mr. Conrad three time why we don't increase the quantity? That is how it works. Mr. Conrad's response was...he will certainly do that

On Page 13 Mr. Gillette is saying that my prices were 13 and 6 times the State average. State average does not say these bearings were 1,700 pounds. I have also explained in blue why State average is low.

According to the Department that job I mentioned above and in Attachment "B2" that was let yesterday wouldn't be between 1.37 and 3.03 million. It would be \$88,000. That is how much the Department is right when they say they overpaid me. Even if they did, that is my Contract price. Kiewit won this job for \$1.37 million. They will get more than 2.5 million out of it, but nobody will try to beat them down.

III. CONCLUSION

FDOT has two ways of paying for bearings: "Each Bearing" for widening and bridge maintenance projects, like ours; and CF for new construction. There is no third option.

So, this is so obvious. I am respectfully asking the Board to rule according to the FDOT's own way of paying for bearings, known for years, as it is shown in Attachments "B" and "B1". That will ultimately rule in my favor.

It cannot be...all jobs get paid in the same way, by "each bearing", except ours. These two attachments prove how bearing replacement is paid.

However, I have not seen from the Department any prove that any job was paid in the way they are saying.

I am encouraging the Department to show if any job in history was paid in the way they are saying.

DEPARTMENT'S REBUTTAL:

1. INTRODUCTION

The Department has reviewed Orlando R&B's Position Paper and offer the following general statements:

- The contractor has made points that are baseless in facts.
- The contractor is attempting to confuse this simple issue with misdirection and unnecessary slander towards the Department and it's Engineer of Record.
- The contractor is exaggerating the number and significance of plan errors in an attempt to show that if the EOR made *that* mistake, then *this* must be a mistake as well. The Department has, and continues, to

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handle each plan error and/or changed condition independently and on its own merit. This will be demonstrated in this Rebuttal Paper.

For the ease of the Board, the Department will reference the question and/or statement presented in the Contractor's Position Paper. The Contractor's Position Paper will be presented in *italics*, followed by the Departments response.

2. REBUTTAL TO CONTRACTOR'S POSITION PAPER

Section I. Questions to the Board

1. *If Scope of Work calls for bearing reposition or replacement, how unit of measurement could be a bent or abutment?*

Department's Response: This question is exactly what this hearing is about. In short, the Department's position is that the plans clearly describe in the summary tables and pay item notes for the pay items in question, 400-140-1 & 2, that "each" is to be defined by bent/pier or abutment. Again, the pay items and pay item notes when taken together clearly indicate to prospective bidders that the work covered under pay items 400-140-1&2 is per bent or abutment.

In order to demonstrate, we will now delve into the plans and describe how one can naturally and easily arrive to the same understanding.

The unit of measure is defined by the contract documents. The plan and pay item notes for the 400-140-x pay items clearly explain that they are used to cover the cost of jacking the prescribed beams at the specified bent/pier or abutment. The 400-140-x pay item notes are as follows:

Bridge 150043:

1. *Pay Item 400-140-1 includes jacking, with all incidental labor, tools, and materials, of Span 5 along Bent 5 and removal and replacement of existing Asbestos Graphite Bearing Pads with a Neoprene Bearing Pad. The replacement bearing pad may be continuous or in broken lengths of 2'-0" minimum.*

Bridge 150055:

1. *Pay Item 400-140-1 includes jacking, with all incidental labor, tools, and materials, of all beams along Pier 4, along with cleaning and repositioning the self lubricating plate and painting bearing assembly for bearing 3-12 along Pier 4.*

Bridge 150203:

1. *Pay Item 400-140-1 includes jacking, with all incidental labor, tools, and materials, of beams 5-2, 5-3, 5-4, 6-2, 6-3 and 6-4 and repositioning the bearing pad of beam 5-3.*

Bridge 150204:

1. *Pay Item 400-140-2 includes jacking, with all incidental labor, tools, and materials, of all beams along Abutments 1 and 4 and repositioning bearing pads for Beams 1-1 (East), 1-5 (East) and 3-2 (East).*

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Bridge 150226:

1. Pay Item 400-140-2 includes jacking, with all incidental labor, tools, and materials, of all beams along Abutments 1 and 6, and Pier 2.

Bridge 150243:

2. Pay Item 400-140-1 includes jacking, with all incidental labor, tools, and materials, for beams 17-1, 17-2, 17-3, 18-1, 18-2, and 18-3 along Pier 18 and the repositioning of bearing pad 18-2.

The pay item notes clearly state that the 400-140-x pay item is to include “jacking, with all incidental labor, tools, and materials...” The note then goes on to explain what is to be jacked and any other ancillary activity that should be include under this pay item.

Now, let’s delve into each bridge specifically:

Bridge 150043, the pay item note explains that the 400-140-1 pay item includes the jacking of Span 5. **This is one pier, therefore the quantity provided is 1.**

Bridge 150055, the pay item note explains that the 400-140-1 pay item includes, “all beams along Pier 4.” **This is one pier, therefore the quantity provided is 1.**

Interesting to note is that the contractor is accepting a quantity of 1 in this case, although more than one beam is being jacked. In fact, the plans required that all 17 beams for both spans 3 and 4 to be jacked; for a total of 34 beams. All that was required after the jacking was to reposition a bearing plate, weld, and paint. Additional pay items were provided to cover the cost of welding and painting. The contractor will argue that the only bearing/beam location that has an “action” is 3-12. Again, that “action” is merely a repositioning that requires minimal equipment and effort. The major item of work and cost is the jacking of the beams.

Also, interesting to note is that the Department approved the Contractor’s signed andsealed jacking plan that involved jacking only 7 out of the 34 beams and did not request a CSI or credit for completing less work.

Incidentally, the Department requested the adjacent bearing, 3-11, also be repositioned. This was accomplished in less than 10 minutes (witnessed by both the FDOT Senior Inspector and Project Administrator) while the crew was in the manlift headed to 3-12. For this 10 minutes’ worth of effort, the contractor is requesting to overrun the 400-140-1 pay item at \$35,000.

For Bridge 150203, the pay item note explains that the 400-140-1 pay item includes the jacking of “beams 5-2, 5-3, 5-4, 6-2, 6-3 and 6-4 and repositioning the bearing pad of beam 5-3. **This is one pier, therefore the quantity provided is 1.**

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Interesting to note is that the contractor is accepting a quantity of 1 in this case, although more than one beam is being jacked. The contractor may respond that the only bearing/beam location that is has an “action” is 5-3. However, that “action” is merely are positioning that requires minimal equipment and effort. Again, it is evident that the major item of work and expense is the jacking of the identified beams.

