

DISPUTE REVIEW BOARD RECOMMENDATION

June 12, 2005

E-Mailed June 12, 2005

Don Vance
Director
Central Florida Excavating and Fill Dirt, Inc.
2812 Airport Road
Plant City, Florida 33563
E-Mail: (dvance@cfefd.com)

Peter J. Medico
Project Engineer
EISMAN & RUSSO, INC.
14219 Walsingham Road Unit #D&E
Largo, FL 33774
E-Mail: (pmedico@eismanrusso.com)

RE: SR 688 (ULMERTON RD) from A PT E OAKHURST RD to A PT E 119TH ST
FIN No.: 257050-1-52-01
Contract No. T7033
County: Pinellas

Issues: 1. Payment for Fitting Glands & Bolts
2. Payment for Long Body Fittings

Dear Sirs:

The Owner, Florida Department of Transportation (Department) and Contractor, Central Florida Excavating and Fill Dirt, Inc. (CFEFD) requested a hearing to determine **entitlement** of CFEFD to **additional compensation for two (2) issues** on the above referenced project. Should entitlement be established, the Dispute Review Board (Board) was not to decide the quantum of such entitlement at this time, as the parties would attempt to negotiate the value of entitlement.

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 were held on May 31st 2005.

CONTRACTOR'S POSITION:

Our "Issue Statement" is as follows and is composed of two parts, both of which are directly related to the JPA work for Pinellas County Utilities. The core of the problem revolves around differing interpretation of Pinellas County Utility Specifications by CFEFD and Pinellas County Utilities for mechanical joint fittings:

Part 1) Our Position Is That The Weight Of Glands And Bolts Are To Be Included With The Fitting Weight For Payment.

- 1. Sheet 17 of 55 of the "Technical Special Provisions for Pinellas County Utilities Relocation for S.R. 688 (Ulmerton Road) from Oakhurst Road to 119th Street", Section 1.3.5.1 requires that "All fittings shall be restrained by means of restraining devices such as retainer glands, restraining gaskets, or other acceptable restraints." Megalug brand restrainers were approved for the project.*
- 2. Sheet 41 of 55, ITEM-1510 - Ductile Iron Fittings states the following: "Measurement: The quantities of Ductile Iron Fittings to be paid for under this Item shall be the weight of the fitting required as per the manufacturer's specified weight per fitting, including bolts and glands, in tons measured in place, complete and accepted. The weight of the gaskets, jointing materials, etc., shall not be included in the computation of the ductile iron tonnage." Megalug brand restrainers were approved for the project.*
- 3. Sheet 48 of 55, ITEM-1610 - Ductile Iron Fittings states the following: "Measurement: The quantities of Ductile Iron Fittings to be paid for under this Item shall be the weight of the fitting required as per the manufacturer's specified weight per fitting, including bolts and glands, in tons measured in place, complete and accepted. The weight of the gaskets, jointing materials,*

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etc., shall not be included in the computation of the ductile iron tonnage." Megalug brand restrainers were approved for the project.

Part 2) Due To The C-110 Issue In The Specifications (C-110 used in bid), and Pinellas County Utilities' Requirement To Use Only C153 Fittings After January 10th, 2005, CFEFD Is Entitled To An Equitable Adjustment In The Pay Item.

Sheet 27 of 55 of the "Technical Special Provisions for Pinellas County Utilities Relocation for S.R. 688 (Ulmerton Road) from Oakhurst Road to 119th Street", section 2.3.1. DUCTILE IRON/CAST IRON FITTINGS, Subsection 2.3.1.1.1, states that the ductile iron fittings "shall be standard design equivalent to class 150 minimum, short body, conforming with AWWA C-110 (ANSI Specification A21.10)." Pinellas County is requiring installation of AWWA C-153 fittings for any fittings ordered after January 10, 2005. This includes all fittings added due to unforeseen additional work. The contract unit price per ton for fittings was estimated assuming the installation of C-110 fittings as stated in the specifications. Now that Pinellas County is requiring C-153 fittings, the contract unit price is no longer equitable and does not provide for fair compensation to cover the material cost, let alone installation cost and markup. This is a result of the substantial difference in weight between equivalent C-110 and C153 fittings and the necessity of purchasing C-153 fittings at today's market value.

DEPARTMENT'S POSITION:

See Attached Position Paper From Pinellas County Utilities.

From: Simpson, Dennis

Please see my clarification of the issues for the upcoming DRB Hearing.

The additional fittings should be considered a overrun of the original bid quantity.

The mega-lugs part of the fittings used to restrained the pipe is included the payment for the length of pipe installed. This is stated in the Technical Special Provisions, Section III Bid Items For Sanitary Sewers And Water Mains, Item 1010 & 1100 pipe, Restrained Joints & Note: Payment for sleeved connections, restrained joints and all appurtenances shall be included in the price of meter (feet) of pipe (installed, page 47 of 55

I hope this clears-up the Pinellas County Utilities position on these subjects.

