

# DISPUTE REVIEW BOARD RECOMMENDATION

June 27, 2014

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RE: FPN: 258660-2-52-01 & 258642-3-52-01

Contract No: T7298

I-275 (SR 93) from South of Floribraska Ave. to South of Hillsborough Ave. and from  
South of Hillsborough Ave. to North of Yukon Street, Florida

Hillsborough County

Disputes Review Board Hearing

Issue: Temporary Barrier Wall Payment

Gentlepersons:

The Owner, Florida Department of Transportation (Department), and Contractor, Prince Contracting LLC (Prince), requested a hearing on the above issue in accordance with the Dispute Review Board (DRB) Specification:

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 June 17<sup>th</sup> 2014. Should entitlement be established, the DRB was not to decide the quantum of such entitlement at this time, as the parties would attempt to negotiate the value of entitlement.

## **CONTRACTOR'S POSITION:<sup>1</sup>**

*The following is Prince Contracting, LLC ("PRINCE")'s position paper for the Dispute Review Board hearing regarding payment for temporary barrier wall on the above referenced project. PRINCE seeks a recommendation from the DRB on the following question: Is PRINCE entitled to be paid under pay item 102 71 14 Barrier Wall Temporary, F&I, Type K when initially installing barrier wall on the project and under pay item 102 71 24 Barrier Wall Temporary, Relocate, Type K when relocating previously installed barrier wall to other locations on the project?*

### **CONTRACTOR'S POSITION**

*At the beginning of the project, PRINCE met with representatives from KCI Technologies, Inc. ("KCI") and the Department to discuss our plans regarding the initial installation and relocation of the temporary barrier wall.*

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<sup>1</sup> For exhibits, attachments or pages referenced, the reader should refer to the respective Party's full position papers.

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*PRINCE's plan was to install the temporary barrier wall along the northbound inside shoulder as depicted in the contract traffic control plans and then only install temporary barrier wall on the southbound inside shoulder at each bridge location. The median construction areas between these southbound barrier wall installations would be protected by the existing guardrail. Once the proposed median barrier wall and northbound widening was completed, it was then PRINCE's intent to relocate the northbound temporary barrier wall to the southbound inside shoulder to construct the southbound median widening. We were correctly paid via pay item 102 71 14 for the initial installation of the temporary barrier wall; however, as we began to relocate barrier wall from the northbound shoulder to the southbound shoulder, KCI refused to compensate PRINCE via 102 71 24 as we requested on our certified MOT quantities. KCI would only compensate PRINCE via 102 71 14 even though there has been no dispute that PRINCE has been relocating barrier wall from its initial position to a new position. It is PRINCE's position that we are entitled to be paid under 102 71 24 because PRINCE's temporary barrier wall plan did not require an alternate MOT design (as agreed to at the beginning of the project), neither pay item 102 71 14 or 102 71 24 are plan quantity pay items, and because the following contract provisions define the method of payment for temporary barrier wall.*

### ***Applicable Specifications and Contract Provisions:***

#### *Note No. 1 of the contract traffic control plans states:*

“Traffic shall be maintained in accordance with the 2010 Edition of the Florida Department of Transportation Design Standards for Design, Construction and Utility Operations on the state highway system (600 series) and those indexes referenced in the traffic control plan. Maintenance of traffic shall be in accordance with the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, 2010 edition, and the Federal Highway Administration Manual on Uniform Traffic Control Devices, 2009 edition.”

*As with all of PRINCE's previous projects, this is a standard plan note that allows changes to the traffic control plan given that the change complies with the referenced Standard Index and other documents. Also, as with all of PRINCE's previous projects, the Department and its representatives on this project agreed that an alternate traffic control plan was not necessary providing any deviation from the contract traffic control plan complied with the applicable Standard Index.*

#### *Note No. 5 of the contract traffic control plans states:*

“All lane tapers and maintained lane lines adjacent to construction areas shall be delineated with type 2 barricades, vertical panels, temporary drums, temporary type k barrier wall or low profile barrier as approved by the Engineer.”

*This plan note provides the contractor with options on how to maintain lane lines and tapers. This plan note is obviously available to perspective bidders to select the best option that would allow them to submit the most competitive bid. This plan note clearly implies that MOT pay item quantities could vary from plan quantity based on the contractor's chosen devices. In fact we see final MOT quantities vary significantly from plan quantity on every project; whether overrun or underrun. For example, we have never heard of the Department*

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*refusing to pay for an overrun in drums because they were able to be used in lieu of barrier wall. MOT pay items are not plan quantity pay items for this reason.*

### Article 9-3: Compensation for Altered Quantities states:

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

*Since a supplemental agreement was not required for the temporary barrier wall change offered by PRINCE, the Contractor shall expect to receive payment in full at contract unit bid prices for the actual quantities of work done. PRINCE is not asking to be compensated for any other item listed in the provision other than the contract pay item for the work performed as defined by the specification 102-11.9 and 102-13.9.*

### Article 102-11.9 Barrier Wall (Temporary) states:

“The contract unit price for Barrier Wall (Temporary) will be full compensation for furnishing, installing, maintaining, and removing the barrier wall. When called for, the Contract unit price for Barrier Wall (Temporary/Relocate) will be full compensation for relocating the barrier. The certified quantity to be paid for will be determined by the number of sections times the nominal length of each section.”

### Article 102-13.9 Barrier Wall (Temporary) states:

“Price and payment will be full compensation for furnishing, installing, maintaining, and removing the barrier. When called for, Barrier Wall (Temporary)(Relocate) will be full compensation for relocating the barrier.