For Bridge 150204, the pay item note explains that the 400-140-2 pay item includes the jacking “of all beams along Abutments 1 and 4...” **There are 2 abutments, therefore the quantity for 400-140-2 is two (2).** The note goes on to explain that the pay item also includes the repositioning of the bearing pads at Beams 1-1, 1-5, and 3-2. As is consistent with the other bridges, the major effort and expense is the jacking operation. The remaining work consisted of supplying and installing collars to prevent the bearings from moving again and tightening some loose bolts. Additional pay items were provided for these activities as well.

Incidentally, there were 2 bearings to reposition at one abutment and 1 at the other. The scope at BOTH abutments was to jack ALL beams to accomplish the repositioning, regardless of the number of bearings to reposition. The effort to “reposition” a bearing takes a matter of minutes. The overwhelming cost and time is the jacking operation, The Department counters the Contractor’s question with this; Why does it cost double to reposition 2 bearings at one abutment than it does 1 at the other abutment? Again, both abutments required that all the beams be jacked. The effort to reposition an additional bearing was minimal.

For Bridge 150226, the pay item note explains that the 400-140-2, “includes jacking, with all incidental labor, tools, and materials, of all beams along Abutments 1 and 6, and Pier 2.” **There are three (3) bents/piers/abutments, therefore a quantity of three (3) was provided for pay item 400-140-2.**

As stated in the Department’s Position Paper, it is acknowledged that is/was an error to include Pier 2 in the quantity meant for an abutment. Therefore, the Department corrected this error and has paid a quantity of two (2) under pay item 400-140-2 (abutment) and one (1) under pay item 400-120-1 (bent/pier). The total quantity for the 400-140-x pay items still being three (3).

In addition, this bridge also includes the replacement of 6 multi-rotational bearings, for which is covered by another pay item, 461-114-14 (multirotational bearing assem exp, F&I, 751- 1000KIPS) at \$18,000/each.

For Bridge 150243, the pay item 400-140-1 includes, “jacking, with all incidental labor, tools, and materials, for beams 17-1- 17-2, 17-3, 18-1, 18-2, and 18-3 along Pier 18 and the repositioning of bearing 18-2.” **This is one (1) pier, therefore the quantity provided is 1.**

Interesting to note is that the contractor is accepting a quantity of 1 in this case, although more than one beam is being jacked. The contractor may respond that the only bearing/beam location that is has an “action” is

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18-2. However, that “action” is merely a repositioning that requires minimal equipment and effort. The major item of work and expense is the jacking of the identified beams.

2. *If Specs direct an Engineers to follow ASHTO and Bases of Estimates, is it possible that the EOR change the Pay Item without requesting it from the Department?*

Department’s Response: This statement is incorrect. The specifications do not “direct an Engineer to follow AASHTO and Bases of Estimates” for these items. The contract documents do not have this requirement nor are AASHTO and the Basis of Estimates a part of the contract.

Although not a contract document, the Department contends that the plans ARE in conformance with the Basis of Estimates. As stated in the Department’s Position Paper, the Basis of Estimates states that, “The Designer should ensure that the description, materials, construction/installation requirements, method of measurement and basis of payment are available in the contract documents to clearly define the work to be completed for payment under this item.” That is precisely what the EOR did through the plan and pay item notes.

In addition, it is clear that THIS project is not merely a “neoprene pad replacement” project. So, for the contractor to attempt to reference past projects or to claim that that the description of the pay item is misleading in anyway is disingenuous.

3. *Is it possible that the EOR, even if he has requested “the change of pay item” does not put that in the Contract?*

E7 (sic)

Department’s Response: This question is irrelevant and purely hypothetical. Again, according to the contract documents the pay items, pay item notes, and plan notes when taken together clearly indicate to prospective bidders that the work covered under pay items 400-140-1&2 is per bent or abutment.

4. *If Bases of Estimates direct EOR-s to: “**Locate in the Plans. Summarize quantities by location**”, how come that, the Department reads this as summarize locations and not quantities? Please see Attachments B–E.*

Department’s Response: The work covered by pay items 400-140-1&2 is in the plans (summary boxes, pay item notes and plan/profile sheets). The contract documents clearly summarize the quantities by location (in this case per bent/abutment). This supports the Department’s assertion that a plain reading of the contract documents clearly indicates to prospective bidders that the work covered under pay items 400-140-1&2 is per bent or abutment.

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5. *Is it bridge rehab practice that, when repositioning one out of 12 bearings at end bent (Br. 204, end bent 4.), the Pay Item means 1 bent, and not 1 bearing?*

Department's Response: This also is irrelevant and not the issue at hand. What has occurred on other projects has no bearing on these contract documents. The contract documents clearly summarize the quantities by location (in this case per bent/abutment).

6. *Is it correct that Plan shows and Note reads to replace three bearings at Pier 2, Br. 226, "Summary Table" (Sheet B-4) shows zero?*

Department's Response: This question is misleading as the total quantity for this bridge was correct. As defined in the plan and pay item notes, "each" is defined as a bent/pier or abutment. There are 3 such locations at Bridge 150226 and therefore a quantity of 3 was provided. The Department has already acknowledged that one (1) should have been quantified under the "pier" pay item, 400-140-2 and the contractor has been paid as such.

However, the TOTAL quantity for Bridge 150226 remains three (3).

7. *If the Department's position at Br. 204 is that we have two abutments and they pay for two, instead for three bearings, is it correct then that, at Br. 226, we have three abutments, as per "Summary Table" (Sheet B-4)?*

Department's Response: This question is repetitive and an attempt at misdirection and confusion. See answer to number 6.

8. *Is it normal that for replacement of three 400 pounds steel rotational bearings at Br. 226 end bents, the EOR put in "Summary Table" ... "Neoprene Pad Replacement"?*

Department's Response: First, the statement made in this question is incorrect. The Summary Table consists of a quantity of six (6) each under the 461-114-14 (Multirotational bearing) pay item. The Contractor is attempting to confuse and conflate the issue by referencing this item. They are separate pay items and there are no conflicts or disputes with the Contractor involving the 461-114-14 pay item.

Furthermore, the Department contends that this question/argument strengthens the Department's position. It is for this reason; the contractor should have been aware to pay special attention to the plan and pay item notes. Furthermore, it is evident that the Contractor understood the intent of the plans because the bid amounts are commensurate to the work described, there were no bid questions asking for clarification, and there were no errors or omissions regarding these pay items. Once again, the pay items in dispute at this RDRB hearing re 400-140-1 and 400-140-2. It has been demonstrated that the work covered under pay items 400-140-1&2 is per bent or abutment.

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9. *Is it possible that Spec 461-8 “Method of Measurements” for Multirotational bearings: “Quantities for fixed and expansion bearings will be the plan quantity number of each of type of bearing constructed and accepted.”, the Department reads as quantity of bents and not bearings? Spec Page 649.*

| SECTION 461 MULTIROTATIONAL BEARINGS | |
|---|--|
| 461-1 Description. | |
| Furnish and install multirotational bearings in accordance with the recommendations of the manufacturer and details shown in the Plans. Obtain all multirotational bearings on each bridge from the same manufacturer. This Section covers the following types of multirotational bearings: | |
| 1. pot bearings | |
| 2. disc bearings. | |

Department’s Response: First, Standard specification 461-8 is the Method of Measurement for Multirotational bearings. This section is not applicable to the issue being discussed.