Dennis M. Simpson, P.E.

Senior Engineer

SUBJECT: Dennis Simpson's email, dated 3.18.2005, sent 3:52 PM to Jack Knowlton

Pinellas County Utilities received shop drawings date 3/11/2004 signed by D. Beecroft and Dennis Simpson "APPROVED AS NOTED" on 4/14/04. The shop drawings had Ductile Iron Mechanical Joint Fittings cut-sheets for Sigma, Union Foundry Company and US Pipe. These cut-sheets underlined and/or pointed to ANSI/AWWA C153/A21.53 DUCTILE IRON COMPACT FITTINGS.

Subsequently, Eisman & Russo representative contacted me to say there is a discrepancy in the Pinellas County Utilities Ductile Iron/Cast Iron fittings specification. The specifications stated short body (Compact) conforming to AWWA C-110. The AWWA C-110 quote is for long body fitting. The contractor elected to purchased long body fitting with the understanding that PCU only pay for short body fittings.

In a effort to work with the contractor because there was a greater lost to the contractor if he uses short body verses long body fittings. PCU agreed to pay for all long body fittings before January 10, 2005. The contractor said they purchased 95% of the ductile iron fittings needed for the project before January 10, 2005. Subsequently, all fitting purchases after this date shall be short body fittings.

Please Note: It is more difficult to get long body fittings for the different type of fittings needed for this project. In one instance the contractor resourced to installing a long body 24 x 8 -inch cross instead of a long body 24 x 8 tee in order to keep working. Once again, poor planning on the part of the FDOT's contractors.

PCU still feels the compromise made to rectify the situation by paying for all long body fitting before January 10, 2005 is a reasonable settlement after the contractor submitted shop drawings and clearly identifying short body fitting as the ductile iron fitting of choice.

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Pinellas County Utilities is submitted(sic) the following documents to assist the Disputes Review Board with their review and decision on the matter at hand. The following pages are attached for your review.

1. Cover page: Technical Special Provisions: -Approved by Dennis M. Simpson on August 11, 2003
2. Page 27 of 55, Section II Material Technical Specification, Page 22 of 55: -Ductile Iron/Cast Iron Fittings
3. Page 47 of 55. Section III Bid items For Sanitary And Water mains, ITEM – 1090 & 1100 Pipe
4. Shop Drawings (SD) Cover Page from Central Florida Excavating & Fill Dirt, for Hughes, Tampa Water
5. & Sewer #32
6. SD Cut Sheet: - Sigma's Mechanical Joint Compact Fittings
7. SD Cut Sheet: - Union Foundry Company, Mechanical Joint- Ductile Iron Class 350 Compact Fittings
8. SD Cut Sheet: - US Pipe Ductile Iron Mechanical Joint Fittings for water or other liquids
9. SD Cut Sheet: - US Pipe Ductile Iron Mechanical Joint Fittings for water or other liquids
10. SD Cut Sheet: - Sigma's Mechanical Joint Compact Fittings
11. SD Cut Sheet: - Union Foundry Company, Mechanical Joint- Ductile Iron Class 350 Compact Fittings
12. Jack & Bore Coordination Meeting: - with breakdown costs comparison between 24 inch Short and Long Body Fittings by the contractor.

CONTRACTOR'S REBUTTAL:

Central Florida Excavating & Fill Dirt, Inc., would like to respond to Pinellas County's position paper by addressing each item. **We are pasting their paper as forwarded to us**, in it's original formatting, in this document for ease of viewing and commenting.

" -----Original Message----- From: Simpson, Dennis

To: Pmedico@eismanrusso.com; Simpson, Dennis

Cc: cecil.williams@dot.state.fl.us; JKNOWLTON@eismanrusso.com; tom.lay@dot.state.fl.us; Toth, Steve; Gambling, Raymond

Sent: 4/29/05 3:25 PM

Subject: RE: DRB Hearing scheduled for May 31, 2005

This Pinellas County Position Paper:

"SUBJECT: Dennis Simpson's email, dated 3.18.2005, sent 3:52 PM to Jack Knowlton

Pinellas County Utilities received shop drawings date 3/11/2004 signed by D. Beecroft and Dennis Simpson "APPROVED AS NOTED" on 4/14/04. The shop drawings had Ductile Iron Mechanical Joint Fittings cut-sheets for Sigma, Union Foundry Company and US Pipe. These cut-sheets underlined and/or pointed to ANSI/AWWA C153/A21.53 DUCTILE IRON COMPACT FITTINGS."