*These are perhaps the most important provisions referenced in this position paper as they clearly define how the two pay items are measured and paid and does so irrespectively of the original plan quantity for each pay item. The note clearly states that, “When called for, the Contract unit price for Barrier Wall (Temporary/Relocate) will be full compensation for relocating the barrier.” It goes on to state, “The certified quantity to be paid for will be determined by the number of sections times the nominal length of each section.” This means that a certified quantity will be paid for the original installation and for the relocate with no further caveats such as those submitted to PRINCE by KCI such as, “...the project pay items as bid are intended to*

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*reflect the design intent as reflected by the traffic control plans...”. Furthermore, the basis of payment for these pay items has nothing to do with the amount of the bid unit prices for each item which has also been provided by KCI as a reason to refuse proper payment. As stated above, Note 5 of the traffic control plans allowed the contractor multiple options to delineate lane lines and PRINCE selected its most competitive option. The Department’s reasoning for failing to properly compensate PRINCE is not supported by the contract documents but is rather based on their belief that PRINCE improperly bid each pay item. Unfortunately for the Department, none of the above contract provisions mentions anything about unit prices as bid but rather the unit quantities and how they should be measured and paid. The Department has conceded during the escalation process that had the unit prices for these pay items been reversed they would have no issue compensating PRINCE for 102 71 24 in lieu of 102 71 14.*

*Additional key points should be made regarding this matter. The Department has argued that the temporary barrier wall changes offered by PRINCE have increased the project cost. Had PRINCE bid unit prices for 102 71 14 and 102 71 24 similar to the statewide or district averages, PRINCE’s total bid price would have increased by approximately \$750,000 and we still would have been the lowest bidder. Furthermore, other PRINCE proposed changes to the traffic control plan utilizing Standard Index have significantly reduced cost to the Department. For example, PRINCE has been able to eliminate almost all of the temporary barrier wall on the side streets and 53 temporary attenuators by adhering to the clear zone requirements in the 600 series of the Standard Index (refer to Note 1 and 5 mentioned above). Neither KCI nor the Department have stated that these actions were in violation of the traffic control plans or have they required PRINCE to submit an alternate traffic control plan. It seems they want to pick and choose which modifications are acceptable based on cost rather than the contract provisions with disregard to the overall cost PRINCE saved the Department at bid time.*

### **Conclusion:**

*PRINCE’s temporary barrier wall modification complied with the contract provisions and was accepted by the Department at the beginning of the project. The final quantities for pay items 102 71 14 and 102 71 24 would clearly be altered by this change and a supplemental agreement was not required by the Department. Final MOT quantities always vary from the original plan quantities due to both contractor and Department proposed changes and due to the numerous options provided to the contractor in both the plans and Standard Index. Whether overrun or underrun, PRINCE has never been in a dispute with the Department or its representatives over proper payment for MOT pay items because they are paid based on contractor submitted certified quantities and not plan quantity. PRINCE has submitted its certified quantities for temporary barrier wall based on the definition and basis of payment defined in the specifications which KCI has refused to accept. PRINCE is entitled to receive compensation for pay item 102 71 24 Temporary Barrier Relocate for relocating temporary barrier wall to other locations on the project after the initial installation.*

*PRINCE appreciates the time and attention of the Board.*

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## DEPARTMENT'S POSITION:

### 1. Issue/Summary of the Facts:

- a. Prince approached the Department with a request to protect the southbound workzone in the beginning of Phase I using guardrail instead of Temporary Barrier Wall as indicated in the Plans. Is this considered an Alternate Traffic Control Plan (per Supplemental Specification 102-4)?

The Department is of the position that an Alternate Traffic Control Plan was implemented by Prince. In accordance with Supplemental Specification Section 102 this Plan shall be at no additional cost to the Department. On 4/17/12, Prince issued a letter (Attachment F) entitled Traffic Control Plan stating that it was Prince's intent to use the Traffic Control Plan shown on pages 225 through 309 of the plans for the referenced project. However the temporary barrier wall intended to protect the southbound workzone (in the median) in Phases I and II was not placed by Prince according to the Plans.

- b. Is the placement of the plan specified southbound temporary barrier wall considered furnish and install (pay item 102-71-14) or relocate (pay item 102-71-24)?

The Department's position is that temporary barrier wall (whether furnish and install or relocate) is clearly **identified and defined in the contract**. As an example, if temporary barrier wall is furnished from within the project by Prince and is not "**called for**" by the Department then the wall should be considered "furnished and installed" barrier wall and not "relocate" barrier wall.

### 2. Summary of the Facts Timeline:

The terms of construction contract payment are unit price based. The project was Let on 2/8/12 with NTP issued on 4/3/12. FDOT Standard Specifications 2010 and Design Standards dated January 1, 2011 are applicable as amended by the contract documents. The applicable Contract pay items as bid by Prince are as follows:

<u>Pay Item</u>	<u>Description</u>	<u>Unit Price</u>	<u>Quantity</u>	<u>Bid/Contract Amount</u>
102-71-14, Barrier Wall F&I (Temp)		\$0.01/LF	40,776 LF	\$ 407.76
102-71-24, Barrier Wall Relocate (Temp)		\$8.00/LF	5,798LF	\$46,384.00

The Department questioned the bid price for pay item 102-71-14 of \$0.01/LF. It was pointed out that in the Notice to Contractor (Attachment D) the Department advised Prince of the "unbalanced nature" of their bid and requested comments on pay item 102-71-14, Barrier Wall, Temporary, F&I, Type K. This item was responded to by Mr. Pete Morgan of Prince on February 8, 2012, where he states that the reason the bid unit price for the pay item was \$0.01 per LF was due to Prince owning the barrier wall and therefore not needing to buy it. It was noted by the Department that the total statistical bid amount for the pay item was \$817,110.26 and that Prince's bid amount was \$407.76.