Second, the Department does interpret 461-8 as “each” bearing. The plans specify 6 and we have paid 6. There is no dispute here. This corresponds with the summary of structure quantities for bridge 226. This is the only bridge with multirotational bearings.

Third, but most importantly, this question is irrelevant and an attempt at misdirection and confusion. The dispute is centered around pay items 400-140-1 & 2 not the 461-114-14 pay item.

10. *Spec 461-9 “Bases of Payment” and 461-9.1 “Basic Items of Bearings” say:*

“The Contract unit price per each for bearings will be full compensation for all work and materials necessary for the complete installation.”

Is it possible that the Department and the EOR are serious when they say it reads as per each bent, or per each location?

Department’s Response: Again, Orlando R&B is attempting to confuse the matter. The Department does interpret 461-9 as “each” bearing. The plans specify 6 and we have paid 6. There is no dispute here. This corresponds with the summary of structure quantities for bridge 226. The dispute is centered around pay items 400-140-1 & 2 not the 461-114-14 pay item.

11. *Spec. 461-9.2 “Payment Items”:* “Payment will be made under:
Item No. 461-114- Multirotational Bearing Assembly – Expansion – Each”

How is it possible that, Department and the EOR read this as bent, and not as bearing assembly? Attachment “F”. Spec Page 650.

Department’s Response: Once again, this question is irrelevant and an attempt at misdirection and confusion. The dispute is centered around pay items 400-140-1 & 2 not the 461-114-14 pay item.

12. *At Br. 055, the task was “reposition lubricating plate under beam 12”. However, during a pre-bid site check I have noticed that b-12 has no plate at all, but b-11 had a plate that “walked away”, so I figured that*

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is the correct location. I have informed PA in June that the EOR mixed the beams. During the field visit with PA and the EOR, I showed them, but the EOR stuck to his Plan, that reposition shall be done under beam-12. He said there was a plate next to beam when he visited the job before design.

Question: *Is it possible to “reposition” a plate that is not there, or was removed because of malfunction or damage, or for some other reason; or you reposition the one that moved away under the beam movements? Or, have you ever seen that somebody left a plate next to a beam for future use? Too much from the Designer.*

Obviously the EOR miscounted beams, but because of so many mistakes he couldn't allow another one, and I had to do both, 11 and 12, not just beam 12. I had to lift 18” long, 1-1/8” thick bearing plate and install lubricating plate furnished by the Department under b-12 bearing plate and reposition plate under b-11. Lot tougher than in bid.

Department's Response: This issue is not a part of the DRB issue. It is not referenced in the Orlando R&B's NOI #01. Orlando R&B is clearly attempting to highlight what they perceive as problems with the plans with the intent of making the Engineer of Record look bad or error prone. This is nothing less than misdirection and unnecessary slander. This is not relevant to how the 400-114-x pay items are quantified. The pay items and pay item notes when taken together clearly indicate to prospective bidders that the work covered under pay items 400-140-1&2 is per bent or abutment.

Outside of this dispute, the contractor is attempting to overrun the 400-140-1 (bent/pier) pay item at bridge 150055 due to the “extra work” repositioning bearing 3-11. As stated before, the Department did authorize this extra work. The Department requested a price proposal to include this bearing repositioning. The contractor quoted \$5,000 but never submitted an actual itemized price proposal. The Department notified the contractor that the extra work would be documented and paid via the “time and materials” method. This “extra work” took less than 10 minutes and was done at the same time as the contract work at 3-12. This issue may very well find itself in front of the RDRB, however this issue is not part of THIS issue.

13. *If “as built” Plans show lubricating plate thickness 1/2”, how come that new Plans show 1- 1/8”, when that stands for bearing plate thickness? Person who did copy-paste from “as built” did not pay attention and showed lack of knowledge. This is not the only mistake. The EOR should have checked the Plans, but it does not seem he did.*

Department's Response: And once again, this issue is not a part of the DRB issue. It is not referenced in the Orlando R&B's NOI #01. Orlando R&B is clearly attempting to highlight what they perceive as problems with the plans with the intent of making the Engineer of Record look bad

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or error prone. This is nothing less than misdirection and unnecessary slander. This is not relevant to how the 400-114-x pay items are quantified. The pay items and pay item notes when taken together clearly indicate to prospective bidders that work covered under pay items 400-140-1&2 is per bent or abutment.

The plans indicated that the thickness of the self-lubricating plate was 1- 1/8” thick when in fact it is 1/2”. A plan revision was issued to correct this mistake. It is important to note that this mistake had absolutely no impact on this project, the contractor, or the contractor’s ability to bid whatsoever.

14. *How is it possible that Plan shows 1” wide joint, when field verification showed more than 2” and 3”?* Another Plan error.

Department’s Response: Clearly, this issue is not a part of the DRB issue. It is not referenced in the Orlando R&B’s NOI #01. Orlando R&B is once again attempting to highlight what they perceive as problems with the plans with the intent of making the Engineer of Record look bad or error prone. This is nothing less than misdirection and unnecessary slander. This is not relevant to how the 400-114-X pay items are quantified. The pay items and pay item notes when taken together clearly indicate to prospective bidders that work covered under pay items 400-140-1&2 is per bent or abutment.

Although this issue is not related to this DRB issue; to cooperate with the contractor, the Department has agreed to look into this issue. If entitled, the Department will consider any warranted monetary compensation for extra labor and material for pouring the alleged wider joint.

15. *How the EOR could have approved the “Summary Table” for Br. 226, when the entire Pier #2 is not shown in the table? How could he possibly approve the table which “steel multirotational bearings” calls “neoprene bearings”???* In my 35 years I have not seen an error like this.

Department’s Response: Once again, this question is Question #6 repeated but worded differently. Please see the Department’s response to Question #6.

In addition, for a contractor to allege that there are egregious mistakes in this set of plans, it is surprising that there were no questions whatsoever concerning any of the issues being brought up by the contractor at the time of bid, nor where they brought up in errors or omissions.

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Section II. Introduction

- The contractor states in the 3rd paragraph, page 5, “After the first estimate, I’ve noticed that I was paid one bearing less, than what Plan shows for bridge 204.”

Department’s Response: This is incorrect. The plans show a quantity of 2 for pay item 400-140-2 (abutment). All the references to a quantity of two (2) are as follows:

Plan Sheet B-4:

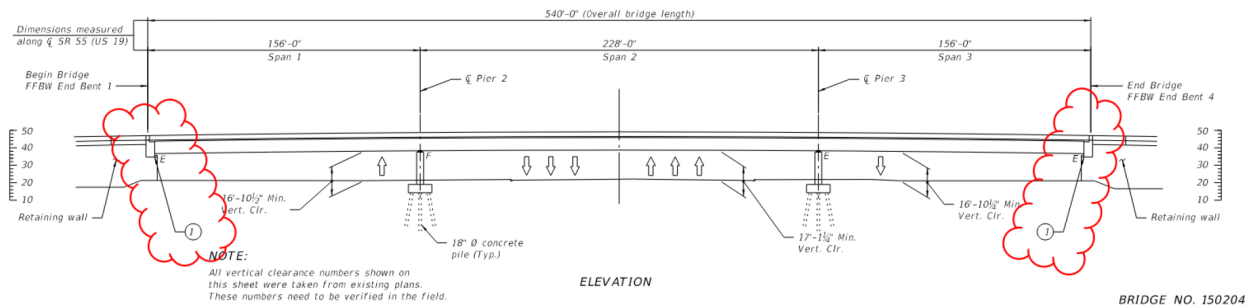
| FLORIDA DEPARTMENT OF TRANSPORTATION PROPOSAL SUMMARY OF PAY ITEMS FOR PROPOSAL: E7M02 | | | | | | | | | | |
|--|-----|--------------|---|------|-------------|-----------------------------|------------------------|------------------------|------------------------|------------------------|
| LEAD PROJECT : 443833-1-52-01 | | | DISTRICT : 07 | | | COUNTY / SECTION : 15070000 | | | | |
| PROJECT(S) : 44383315201 | | | COUNTY : PINELLAS | | | | | | | |
| 0001 SUMMARY OF STRUCTURES | | | | | | | | | | |
| SPC | ALT | ITEM NUMBER | ITEM DESCRIPTION | UNIT | 44383315201 | 44383315201 BR# 150043 | 44383315201 BR# 150243 | 44383315201 BR# 150053 | 44383315201 BR# 150203 | 44383315201 BR# 150204 |
| | | 0104- 11- | FLOATING TURBIDITY BARRIER | LF | | 197.000 | | | | |
| | | 0110- 3- | REMOVAL OF EXISTING STRUCTURES/BRIDGES 44383315201 | (LS) | | | 1.000 | | | |
| T | | 0400-140- 1 | NEOPRENE PAD REPLACEMENT, BENT/PIER | EA | | 1.000 | 1.000 | 1.000 | 1.000 | |
| T | | 0400-140- 2 | NEOPRENE PAD REPLACEMENT, ABUTMENT | EA | | | | | | 2.000 |
| | | 0458- 1- 21 | BRIDGE DECK EXPANSION JOINT, REHABILITATION, POURED JOINT WITH BACKER ROD | LF | | 74.000 | | | | |
| | | 0460- 1- 1 | STRUCT STEEL REHAB, CARBON | LB | | | | | | 393.000 |
| | | 0460- 1- 13 | STRUCTURAL STEEL REHAB- BOLTS, NUTS, WASHERS & PLATES | LB | | 2686.000 | | | | |
| P | | 0460- 94 | STRUCTURAL STEEL REPAIR- WELDS | LF | | 90.000 | | 1.000 | | 35.000 |
| T | | 0460-112- | ANCHOR BOLT REPLACEMENT | EA | | 120.000 | | | | 18.000 |
| | | 0461-114- 14 | MULTIROTATIONAL BEARING ASSEM EXP. F&I, 751- 1000KIPS | EA | | | | | | |
| T | | 0561- 2- | COATING EXISTING STRUCTURAL STEEL | SF | | | | 6.000 | | 52.000 |

Plan Sheet BQ1-1:

| SUMMARY OF STRUCTURE QUANTITIES - BRIDGE 150204 | | | | | | | | | | |
|---|--------------|------------------------------------|-----------------------------|------|----------|---|-------|---|--------------|----------------------|
| SECTION | PAY ITEM NO. | PAY ITEM DESCRIPTION | LOCATION | UNIT | QUANTITY | | TOTAL | | DESIGN NOTES | CONSTRUCTION REMARKS |
| | | | | | P | F | P | F | | |
| | 400-140- 2 | Neoprene Pad Replacement, Abutment | Sta. 726+42.00 to 731+82.00 | EA | 2 | | 2 | | | |
| SUBSTRUCTURE | 460- 1- 1 | Struct Steel - Rehab, Carbon | Sta. 726+42.00 to 731+82.00 | LB | 393 | | 393 | | | |
| | 460- 94 | Structural Steel Repair- Welds | Sta. 726+42.00 to 731+82.00 | LF | 35 | | 35 | | | |
| | 460-112 | Anchor Bolt Replacement | Sta. 726+42.00 to 731+82.00 | EA | 18 | | 18 | | | |
| | 561- 2 | Coating Existing Structural Steel | Sta. 726+42.00 to 731+82.00 | SF | 52 | | 52 | | | |

Plan Sheet B4-2:

In the elevation view, both (quantity of 2) abutments are called out and refer to note #1.



Note #1 reads as follows:

LEGEND:

- ① Jack End Bents 1 and 4, reposition bearing pads and install painted collars on bearings 1-1 (East) and 1-5 (East) along End Bent 1, and 3-2 (East) along End Bent 4

“Jack End Bents 1 and 4.” That is a quantity of 2.

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This fact is reinforced with the Pay Item note that reads:

Bridge 150204:

1. Pay Item 400-140-2 includes jacking, with all incidental labor, tools, and materials, of all beams along Abutments 1 and 4 and repositioning bearing pads for Beams 1-1 (East), 1-5 (East) and 3-2 (East).

- Page 5, last paragraph, the Contractor states the following, *“He knows pay item for bearings is each bearing, but in the middle of the project he changed his mind and called it each bent.”*

Department’s Response: This is incorrect. The method of measurement and compensation has been consistent from the start/inception of this project. This is an inflammatory comment that lacks any sort of resemblance to facts.

- Page 6, top of the page, the Contractor states the following, *“I was initially told by Mr. Gillette: “The EOR’s thoughts are that “EA” means each pier and each abutment. Well, it is not enough to think or have thoughts. It should have been spelled out in the Plans. But, it’s not.”*

Department’s Response: This is incorrect. The method of measurement and compensation has been consistent from the start/inception of this project. This is an inflammatory comment that lacks any sort of resemblance to facts.

Orlando R&B makes the statement “it should have been spelled out in the Plans” when referencing the Department’s stance that “EA” means each pier and each abutment. We agree here! Orlando R&B states that if “EA” is to mean each pier and each abutment then the plans should detail just that. This makes Orlando R&B’s comments that “EA” must mean “each bearing” contradictory. The Department has made it abundantly clear that the contract documents (as defined in the contract itself) when taken together clearly indicate to prospective bidders that work covered under pay items 400-140-1&2 is per bent or abutment. Here, Orlando R&B concedes that “EA” can mean each pier and each abutment provided it is “spelled out in the plans.” By pointing out Orlando R&B’s contradictory positions, it is easy to see their attempt to selectively interpret parts of the contract, plans and Basis of Estimates to support their position. This fact alone demonstrates the only plain reading or logical interpretation of “EA” is the Department’s interpretation.