On 6/5/12, following the initial Weekly Progress Meeting a conversation was held where John Padavich, Henry Smith, Fred Ocasio, Richard Frank, Ryan Jackson, and Matt Schumaker discussed Prince's intent regarding the setting of temporary barrier wall. Mr. Jackson stated that Prince wanted to delay setting the southbound temporary barrier wall to a point later in time as enough room existed in the existing median area to construct

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*the median permanent barrier wall without removing the entire southbound guardrail. In other words the southbound median workzone would be protected by guardrail versus the temporary barrier wall as specified by the Plans. Mr. Frank, Mr. Padavich and Mr. Smith did not disagree with this approach provided that when the temporary barrier wall was eventually placed, that it will be paid for as “furnish and install” as specified in the Plans and that the Department would permit Prince to proceed with this plan of action provided that it was at **no additional cost to the Department**. This agreement was not memorialized.*

*On 1/21/14, Prince issued an e-mail (Attachment G) stating that it is their position that the agreement for setting southbound temporary barrier wall was that the Department would compensate Prince for “relocate” rather than “furnish and install”. The Department disputes this position and Mr. Smith responded via e-mail on 1/21/14 (Attachment G).*

*On 1/22/14, Prince requested that this issue be escalated to Conrad Campbell. An escalation meeting was held on 2/3/14 and on 2/10/14 the determination was made that Prince had no entitlement. This was transmitted to Prince via e-mail dated 2/10/14 from C. Campbell to T. Craft (Attachment H), and a letter from J. Padavich to R. Jackson the same date (Attachment I). Prince requested that this issue be escalated to B. McKishnie, District Construction Engineer.*

*On 2/27/14 a second escalation meeting was held. It became apparent at this meeting that Prince did not consider this issue an Alternate Traffic Control Plan. It was determined once again that Prince had no entitlement.*

*On 3/3/14, to eliminate any possible confusion, KCI issued Prince a formal letter entitled Temporary Barrier Wall (Attachment J) in which the Department’s position was reiterated stating that should Prince wish to present an Alternate Traffic Control Plan that it would be reviewed by the Department and if determined to be acceptable for use it would be at **no additional cost to the Department**.*

*On 4/16/14 Prince issued an e-mail (Attachment K) requesting that this issue be escalated to the Dispute Review Board citing Specification Section 9-3, Compensation for Altered Quantities.*

### 3. Contract Requirements:

*Contract Supplemental Specifications that discuss temporary barrier wall are as follows:*

#### Supplemental Specification 102-4, Alternative Traffic Control Plan

*The Contractor may propose an Alternate Traffic Control Plan (TCP) to the plan presented in the Contract Documents..... **The Engineer’s approval of the alternate TCP does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those in the original Contract Specifications, design plans (including traffic control plans) or other Contract Documents and which effect a change in utility work, different from that shown in the utility plans, joint project agreements or relocation schedules.***

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The Department reserves the right to reject an Alternative Traffic Control Plan. **The Engineer's written approval is required for all modifications to the TCP.** The Engineer will only allow changes to the TCP in an emergency without the proper documentation.

### Supplemental Specification 102-9, Temporary Traffic Control Devices

102-9.5.2 Barrier Wall (Temporary): Furnish, install, maintain, remove and relocate a temporary barrier wall **in accordance with the plans.**

### Supplemental Specification 102-11, Method of Measurement

102-11.9 Barrier Wall (Temporary): The Contract unit price for Barrier Wall (Temporary) will be full compensation for furnishing, installing, maintaining, and removing the barrier wall. **When called for, the Contract unit price for Barrier Wall (Temporary/Relocate) will be full compensation for relocating the barrier.**

### Supplemental Specification 102-13, Basis of Payment

102-13.9 Barrier Wall (Temporary): Price and payment will be full compensation for furnishing, installing, maintaining, and removing the barrier. **When called for, Barrier Wall (Temporary) (Relocate) will be full compensation for relocating the barrier.**

### Supplemental Specification 9-2, Scope of Payments

9-2.1 Items Included in Payment: States in part that for any item of work contained in the proposal, except as might be specifically provided otherwise in the basis of payment clause for the item, **include in the Contract unit price** (or lump sum) for the pay item or items the cost of all labor, equipment, materials, tools and incidentals required for the complete item of work, including all requirements of the Section specifying such item of work, except as specifically excluded from such payments.

Additionally, a review of the Contract Bid Questions (Attachment E) reveals the following:

- **Question:** Bid Item 102-71-14 includes 40,776 LF of F&I Type K Temporary Barrier Wall. Will utilization of Type J Barrier Wall utilizing Index 415, 6 of 10, for Continuation of Runs of Barrier Wall with Dissimilar Connections at locations where Type K is required by Design Standards be permitted?

**Answer:** 1/20/12: **Please bid the item and quantity as provided in the plans.**

- **Question:** Can the barrier wall configuration across the bridges for the North bound lane be utilized on the South bound lane? This will give the same amount of work area on both bridges. **Answer:** 1/20/12: Shifting the temporary SB barrier out to match the NB barrier configuration would push SB traffic out onto the existing outside shoulder, requiring additional overbuild and milling and resurfacing once complete, striping eradication and installation which is currently not required. **Please bid the plans as shown.**

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- Question: MOT plans for contract 258660-2 place Type K barrier on the southbound inside shoulder for median work. MOT plans for contract 258642-3 place Type K barrier on the southbound travel lane for median work. Can the Type K barrier for contract 258642-3 be placed on the southbound inside shoulder like shown in contract 258660-2 MOT plans?

Answer: 1/20/12: The southbound median shoulder for the 258642-3 project is being reconstructed. The southbound median shoulder on the 258660-2 project is being resurfaced. **The barriers must remain as shown in the TCP.**

4. What Has Changed:

Prince informally requested at the beginning of the project to be permitted to only place temporary barrier wall on the northbound roadway and to leave the southbound roadway guardrail in place generally until such time as the median permanent concrete barrier wall was constructed as enough room was available in the median to permit median permanent concrete barrier wall, drainage, lighting, and to permit northbound shoulder construction. The Department was agreeable to this modification to the Traffic Control Plan. **It was noted by the Department during the discussion that if Prince proceeded with this plan of action it was to be at no additional cost to the Department since the unit price for barrier wall furnishing was bid at \$0.01 per LF and the Department would only compensate Prince for barrier wall furnishing when the time came to place barrier wall on the southbound roadway as this was how the project was bid by Prince and that the plans require both northbound and southbound roadway be lined with temporary barrier wall beginning in phase 1 of the Traffic Control Plans.**

5. Summary:

Did Prince submit an Alternate Traffic Control Plan?

- The Department requests that the DRB determine that the Prince has no entitlement for this issue. Prince changed the method of workzone protection and has implemented an Alternate Traffic Control Plan. In accordance with Supplemental Specification 102-4, the Department's is not obligated to pay any additional cost for an item of work associated with an Alternate Traffic Control Plan.