Section III. Dispute

Sub Section, “Inconsistency in Pay Item Interpretation.”

Department’s Response: While this section is mostly incoherent, we will attempt to dissect. The contractor continues to make issue of the fact that there was an error in quantifying and separating the quantity for Bridge 150226. This has been addressed as the Department adjusted the quantities to reflect a quantity of two (2) for 400-140-2 (abutment) and one (1) for 400-140-1 (bent/pier). The significant fact here is that the TOTAL quantity of three (3)

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has remained consistent. The claim that there has been any “inconsistency” is outlandish and incorrect.

In addition, the contractor is attempting to draw comparisons between the 400-140-x pay items and the 461-114-14 (multirotational bearing assembly) pay item. The plan and pay item notes for the 400-140-x pay items very clearly do not include the costs to supply and furnish the multirotational bearings. As demonstrated, the 400-140-x pay items are for the jacking. Therefore, the 461-114-14 pay item was provided to account for the six (6) multirotational bearings.

- Contractor’s statement, *“For Pier #2 he told me the Table calls for Neoprene bearings, and we have steel, and since there are no Neoprene bearings, he will not pay me.”*

Department’s Response: The nature of this conversation is mischaracterized in the Contractor’s Position Paper. This paraphrase comes from a conversation regarding the wording of the pay item. The Department was attempting to illustrate that it should have been apparent from the beginning that these pay items were being utilized for work not solely to “replace neoprene pads” as is written in the pay item description. This is due to the fact that there are no neoprene pads on 5 of the 6 bridges included in this contract. Therefore, it was expected that any contractor qualified to perform work for the Florida Department of Transportation could pick up on this fact and pay particular attention to the plan and pay item notes; which clearly define the intended use of the 400-140-x pay items and how they are to be quantified and measured.

- Contractor’s statement, *“Plans are in charge over the table, and they always were!”*

Department’s Response: This is incorrect. The tables are part of the plans and have equal weight. In any case, the tables and plan are consistent in describing that “each” is defined as a pier/bent or abutment, with each other with no ambiguity.

- Contractor’s statement, *“Mr. Gillette called me one day and asked how much money I want per bearing at Pier #2, Br. 226, which proves that the Department knew it is a bearing in question, and not bent/pier.”*

Department’s Response: Again, this statement is mischaracterized and out of context. This question/comment was part of a lengthy conversation where the Department was trying to point out and further illustrate the fact that the plans provided the 400-140-x pay items to cover the costs of jacking. Bridge 150226 is a perfect example.

There are 3 “bents” to be jacked; both abutments and one intermediate pier. The first abutment included only one (1) bearing replacement, the second abutment included two (2) bearing replacements, and Pier 2 included three (3) bearing replacements. In all three cases, ALL of the beams were required to be jacked, **regardless of the number of**

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bearings to be replaced. Therefore, the jacking effort is independent of the number of bearings to replace. This fact further supports the plan and pay item notes defining the 400-140-x pay items as per abutment and/or pier/bent.

So, the question referenced by the Department was an attempt to point out that the contractor was requesting inconsistent compensation between each abutment and pier. Since the jacking operation is the same for both abutments and the only difference is the number of bearings to be installed, then the cost differential between bents is logically controlled by the number of bearings at the abutment.

For example; abutment #1 included only one (1) bearing replacement and abutment #2 included 2 bearing replacements. Since all beams at both abutments were to be jacked, the jacking cost/effort at each abutment is the same. The bearing pay item is paid per each and compensates for each bearing appropriately. So, the question referenced by the Contractor was part of a lengthy conversation trying to find out why the contractor felt entitled to double the jacking payment for abutment #2 as compared to abutment #1, which is the Contractor's position assuming one were to apply the 400-140-x pay items to each bearing as opposed to each bent or pier.

The Contractor's position being to pay for multiple 400-140-x items per bent does not make sense. **This section of the Contractor's Position Paper represents the inconsistency of the Contractor's position.**

Sub Section, "Interpretation of Pay Items for Bearing repositioning/replacement."

- In the first paragraph, Orlando R&B states, *"For more than 10 years I've been reviewing construction plans for road and bridge, for CEI and Design purposes. The EOR-s would bring plans 30%, 60%, 90% for check, before they were taken to DOT, and I have not seen case like this, ... The Final Plans full of errors. I know this type of Plans are different from New Construction, but regardless, the final review should exist."*

Department's Response: Orlando R&B implies that a "final review" of the plans was not performed on this project. That is incorrect. Orlando R&B states this without any factual basis. The fact is the final review was completed on 11/8/2019. The Roundtable Review with FDOT was conducted on 11/15/2019. Final Specifications Review was completed on 1/3/2020.

Again, Orlando R&B has made statements that are not based in fact as an attempt to make the EOR look bad.

- In the second paragraph, Orlando R&B states, *"I must say that "Summary Tables" are done By technicians, not by EOR-s. That explains our case. Person who did the table was not skilled in takeoffs, and*

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obviously the EOR did not check does it make sense, before he signed and sealed the Plans.”

Department’s Response: Again, how can Orlando R&B make the statement – “Person who did the table was not skilled in takeoffs, and obviously the EOR did not check”. Does Orlando R&B know the person who did the summary tables? The structural engineer who prepared the summary tables had a Florida PE with seven years of experience at the time and had worked on over 20 FDOT design projects. The engineer who performed the QC is a Senior Structural Engineer with a Florida PE with 18 years of experience at the time and had worked on over 50 FDOT design projects. The EOR is a Professional Engineer registered in the State of Florida and is in good standing. The EOR has signed and sealed the plans in accordance with the applicable laws and rules of the State of Florida. Orlando R&B’s statement that the EOR “did not check” the quantities amounts to an accusation of engineering malpractice.

- Third paragraph, the Contractor states, *“The EOR is required to follow a guidance when he does design. Since the Department does not have a Pay Item for “each bent/pier” nor for “each abutment”, the EOR should have requested “the Change of Pay Item”, if he wanted quantity to paid differently than “Each Bearing”, as “Bases of Estimates” direct him. I am sure that the EOR did not have any intention to pay differently, and he did not. The problem arose because they give technicians to do most of the work (drawings, takeoffs, measurements....).”*

Department’s Response: This contradicts Orlando R&B’s statement above that “it should have been spelled out in the Plans” when referencing the Department’s stance that “EA” means each pier and each abutment. Orlando R&B agrees that if “EA” is to mean each pier and each abutment then the plans should detail just that. This makes Orlando R&B’s comments here internally contradictory. The Department has made it abundantly clear that the contract documents (as defined in the contract itself) when taken together clearly indicate to prospective bidders that the work covered under pay items 400-140-1&2 is per bent or abutment.

- Last paragraph, the Contractor states, *“Otherwise, how to explain that person who did the Plans put “multirotational bearings” for replacement and person who did a “summary table” put “neoprene bearings”. This proves that Plans and Table were not done by same person. The EOR’s lack of checking every detail before signing and sealing the Plans is obvious. The Department shouldn’t address this to me.”*

Department’s Response: Although this question is truly irrelevant, the Department will answer the accusation with the facts. The plans and tables were completed by the same person.

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Sub Section, “Other Plan Errors”

Department’s Response: These “other plan errors” are not a part of the DRB issue and are not referenced in the Orlando R&B’s NOI #01. Orlando R&B is clearly attempting to highlight what they perceive as problems with the plans with the intent of making the Engineer of Record look bad or error prone. This is nothing less than misdirection and unnecessary slander. This is not relevant to how the 400-114-x pay items are quantified. The pay items and pay item notes when taken together clearly indicate to prospective bidders that the work covered under pay items 400-140-1&2 is per bent or abutment.

Section IV. Conclusion

Department’s Response: Any reference to the 461 spec is irrelevant to the issue being brought to the Regional Disputes Board. The 461 specification deals with the multirotational bearings and there are no disputes regarding that item and applicable pay item. The contractor has been fully compensated with all work related to 461-114-14.

As for the issue at hand, the Department repeats its position that the plan and pay item notes clearly define that 400-140-x covers the entire abutment and or bent\pier. In fact, as illustrated with Bridge 150266, it does not make sense to utilize BOTH the 400-140-x pay item AND the 461-114-14 pay item for each bearing location. This would represent a duplication of scope between the two pay items.

Contractor’s Attachments

Attachment “A”

This is an email from the Project Administrator reaffirming a phone conversation concerning Orlando’s R&B’s refusal to complete contract work.

This attachment reinforces the Department’s consistent position that the 400-140-x pay items are to cover the costs of the jacking and that the other work to be completed is included by other pay items.

Attachments “B,” “C,” and “D”

This attachment is merely three outdated versions of the Basis of Estimates.

Nonetheless; these attachments (and the current version of the Basis of Estimates) reinforce the Department’s position and underlines the guidance to, “locate in plans, summarize by location on the tabulation of quantities sheet in the plans.” As demonstrated by the Department, the plan and pay items notes follow this guidance.

Attachments “E” and “F”

These attachments involve the pay item 461-114-x which is not in dispute are irrelevant to the issue being brought to the Regional Disputes Board.

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Attachments “G” and “H”

These attachments are the Contractor Notice of Intent and Certified Claim statement. These attachments are a matter of record and require no response.

3. DEPARTMENT’S CONCLUSION

The Department has always attempted to administer this contract in compliance with the contract documents and the guidance documents provided by the Florida Department of Transportation. In doing so, the Department has always, and continues to, evaluate each issue separately and on its own merits. These issues include but are not limited to; plan errors, extra work, and contractor claims. As can be seen in the Contractor’s Position Paper, the information and statements provided range from irrelevant (to serve as misdirection or confusion) to inflammatory to the Department and its agents. The Contractor has also made the preposterous statement that the Department is treating Orlando R&B unfairly due to the size of their company.

Despite this, the Department has remained professional and continues to evaluate many requests for additional payment for random items throughout the life of this project; many of which were not issues prior to forcing this pay item dispute to the Regional DRB. Furthermore, many of these issues can be dismissed/denied based on the fact the contractor did not submit a Notice of Intent. Nonetheless, the Department is reviewing each and every issue without prejudice and evaluating them on their individual merits as it is the Department’s desire to fairly compensate its contractors for work completed or for any damages caused to said contractor due to plan errors, extra work, etc.

Having said this, the issue being brought to the Board at this time is whether or not “each” for the pay items 400-140-1 (neoprene pad replacement, bent/pier) and 400-140-2 (neoprene pad replacement, abutment) FOR THIS PARTICULAR PROJECT is defined as abutment/pier/bent or as a bearing location.

It is the Department’s position that the contract documents (as defined in the contract itself) when taken together clearly indicate to prospective bidders that the work covered under payitems 400-140-1&2 is per bent or abutment. Major points discussed in the Department’s Position Paper and this Rebuttal Paper are as follows:

- This contract is a rehabilitation contract with 6 different bridges and each with a slightly different scope of work which all utilize the 400-140-x pay items. This is NOT a “neoprene bearing padreplacement” project has never been represented as such.
- The plan and pay item notes clearly define the work to be completed under the 400-140-x payitem is clearly identified through pay item notes for each individual bridge.
- Plain interpretation of these notes reveals that the 400-140-x pay items are primarily for the jacking of each bent/abutment and is quantified as such.

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- Any attempt by the contractor to discuss other pay items or alleged plan errors is irrelevant and an attempt at misdirection and confusion.
- The contractor bid 12 times the Item Unit Average for pay item 400-140-1 and 6 times the Item Unit Average for 400-140-2. This indicates either:
 - The contractor understood at the time of bid that the pay item included the entire abutment or bent/pier, or
 - The contractor intended to capitalize and take advantage of a preconceived quantity bust in the plans. In which case, the contractor is in violation of Specification 5-4, Error or Omissions in Contract Documents. This specification requires the contractor to “immediately notify the Engineer in writing of such discovery.”

It is therefore, that the Department asks the Board to rule that the Contractor is NOT entitled to overrun the pay items 400-140-1 and 400-140-2.

BOARD FINDINGS/EXPLANATION:

The issue revolves around the method of payment for two pay items:

| SPC | ALT | Item Number | Item Description | Unit |
|-----|-----|-------------|-------------------------------------|------|
| T | | 0400-140-1 | Neoprene Pad Replacement, Bent/Pier | EA |
| T | | 0400-140-2 | Neoprene Pad Replacement, Abutment | EA |

Plan sheet B-1 states:

GOVERNING STANDARD SPECIFICATIONS:

Florida Department of Transportation, January 2020 Standard Specifications

Plan sheet B-4 *SUMMARY OF PAY ITEMS (1 OF 2)* in top table states:

| SPC | ALT | Item Number | Item Description | Unit |
|-----|-----|-------------|-------------------------------------|------|
| T | | 0400-140-1 | Neoprene Pad Replacement, Bent/Pier | EA |

And lists as a quantity of 1 each for bridges #150043, #150243, #150055 and #150203 with no quantity for bridge # 150204.

For bridge #150226 plan sheet B-4 lists in the lower table no quantity:

This would indicate a total plan quantity of 4 for this item.

As to:

| SPC | ALT | Item Number | Item Description | Unit |
|-----|-----|-------------|------------------------------------|------|
| T | | 0400-140-2 | Neoprene Pad Replacement, Abutment | EA |

Plan sheet B-4 lists a quantity of 2 for bridge #150204 and a quantity of 3 for bridge #150226

This would indicate a total plan quantity of 5 for this item.