Is the placement of the plan specified southbound temporary barrier wall considered furnish and install (pay item 102-71-14) or relocate (pay item 102-71-24)?

- Specification Section 102, Maintenance of Traffic (102-11.9 & 102-13.9) clearly states that compensation will be made under the associated pay item “**when called for**”. Relocation of temporary barrier wall from the northbound roadway to the southbound roadway to accommodate the contractor's revised plan of operations is not “**called for**” either by the project plans or by the Department and therefore payment of any additional cost by the Department is not warranted since this would not be considered “relocated” barrier wall as defined in the Contract.



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6. Supporting Documents (Attachments):
- **PLANS:**
    - A. *FPID 258660-2-52-01, I-275 (SR 93) from South of Hillsborough Avenue to North of Yukon Street, Plan Sheets 267 through 296* *Pages 7 – 37*
    - B. *FPID 258642-3-52-01, I-275 (SR 93) from South of Floribraska to South of Hillsborough Avenue, Plan Sheets 122 through 143* *Pages 38 – 61*
  - **SPECIFICATIONS:**
    - C. *Supplemental Specifications:* *Pages 62 – 63*
      - 9-2.1, Scope of Payments, Items Included in Payment*
      - 102-4, Alternative Traffic Control Plan*
      - 102-9.1, Temporary Traffic Control Devices, Installation and Maintenance*
      - 102-9.5.2, Temporary Traffic Control Devices, Barrier Wall (Temporary)*
      - 102-11.9, Method of Measurement, Barrier Wall (Temporary)*
      - 102-13.1, Basis of Payment, Maintenance of Traffic (General Work)*
      - 102-13.9, Basis of Payment, Barrier Wall (Temporary)*
  - **DOCUMENTS/CORRESPONDENCE/E-MAILS:**
    - D. *2/8/12, FDOT Notice to Contractor, Unbalanced Review* *Pages 64 – 68*
    - E. *2/8/12, FDOT Bid Questions* *Pages 69 – 73*
    - F. *4/17/12, Prince Letter, M. Schumacher to H. Smith, Traffic Control Plan* *Page 74*
    - G. *1/28/14, KCI e-mail, H. Smith to R. Jackson, Temporary Barrier Wall Issue Escalation* *Pages 75 – 78*
    - H. *2/10/14, FDOT e-mail, C. Campbell to T. Craft, Temporary Barrier Wall* *Page 79*
    - I. *2/10/14, KCI e-mail and letter, J. Padavich to R. Jackson, Temporary Barrier Wall* *Pages 80 – 84*
    - J. *3/3/14, KCI e-mail and letter, J. Padavich to R. Jackson, Temporary Barrier Wall* *Pages 85 – 87*
    - K. *4/16/14, Prince e-mail, R. Jackson to J. Padavich, Temporary Barrier Wall* *Pages 88 – 89*
    - L. *4/23/14, KCI e-mail, J. Padavich to R. Jackson, Temporary Barrier Wall* *Pages 90 – 92*
    - M. *5/14/14, Prince e-mail, R. Jackson to J. Duke, Request for DRB Hearing for Temporary Barrier Wall Payment* *Pages 93 – 95*

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## **CONTRACTOR'S REBUTTAL:**

*The following is Prince Contracting, LLC ("Prince")'s rebuttal paper for the Dispute Review Board hearing regarding payment for temporary barrier wall on the above referenced project. For each portion of this rebuttal, Prince will address each of KCI Technologies, Inc. ("KCI")'s arguments in the format and order presented in their position paper. Prince will not restate each argument presented by KCI but will provide our direct response in order.*

### **CONTRACTOR'S REBUTTAL**

1.

- a. *KCI's position that Prince implemented an alternate traffic control plan has never been revealed until the escalation process for this issue. In fact, as Prince stated in its position paper, all parties agreed at the beginning of the project that an alternate traffic control plan as defined by the specifications was not required provided any deviations complied with the requirements of Standard Index 600. Throughout the course of this project, numerous deviations to the contract traffic control plan have been made by both KCI and Prince. For example the locations of advanced warning signs have been altered, drums have either been added or removed, the location of striping for traffic patterns has been changed, and detours have been altered or added. Not once have we been requested or directed to submit an alternate traffic control plan nor have we been provided with a revised traffic control plan from the Department. The Standard Index was referenced for these deviations in accordance with Note 1 of the contract traffic control plan and the changes were implemented. This scenario is not unique to this project.*

*At the beginning of the project, Prince submitted a letter in accordance with the specifications stating that we intended to us the contract traffic control which we have done. As Prince presented in its position paper, Note 1 of the traffic control plans requires the contractor to maintain traffic in accordance with Standard Index. Additionally, Note 5 allows the contractor options to maintain lane lines including drums, barrier wall, etc. Therefore, the changes proposed by Prince subsequent to submitting the referenced letter comply with the contract traffic control plan. Prince will reiterate numerous times throughout this rebuttal that Prince was never requested or directed to submit an alternate traffic control plan as all parties agreed one was not required.*

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- b. *The basis of payment and method of measurement articles of the specifications (102-11.9 and 102-13.9) for each of the pay items (102-71-14 and 102-71-24) defines the work and how it is measured and paid. None of the barrier wall in the traffic control plans is specifically “called for” to be either furnish and install or relocate. The locations of the barrier wall in each traffic control phase is provided, and estimated, not plan quantities, are provided for each contractor to bid. For barrier wall to be specifically “called for” as relocate, there would need to be a clear plan note specifying with station limits exactly which barrier wall was to be paid as relocate. Otherwise, the basis of payment and method of measurement articles of the specifications must be used to measure and pay for the work performed by the contractor. As stated in Prince’s position paper, Articles 102-11.9 and 102-13.9 clearly define how each pay item is measured and paid.*
2. *KCI and the Department are attempting to distract the DRB from the relevant facts of this issue. The unit prices Prince used to bid the individual pay items have no relevance to the basis of payment or method of measurement for each pay item. Neither Articles 102-11.9 nor 102-13.9 mention anything about the pay item unit prices. Furthermore, the traffic control plans do not mention anything about the pay item unit prices. Prince has only asked to be compensated in accordance with the pay item unit prices as bid.*