This would bring the bid plan quantity for these two items to:

| SPC | ALT | Item Number | Item Description | Unit |
|-----|-----|-------------|-------------------------------------|------|
| T | | 0400-140-1 | Neoprene Pad Replacement, Bent/Pier | 4 EA |
| T | | 0400-140-2 | Neoprene Pad Replacement, Abutment | 5 EA |

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The *Florida Department of Transportation, January 2020 Standard Specifications January 2020* does not specifically reference either item.

The Department acknowledged that “*the Basis of Estimates was referenced in this paper, it is not a contract document.*”

A further review of the relevant plan notes on SUMMARY OF QUANTITIES (5 OF 5) sheet BQ1-2 coupled with sheet B-4 SUMMARY OF PAY ITEMS (1 OF 2) yields the following:

| Bridge No. | Pay Item | | Quantity | Plan sheet BQ1-2 Notes Relevant Notes |
|------------|------------|-------------------------------------|----------|--|
| | | | | |
| 150043 | 0400-140-1 | Neoprene Pad Replacement, Bent/Pier | 1 | 1. Pay Item 400-140-1 includes jacking, with all incidental labor, tools, and materials, of Span 5 along Bent 5 and removal and replacement of existing Asbestos Graphite Bearing Pads with a Neoprene Bearing Pad. The replacement bearing pad may be continuous or in broken lengths of 2'-0" minimum. |
| | 0400-140-2 | Neoprene Pad Replacement, Abutment | 0 | |
| 150055 | 0400-140-1 | Neoprene Pad Replacement, Bent/Pier | 1 | 1. Pay Item 400-140-1 includes jacking, with all incidental labor, tools, and materials, of all beams along Pier 4, along with cleaning and repositioning the self lubricating plate and painting bearing assembly for bearing 3-12 along Pier 4. |
| | 0400-140-2 | Neoprene Pad Replacement, Abutment | 0 | |
| 150203 | 0400-140-1 | Neoprene Pad Replacement, Bent/Pier | 1 | 1. Pay Item 400-140-1 includes jacking, with all incidental labor, tools, and materials, of beams 5-2, 5-3, 5-4, 6-2, 6-3 and 6-4 and repositioning the bearing pad of beam 5-3. |
| | 0400-140-2 | Neoprene Pad Replacement, Abutment | 0 | |
| 150204 | 0400-140-1 | Neoprene Pad Replacement, Bent/Pier | 0 | 1. Pay Item 400-140-2 includes jacking, with all incidental labor, tools, and materials, of all beams along Abutments 1 and 4 and repositioning bearing pads for Beams 1-1 (East), 1-5 (East) and 3-2 (East). |
| | 0400-140-2 | Neoprene Pad Replacement, Abutment | 2 | |
| 150226 | 0400-140-1 | Neoprene Pad Replacement, Bent/Pier | 0 | 1. Pay Item 400-140-2 includes Jacking, with all incidental labor, tools, and materials, of all beams along Abutments 1 and 6, and Pier 2. |
| | 0400-140-2 | Neoprene Pad Replacement, Abutment | 3 | |
| 150243 | 0400-140-1 | Neoprene Pad Replacement, Bent/Pier | 1 | 2. Pay Item 400-140-1 includes Jacking, with all incidental labor, tools, and materials, for beams 17-1, 17-2, 17-3, 18-1, 18-2, and 18-3 along Pier 18 and the repositioning of bearing pad 18-2. |
| | 0400-140-2 | Neoprene Pad Replacement, Abutment | 0 | |
| SUMMARY: | | | | |
| | 0400-140-1 | Neoprene Pad Replacement, Bent/Pier | 4 | |
| | 0400-140-2 | Neoprene Pad Replacement, Abutment | 5 | |

There was a discrepancy between the plan quantity amount of Bents/Piers vs amount of Abutments on Bridge #150226. This was acknowledged by the Department and corrected in the Contractor’s favor by paying for the Pier at the higher bid rate.

The Contractor believes he should be paid for replacing or repositioning bearing at the six bridges on a per each bearing basis under Pay Item 0400-140-1 or Pay Item 0400-140-2.

The designated work that is to be paid for under those Pay Items is not defined in the Standard Specifications or Special Provisions. The designated work that is to be paid via those two pay items, for each of the six bridges, is established in the Pay Item Notes shown on Contract Plan Sheet No. BQ1-2 SUMMARY OF QUANTITIES (5 OF 5).

The pay item notes for Pay Items 0400-140-1 and 0400-140-2 all specify that the jacking of various number of beams at specific bents at each of the six bridges. The quantity of bent/pier/abutments where jacking is to be done on Plan Sheet BQ1-2 is the same quantity as the quantity listed in Plan sheet B-4 SUMMARY OF PAY ITEM table for each of those two pay items, except for Bridge 150226 where the Department acknowledged its mistake in the summary table (according to the Pay Item Notes on Contract Plan Sheet BQ1-2 and notes on PLAN AND ELEVATION BRIDGE NO. 150226 Contract Plan Sheet B5-2, jacking was to be performed at one bent/pier (thus Pay Item 0400-140-1) and at two abutments (thus Pay Item

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0400-140-2). It should be noted that the summary table on Contract Plan Sheet B-4 does not designate nor specify what work is to be performed for each of those two pay items. The Pay Item Notes on Contract Plan Sheet BQ1-2 provides the designated work covered by each of those two pay items.

The pay item notes on Contract Plan Sheet BQ1-2 states that for Pay Items 0400-140-1 and 0400-140-2 for five of the bridges (Nos. 150043, 150055, 150203, 150204, and 150243) the work to be paid via those two Pay Items is jacking and also includes replacing or repositioning bearings. For Bridge No. 150226, Pay Item 400-140-2 is only for jacking and DOES NOT include replacing or repositioning bearings. The payment for replacing or repositioning the bearings for that bridge is via Pay Item 461-1174-14, Multirotational Bearing Assem Exp, F&I, 751- 1000KIPS. The common work included for those two pay items for all six bridges is jacking, not replacement or repositioning bearings. The jacking to be performed relates to the quantity of bents/piers or abutments, not to the quantity of bearings.

Base on the Pay Item Notes of Contract Plan Sheet BQ-1 and with the combination of the notes on the Contract Plans Sheet for each of the individual six bridges, it is apparent that the quantities of Pay Item 0400-140-1 and 0400-140-2 refer to the quantity of bent/pier/abutments where jacking is to be performed and not to the quantity of bearings to be replaced or repositioned.

The Owner sufficiently “linked” the “work” to the pay item. The item descriptions, Neoprene Pad Replacement, Bent/Pier and Neoprene Pad Replacement, Bent/Pier, can only be attributed to the location of “work” since Neoprene Pad “Replacement” only occurred at Bridge # 150043. If the bidder felt that the item was inappropriate, he should have brought it to the Department’s attention prior to bid.