*Prince had a competitive advantage when it bid this project because it owned a large amount of temporary barrier wall. We had every right to use that advantage to prepare our bid. Every contractor has a competitive advantage in one form or the other that they utilize on every bid. The Department queried Prince’s bid unit price for temporary barrier wall and Prince responded accordingly. The Department ultimately accepted Prince’s response and its bid unit price for temporary barrier and not surprisingly so since the amount of savings the Department received at bid time due to Prince’s competitive advantage have been eloquently presented in the Department’s position paper.*

*Regarding the 6/5/12 Meeting: The discussion at this meeting is obviously disputed between the parties. Prince recalls that there was no disagreement with our proposed plan for the temporary barrier wall. All parties also agreed that an alternate traffic control plan was not necessary which is a position that KCI appears to have reversed during the escalation process based on their position paper. Given the high level of scrutiny Prince has received on this project, Prince finds it hard to believe that we would be permitted to proceed with our barrier wall idea without the full support of KCI and without agreement that an alternate traffic control plan was not necessary since said plan was never required by KCI. Furthermore, no mention of cost was made at the meeting. Prince would have escalated this issue at that time had we known that KCI did not intend to properly compensate Prince for these pay items. Prince would have gained nothing from waiting almost two years to escalate the issue. Unfortunately this meeting was not memorialized.*

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3. *Prince will address each KCI referenced specification by first listing the specification referenced in KCI's position paper and then providing rebuttal.*

### *Supplemental Specification 102-4, Alternative Traffic Control Plan*

*As Prince has stated above KCI's position that an Alternate Traffic Control Plan was required for Prince's barrier wall modifications has only been presented to Prince during the escalation process. All parties agreed at the beginning of the project that an alternate traffic control plan was not required. Certainly KCI would have never permit Prince to modify the traffic control plans without an alternate traffic control plan if they believed such a plan was necessary. Furthermore, if KCI believed that an alternate traffic control plan was necessary and that Prince violated the requirements of the contract documents, there would certainly be numerous correspondence (CPPR violations, written directives, etc.) that KCI would have presented in its position paper. The fact is that any modification to the traffic control plan that complies with the Standard Index does not require an alternate traffic control plan. The process has been used on this project and every project Prince has constructed for the Department. We could provide numerous examples; however, it is highly unlikely that this fact is disputed. Note 1 of the traffic controls plan states:*

*“Maintenance of traffic shall be in accordance with the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, 2010 Edition...”*

*The traffic control plan general notes were omitted from KCI's position paper.*

### *Supplemental Specification 102-9, Temporary Traffic Control Devices*

*Prince has met the requirements of the plans, specifically Note 1 and Note 5 of the traffic control plans as referenced in our position paper. Several options are provided to the contractor to maintain lane lines provided compliance with Standard Index.*

### *Supplemental Specification 102-11.9, Method of Measurement*

*KCI has placed emphasis on the words “when called for” in this specification. Prince can only assume that KCI is implying that this is to mean “when called for in the plans”. However, no temporary barrier wall relocate is specifically indicated in the plans. Prince submits that the intent of the this specification is that if a pay item exists (“when called for”) for temporary barrier wall relocate, then any required relocation is paid via that pay item.*

### *Supplemental Specification 102-13, Basis of Payment*

*Same response as above.*

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### Supplemental Specification 9-2, Scope of Payments

*As previously stated, the amount of the bid unit prices are completely irrelevant to whether or not Prince is entitled to compensation for barrier wall relocate. We have been requesting to be compensated in accordance with the pay item unit prices.*

### Question and Answer Section

*Prince is confused to the relevance of any of these pre-bid questions and answers. We have never asked to install Type J barrier wall nor have we asked to change the planned location of the southbound temporary barrier wall.*

- 4. As stated above, the discussion at the beginning of the project is in dispute and was unfortunately not memorialized. KCI states that the Department was agreeable to Prince's approach. The Department also agreed that an alternate traffic control plan was not necessary and Prince was never required to provide an alternate traffic control plan. Prince also did not request a DRB recommendation on whether or not an alternate traffic control was required because this has never been in dispute.*
- 5. The issue at hand has never been about whether or not an alternate traffic control plan was required as it has never been in dispute. Prince asked the DRB to provide a recommendation as to whether or not Prince was entitled to be paid under 102-71-14, Temporary Barrier Furnish and Install when initially furnishing and installing temporary barrier wall and under 102-71-24, Temporary Barrier Relocate when relocating that same barrier wall to other areas of the project.*

*Temporary barrier wall relocate is never specifically called for in the plans. Sections 102-11.9 and 102-13.9 refer to whether or not a pay item exists for relocating barrier wall. Neither 102-71-14 nor 102-71-24 are plan quantity items and their basis of payment are clearly defined in the specifications: 102-71-14 is paid for furnishing and installing the barrier wall and 102-71-24 is paid for relocating the barrier wall.*

*Prince is entitled to receive compensation for pay item 102 71 24 Temporary Barrier Relocate for relocating temporary barrier wall to other locations on the project after the initial installation.*

*Prince appreciates the time and attention of the Board.*

# DISPUTE REVIEW BOARD RECOMMENDATION

## **DEPARTMENT'S REBUTTAL:**

*We are in receipt of Prince Contracting, LLC's (Prince) position paper regarding the subject matter. This document is prepared as a rebuttal to Prince's position and presents what the Department believes to be the required contractual determination in regard to entitlement for temporary barrier wall installation on the above referenced project.*