The Florida Department of Transportation, January 2020 Standard Specifications state in part:

SECTION 2 PROPOSAL REQUIREMENTS AND CONDITIONS

2-3 Interpretation of Estimated Quantities.

2-3.2 Contracts other than Lump Sum: *For those items constructed within authorized plan limits or dimensions, use the quantities shown in the Plans and in the Proposal Form as the basis of the bid. The Department will also use these quantities for final payment as limited by the provisions for the individual items. For those items having variable final pay quantities that are dependent on actual field conditions, use and measurement, the quantities shown in the Plans and in the Proposal Form are approximate and provide only a basis for calculating the bid upon which the Department will award the Contract. Where items are listed for payment as lump sum units and the Plans show estimates of component quantities, the Department is responsible for the accuracy of those quantities limited to the provisions of 9-3.3. Where items are listed for payment as lump sum units and the Plans do not show estimates of component quantities, the Bidder is solely responsible for their own estimates of such quantities.*

The Department may increase, decrease, or omit the estimated quantities of work to be done or materials to be furnished.

...

2-6 Rejection of Irregular Proposals.

A Proposal is irregular and the Department may reject such Proposal if the Proposal shows omissions, alterations of form, additions not specified or required, conditional or

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unauthorized alternate bids, or irregularities of any kind; or if the unit prices are obviously unbalanced, or if the cost is in excess of or below the reasonable cost analysis values, or if the Bidder submits a Proposal which was not generated using the Department's bid software.

When the Department provides for alternate bids in the Proposal Form, make only one entry for each alternate. A Proposal that provides for alternative bids is irregular and the Department may reject such Proposal if the Bidder makes entries for more than one alternate.

...

5-4 Errors or Omissions in Contract Documents.

Do not take advantage of any apparent error or omission discovered in the Contract Documents, but immediately notify the Engineer in writing of such discovery. The Engineer will then make such corrections and interpretations as necessary to reflect the actual spirit and intent of the Contract Documents.

SECTION 9 MEASUREMENT AND PAYMENT

9-3 Compensation for Altered Quantities.

9-3.1 General: *When alteration in Plans or quantities of work not requiring a supplemental agreement as hereinbefore provided for are offered and performed, the Contractor shall accept payment in full at Contract unit bid prices for the actual quantities of work done, and no allowance will be made for increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor, resulting either directly from such alterations, or indirectly from unbalanced allocation among the Contract items of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefore, or from any other cause.*

Compensation for alterations in Plans or quantities of work requiring supplemental agreements shall be stipulated in such agreement, except when the Contractor proceeds with the work without change of price being agreed upon, the Contractor shall be paid for such increased or decreased quantities at the Contract unit prices bid in the Proposal for the items of work. If no Contract unit price is provided in the Contract, and the parties cannot agree as to a price for the work, the Contractor agrees to do the work in accordance with 4-3.2.

9-3.2 Payment Based on Plan Quantity:

9-3.2.1 Error in Plan Quantity: *As used in this Article, the term "substantial error" is defined as the smaller of (1) or (2) below:*

- 1. a difference between the original plan quantity and final quantity of more than 5%,*
- 2. a change in quantity which causes a change in the amount payable of more than \$5,000.*

On multiple job Contracts, changes made to an individual pay item due to substantial errors will be based on the entire Contract quantity for that pay item.

Where the pay quantity for any item is designated to be the original plan quantity, the Department will revise such quantity only in the event that the Department determines it is in substantial error. In general, the Department will determine such revisions by final measurement, plan calculations, or both, as additions to or deductions from plan quantities.

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In the event that either the Department or the Contractor contends that the plan quantity for any item is in error and additional or less compensation is thereby due, the claimant shall submit, at their own expense, evidence of such in the form of acceptable and verifiable measurements or calculations. The Department will not revise the plan quantity solely on the basis of a particular method of construction that the Contractor selects. For earthwork items, the claimant must note any differences in the original ground surfaces from that shown in the original Plan cross-sections that would result in a substantial error to the plan quantity, and must be properly documented by appropriate verifiable level notes, acceptable to both the Contractor and the Department, prior to disturbance of the original ground surface by construction operations. The claimant shall support any claim based upon a substantial error for differences in the original ground surface by documentation as provided above.

The analyzation of the Contractor's unit price against the Item Unit Cost report and the actual Time and Material calculation for said work in order to determine if the bid amount is consistent with intended use of said pay items may be instructive but is not relevant to the entitlement of the issue. Neither is it relevant whether the Contractor made or lost money on the Contract.

As to the issue before the Board as stated by the Contractor, -. *Bridge bearing replacement is shown as Each. The Department is misinterpreting this as Each bent whereas the correct interpretation is Each bearing.*

The item "0400-140-x Bearing Pad, Location" is normally recognized in the industry to apply to payment for Bearing Pads on an "Each" basis, i.e. payment for each pad on a bent or pier. The Board is of the opinion that the Contractor became fixated on this convention and disregarded or ignored the plan notes that linked multiple "work" activities to what was a single price for each Pier or Bent as noted in the plans. He indicated that he distributed the costs and anticipated payment for performing the work over units in excess of plan believing that the quantity would be adjusted to "actual". The Board has no way to confirm if this is true and the remedy for such action is outside of the Board's mandate. Only the Owner may make such action. He did not alert the Department of his discovery of an apparent (in his mind) quantity error. Further, application of "revised" standards as to payment might very well reveal that the Contractor was not the low bidder at all.

It is sometimes argued that a RDRB will provide a recommendation that ignores the contract or is somewhere in between the positions taken by each party; in effect, a compromise. **It is not the RDRB's prerogative to substitute its own ideas of fairness and equity for the provisions of the contract. ...**⁵

BOARD RECOMMENDATION:

Based on the materials supplied to the Board and presentations to the Board at the RDRB hearing, the Board finds that the Department's application of payment for the items in question is consistent with the Contract. Further, the Board finds no entitlement for the Contractor's position on the above referenced project.

This Board sincerely appreciates the cooperation of all parties and the information presented for its review in making this recommendation.

⁵ DRBF Practices and Procedures Section 1 – Chapter 6

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Please remember that a response to the RDRB and the other party of your acceptance or rejection of this recommendation is required within 15 days. Failure to respond constitutes an acceptance of this recommendation by the non-responding party.

I certify that I have participated in all meetings of this RDRB regarding this issue and concur with the findings and recommendations.

Respectfully Submitted

Regional Disputes Review Board

John H. Duke, RDRB Chairman

Matthew L. Michalak; RDRB Member

John Padavich; RDRB Member

Signed with the concurrence of all members:

John H. Duke
Chairman

Matthew L. Michalak
Member

John Padavich
Member