### Contractor's Position

*It is true that at the beginning of the project that Prince and representatives of the Department discussed temporary barrier wall installation. Prince's plan to install temporary barrier wall along the northbound inside shoulder in accordance with the Plans and to not install the Plan specified southbound temporary barrier wall as required in Phase I/II of the Traffic Control Plan (TCP) was discussed. It was stated that Prince's intent to protect the southbound workzone utilizing the existing guardrail. The Department made it clear at the beginning of the project that if Prince wanted to delay the installation of temporary barrier wall for the southbound shoulder construction that the Department had no objection, however, when the time came that Prince was to install the temporary barrier wall they would be compensated for the wall in accordance with the Plans (102-71-14, Barrier Wall F&I (Temp) and not 102-71-24, Barrier Wall Relocate (Temp)). This discussion should have made it clear to Prince that the Department does not "call for" relocated temporary barrier wall where the Plans "call for" furnish and install barrier wall. An alternate traffic control plan was not submitted by Prince and on 4/17/12 Prince issued a letter accepting the TCP contained in the Contract documents which "calls for" pay item 102-71-14, Barrier Wall furnish and install to be utilized for the southbound inside shoulder temporary barrier wall. The timing of the wall installation, although delayed by Prince to occur at a point later in time than the TCP requires, requires the use of the "called for" contract pay item (102-71-14) per the Contract documents.*

### Applicable Specifications and Contract Provisions

*Note No. 1 of the TCP as referenced by Prince in their position paper does not give Prince the authority to modify the TCP even if the modification may comply with the FDOT Standard Index. The order of precedence of the Contract documents is clear that the project plans override the Standard Index. The Engineer may permit a modification to the TCP, but the Contractor cannot take the liberty of modifying the contract specified TCP unilaterally without the approval of the Engineer which often will require that a new signed and sealed TCP be submitted. Prince did not submit new TCP sheets for this project and did accept the TCP contained in the Plans, although it was modified in accordance with 102-4 with the Engineer's approval.*

*Note No. 5 of the TCP as referenced by Prince includes the words "as approved by the Engineer". For the record, the Engineer has not "approved" any variation other than to delay the southbound installation to a point later in time. This does not affect how the wall is to be paid. Pay item overruns and underruns as discussed by Prince, although not unusual for MOT pay items, is not what is being asked of the DRB.*

## **DISPUTE REVIEW BOARD RECOMMENDATION**

*Article 9-3: Compensation for Altered Quantities – 9-3.1 states that the Contractor shall accept as full payment at Contract unit bid prices and no allowance will be made for increased expense or loss of anticipated profits resulting from unbalanced allocation among the Contract items of overhead expense on the part of the bidder. The issue of temporary barrier wall setting as required per the Plan specified TCP is not an altered quantity issue. Installation of the Contract required temporary barrier wall is not an altered quantity. Should additional temporary barrier wall be required by the Engineer Prince shall install it at that time and payment will be made in accordance with the existing Contract pay items.*

*Article 102-11.9 and 102-13.9, Barrier Wall (Temporary) – Specifically state that the Contract unit price for Barrier Wall (Temporary) will be full compensation for furnishing, installing, maintaining, and removing the barrier wall. It goes on to state, “when called for”. The Department has not “called for” relocated temporary barrier wall to be utilized. The plans “call for” furnish and install temporary barrier wall. The argument is made by Prince that regardless of what the Plans “call for”, Prince only has to submit a certified quantity for an item to be paid under a certain pay item. This is not delineated in the Contract documents. What is intended by these Articles is describing how the Contractor will be paid for acceptable items of work performed in accordance with the Contract documents. The Contract documents do not define ‘relocated’ wall in the manner that Prince suggests in their position paper.*

*Lastly, Prince states that had they bid the project more in conformance with industry standards they would have bid an additional \$750,000 for temporary barrier wall, and would still have been the low bidder. Prince is attempting to make the argument that since they bid a low amount for temporary barrier wall on the project they are now entitled to be paid more than their bid amount for the Plan specified pay items and quantities.*

### Conclusion

*Relocation versus furnish and install of temporary barrier wall must be as defined in the Plans. For example, if a contractor bids furnish and install wall at a higher unit price than relocate wall he could simply load up previously delivered, installed, and paid for temporary wall, drive it off of the project limits, turn the truck around and bring the same barrier wall back to the project for installation at a different location and then call it furnish and install wall in order to receive a higher payment unit price. Our situation is the reverse of this. That is why the Department instructs the bidders to bid what is indicated in the plans and not to assume that an alternate TCP will be accepted/approved by the Department. Lastly, Article 102-4 is clear that if an Alternate TCP is approved, it will be at no additional cost to the Department.*

# DISPUTE REVIEW BOARD RECOMMENDATION

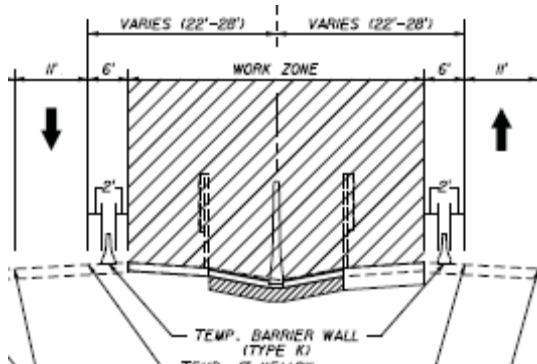
## BOARD FINDINGS/EXPLANATION:

This issue has its genesis in the inclusion of **two** unit priced bid items for Temporary Barrier Wall in the contract pay items:

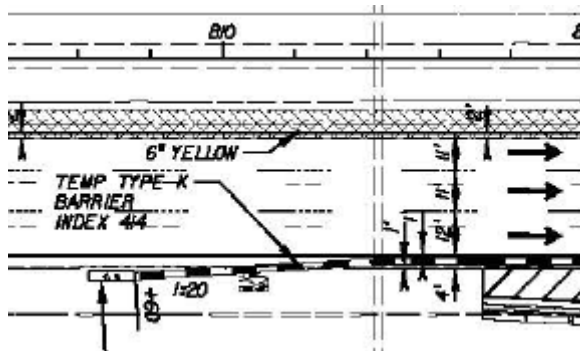
Pay Item	Description	Quantity
102-71-14,	Barrier Wall F&I (Temp)	40,776 LF
102-71-24,	Barrier Wall Relocate (Temp)	5,798 LF

Further, the contract plans for the Traffic Control Plan Phasing depict the location for the placement of the Temporary Barrier Wall without specifying whether it is the “first set” F&I Temp item or the “second set” Relocated (Temp) item.

Plan sheet 116 shows the placement of Temp. Barrier Wall (Type K)



Plan sheets detail the placement of “Temp Type K Barrier” Wall without specifying whether it is to be paid for under item 102-1-14 or 102-71-24



Florida Department of Transportation Standard Specifications for Road and Bridge Construction dated 2010, as amended by the project Supplemental Specifications apply to this project.

Supplemental Specifications 102-4 Alternative Traffic Control Plan, allows the Contractor to submit an Alternate Traffic Control Plan:

### ***102-4 Alternative Traffic Control Plan.***

*The Contractor may propose an alternative Traffic Control Plan (TCP) to the plan presented in the Contract Documents. Have the Contractor’s Engineer of Record sign and seal the alternative plan. Prepare the TCP in conformance with and in the form outlined in the current version of the Roadway Plans Preparation Manual. Indicate in the plan a TCP for each phase of activities. Take responsibility for identifying and assessing any potential impacts to a utility that may be caused by the alternate TCP proposed by the Contractor, and notify the Department in writing of any such potential impacts to utilities.*



## DISPUTE REVIEW BOARD RECOMMENDATION

*Engineer's approval of the alternate TCP does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those in the original Contract Specifications, design plans (including traffic control plans) or other Contract Documents and which effect a change in utility work different from that shown in the utility plans, joint project agreements or utility relocation schedules.*

*The Department reserves the right to reject any Alternative Traffic Control Plan. Obtain the Engineer's written approval before beginning work using an alternate TCP. The Engineer's written approval is required for all modifications to the TCP. The Engineer will only allow changes to the TCP in an emergency without the proper documentation.*

On April 7<sup>th</sup> 2012, the Contractor wrote the CEI:

*It is PRINCE's intent to follow and use the Traffic Control Plan shown on pages 225 through 309 of the plans for the above referenced project. In the event a change or modification is needed or required to complete the Work, PRINCE shall submit such modification in accordance with Section 102 "Maintenance of Traffic" of the Supplemental Specifications.*

The Contractor met with the Department on June 5<sup>th</sup> 2012, and discussed the timing of the placement for certain portions of the Temporary Barrier Wall. There is disagreement as to whether said meeting included discussion of the method of payment for delayed placement of the Temporary Barrier Wall. There is **no documentation that such discussion took place.**

The Traffic Control Plan continued to be implemented without any discussion as to the need for a submittal of an Alternate TCP until on or about January 21<sup>st</sup> 2014, sometime after the Contractor relocated certain portions of the originally placed Temp Barrier (F&I) to the delayed locations and submitted its request for payment for Relocated Temp Barrier.

Supplemental specification **102-11 Method of Measurement** states in part:

*102-11.1 General: Devices installed/used on the project on any calendar day or portion thereof, within the allowable Contract Time, including time extensions which may be granted, will be paid for at the Contract unit price for the applicable pay item, except those paid for as Lump Sum.*

...

*102-11.9 Barrier Wall (Temporary): The Contract unit price for Barrier Wall (Temporary) will be full compensation for furnishing, installing, maintaining, and removing the barrier wall. When called for, the Contract unit price for Barrier Wall (Temporary/Relocate) will be full compensation for relocating the barrier. The certified quantity to be paid for will be determined by the number of sections times the nominal length of each section.*

There is no disagreement that the "as placed" quantities for Relocation of the Temporary Barrier are substantially correct, only that the Department believes that certain portions of the quantity should be paid for under the F&I item.

## DISPUTE REVIEW BOARD RECOMMENDATION

The Department, in part, cites

### ***102-13 Basis of Payment.***

...

***102-13.9 Barrier Wall (Temporary):*** Price and payment will be full compensation for furnishing, installing, maintaining, and removing the barrier. **When called for, Barrier Wall (Temporary) (Relocate)** will be full compensation for relocating the barrier.

as the authority for only paying for F&I, since the Department did not “call for” Relocated Temp Barrier Wall at those locations.

The plans did not specify or “call for” which item would be paid for at any location, only “Temporary Barrier Wall”. The meaning of “called for” is at best ambiguous and therefore must be construed in favor of the Contractor.

SECTION 2 PROPOSAL REQUIREMENTS AND CONDITIONS states in part:

### ***2-3 Interpretation of Estimated Quantities.<sup>2</sup>***

...

***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 Contractor is solely responsible for his 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.**

The Board finds that the pay items at hand are not lump sum quantities and are subject to variation in quantity.

EXAMINATION OF CONTRACT DOCUMENTS AND SITE OF WORK. As amended states:  
(REV 12-9-10) (FA 1-27-11)(7-11)

*ARTICLE 2-4 (Page 12) is deleted and the following substituted:*

### ***2-4 Examination of Contract Documents and Site of Work.***

***Examine the Contract Documents and the site of the proposed work carefully before submitting a proposal for the work contemplated. Investigate the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished and as to the requirements of all Contract Documents.***

***Direct all questions to the Department by posting them to the Department’s website at the following URL address:  
[www2.dot.state.fl.us/construction/bidquestionmain.asp](http://www2.dot.state.fl.us/construction/bidquestionmain.asp). Questions posted to this site***

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<sup>2</sup> Not amended

## DISPUTE REVIEW BOARD RECOMMENDATION

*before 5:00 P.M. (EST) on the seventh calendar day prior to the bid opening, or tenth calendar day prior to the December bid opening, will be responded to by the Department. For questions posted after these times, an answer cannot be assured. For all questions posted before the deadline, the Department will provide and post responses at the same website before 8:00 A.M. (EST) on the second calendar day prior to bid opening. Take responsibility to review and be familiar with all questions and responses posted to this website and to make any necessary adjustments in the proposal accordingly. If the Department's web site cannot be accessed, contact Conrad Campbell at conrad.campbell@dot.state.fl.us or 813-975-6293.*

*When, in the sole judgment of the Department, responses to questions require plans revisions, specifications revisions and/or addenda, the Contracts Office will issue them as necessary.*

*The Department does not guarantee the details pertaining to borings, as shown on the plans, to be more than a general indication of the materials likely to be found adjacent to holes bored at the site of the work, approximately at the locations indicated. The Contractor shall examine boring data, where available, and make his own interpretation of the subsoil investigations and other preliminary data, and shall base his bid on his own opinion of the conditions likely to be encountered.*

*The bidder's submission of a proposal is prima facie evidence that the bidder has made an examination as described in this Article.*

Prior to the contract letting date, several questions were posed to the Department regarding the Temporary Barrier Wall. In two cases, the response was "***Please bid the item and quantity as provided in the plans.***" and "***Please bid the plans as shown***". In another case "***The barriers must remain as shown in the TCP.***" was the response. None of these questions addressed a quantity issue between F&I and Relocation.

Specification **SECTION 2 PROPOSAL REQUIREMENTS AND CONDITIONS** states in part:

### ***2-6 Rejection of Irregular Proposals<sup>3</sup>.***

*A proposal is irregular and the Department may reject it if it shows omissions, alterations of form, additions not specified or required, conditional or 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.****

*When the Department provides for alternate bids in the proposal form and the bidder submits non-computer-generated proposal form sheets, make only one entry in each design group. A proposal that provides for alternative bids is irregular and the Department may reject it if the bidder makes entries for more than one alternate.*

Specification **SECTION 5 CONTROL OF THE WORK** states in part:

### ***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 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.*

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<sup>3</sup> Not amended

## DISPUTE REVIEW BOARD RECOMMENDATION

This section (above) was brought to the attention of the Parties at the hearing and **both stated that there was no error or omission in the documents**. Obviously, there is disagreement as to whether certain quantities for F&I and Relocate can be transposed without the submittal of an Alternate TCP.

The Contractor admits that he planned to install less of the F&I item and Relocate more quantity than was listed in the proposal. The Department considered the F&I item “unbalanced” and queried the Contractor prior to awarding the contract. It is significant that **the Department did not question whether the Relocate Temporary Wall item was unbalanced**.

There were two revenue items in the contract for Temporary Barrier Wall placement without a specified location for either item - only that Temporary Barrier Wall must be in place to protect the work area and traveling public. This would allow the bidder to “bid” a reduced quantity of the F&I item and place the revenue in a lump sum or other item and “bid” the F&I item at a penny thus reducing the total proposal amount. As long as the Relocate item is not unbalanced excessively, the Owner could benefit from this delayed placement of the Temp Barrier Wall.

The Board finds that there was **no change in the TCP**, in that, where Temp Barrier Wall was called for - Temp Barrier Wall was placed when required. Further, the change to the barrier wall placement sequence did not affect travel lane alignment as depicted in the TCP.

SECTION 9 MEASUREMENT AND PAYMENT states in part:

*9-1 Measurement of Quantities.*<sup>4</sup>

...

*9-1.3.2 Plan Quantity: When measuring items paid for on the basis of area of finished work, where the pay quantity is designated to be the plan quantity, the Engineer will determine the final pay quantity based on the plan quantity subject to the provisions of 9-3.2. Generally, the Engineer will calculate the plan quantity using lengths based on station to station dimensions and widths based on neat lines shown in the plans.*

The Board finds that the **items at issue are not designated to be plan quantity**.

Section **009 MEASUREMENT AND PAYMENT**, as amended by the supplemental specifications states in part:

**(REV 3-9-11) (FA 5-12-11) (1-12)**

ARTICLE 9-2 (Pages 96 and 98) is deleted and the following substituted:

**9-2 Scope of Payments.**

*9-2.1 Items Included in Payment: Accept the compensation as provided in the Contract as full payment for furnishing all materials and for performing all work contemplated and embraced under the Contract; also for all loss or damage arising out of the nature of the work or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its final acceptance; also for all other costs incurred under the provisions of Division I.*

*For any item of work contained in the proposal, except as might be specifically provided otherwise in the basis of payment clause for the item, include in the Contract unit price (or lump sum price) for the pay item or items the cost of all labor, equipment,*

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<sup>4</sup> Not amended

## DISPUTE REVIEW BOARD RECOMMENDATION

*materials, tools and incidentals required for the complete item of work, including all requirements of the Section specifying such item of work, except as specifically excluded from such payments.*

...

**9-2.2 Non-Duplication of Payment:** *In cases where the basis of payment clause in these Specifications relating to any unit price in the bid schedule requires that the unit price cover and be considered compensation for certain work or material essential to the item, the Department will not measure or pay for this same work or material under any other pay item that may appear elsewhere in these Specifications.*

...

### **9-3 Compensation for Altered Quantities.<sup>5</sup>**

**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.*

The Department admitted that if the issue were to be reversed they would have the right to overrun the F&I item. It did state, however, that it would not seek to do so to the detriment of the Contractor.

There is no specification that supports the Department's contention that it may pay for F&I in lieu of what was actually Relocated Wall.

Neither Party has presented testimony that a supplemental agreement would need to be executed to prevail in their position. Unit price items not subject to plan quantity determination are routinely subject to variation in final pay quantity. Therefore, the **Board finds that the items are to be paid in accordance with Section 9-3.**

The Board recommends that the Contractor be paid for work actually performed under each respective item for which there is a contract pay item.

It is sometimes argued that a DRB 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 DRB's prerogative to substitute its own ideas of fairness and equity for the provisions of the contract. ...<sup>6</sup>**

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<sup>5</sup> Not amended

<sup>6</sup> DRBF Practices and Procedures Section 1 – Chapter 6

## **DISPUTE REVIEW BOARD RECOMMENDATION**

### **BOARD RECOMMENDATION:**

**Therefore, based on the materials supplied to the Board and presentations to the Board at the DRB hearing, the Board recommends entitlement to the Contractor's position as detailed above.**

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

Please remember that a response to the DRB 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 of the meetings of this DRB regarding this issue and concur with the findings and recommendations.

Respectfully Submitted  
Disputes Review Board

John H. Duke Sr.; DRB Chairman  
David M. Jameson; DRB Member  
Robert J. Lindquist P.E.; DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:

A handwritten signature in black ink, appearing to read "JH Duke", written in a cursive style.

John H. Duke Sr.  
DRB Chairman