CFEFD RESPONSE; Yes, we did in fact submit the wrong shop drawings (mechanical joint fittings) for the project, C-153 instead of C-110, and these submittals should have been immediately rejected by Pinellas County. CFEFD did not properly review shop drawings for compliance with the contract specifications. Upon discovery of our error, we generated RFI #24. See Attachment #1, page 1.

"Subsequently, Eisman & Russo representative contacted me to say there is a discrepancy in the Pinellas County Utilities Ductile Iron/Cast Iron fittings specification. The specifications stated short body (Compact) conforming to AWWA C-110. The AWWA C-110 quote is for long body fitting. The contractor elected to purchased (sic) long body fitting with the understanding that PCU only pay for short body fittings."

CFEFD RESPONSE; In the response to RFI #24, from Eisman & Russo, dated May 24, 2004, the issue of fitting type and payment seemed to be resolved. See Attachment #1, page 2.

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"In a effort to work with the contractor because there was a greater lost to the contractor if he uses short body verses long body fittings. PCU agreed to pay for all long body fittings before January 10, 2005. The contractor said they purchased 95% of the ductile iron fittings needed for the project before January 10, 2005. Subsequently, all fitting purchases after this date shall be short body fittings."

CFEFD RESPONSE; In the first sentence of the above statement, Pinellas County acknowledges the inequity of payment between C-153 and C-110 fittings, so now that the county is specifying the use of C-153 only (which must be purchased at today's market value), why are they expecting CFEFD to absorb the substantial loss that would be generated by treating these additional fittings as an overrun at the C-110 payment value? See Part 2 of our Position Statement. (Attachment 2, page 2)

"Please Note: It is more difficult to get long body fittings for the different type of fittings needed for this project. In one instance the contractor resourced to installing a long body 24 x 8 -inch cross instead of a long body 24 x 8 tee in order to keep working. Once again, poor planning on the part of the FDOT's contractors."

CFEFD RESPONSE; Whether or not one type of fitting is or is not more readily available is not the issue (See Part 2 of our Position Statement. (Attachment 2, page 2). Planning, or scheduling of material deliveries has nothing to do with the issues at hand.

"PCU still feels the compromise made to rectify the situation by paying for all long body fitting before January 10, 2005 is a reasonable settlement after the contractor submitted shop drawings and clearly identifying short body fitting as the ductile iron fitting of choice."

CFEFD RESONSE; Pinellas County Utilities did not "compromise", they were only abiding by their own specification. See Attachment 1, page 3, correspondence between Eisman & Russo and PCU.

"-----Original Message-----

From: Simpson, Dennis

To: Mreed@eismanrusso.com; Sweet, Mike; jblengr@desoto.net; JKNOWLTON@eismanrusso.com; johnduke@alumni.vanderbilt.edu; lestercfurney@aol.com; Pmedico@eismanrusso.com; tom.lay@dot.state.fl.us

Cc: Solis, Carlos; Toth, Steve; Gambling, Raymond

Sent: 5/9/05 12:03 PM

Subject: RE: DRB Hearing May 31 - FIN: 25705015201

Please see my clarification of the issues for the upcoming DRB Hearing.

Jack,

The additional fittings should be considered a overrun of the original bid quantity."

CFEFD RESPONSE; How can plan (bid) quantities be over run, when a pay item for the specified work does not exist (C-153 fittings)? The type of fittings to be used was clearly defined in correspondence between Eisman & Russo and PCU, see Attachment 1, page 3.

"The mega-lugs part of the fittings used to restrained the pipe is included the payment for the length of pipe installed. This is stated in the Technical Special Provisions, Section III Bid Items For Sanitary Sewers And Water Mains, Item 1010 & 1100 pipe, Restrained Joints & Note:

Payment for sleeved connections, restrained joints and all appurtenances shall be included in the price of meter (feet) of pipe (installed, page 47 of 55."

CFEFD RESPONSE; First of all, Item 1010 & 1100 Pipe, does not exist, however there is an Item 1090 & 1100 Pipe, See Attachment 3, page 1 (page 47 of 55) of "Technical Special Provisions for Pinellas County Utilities Relocation for S.R. 688 (Ulmerton Road) from Oakhurst Road to 119th Street", must have been a typo on the county's part.

Per the "Technical Special Provisions for Pinellas County Utilities Relocation for S.R. 688 (Ulmerton Road) form Oakhurst Road to 119th Street" (TSPs);

1.3.5 ANCHORING, THRUST BLOCKING AND RESTRAINING

1.3.5.1 All fittings shall be restrained by means of restraining devices such as retainer glands, restraining gaskets, or other acceptable restraints. See Attachment 4, page 1 (17 of 55 of the TSPs).

1.3.5.1 surely identifies the restrainer as being part of the fitting

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If the only pay item for the project was Pipe/LF, then we would agree with PCU, but this is not the case. Item 1090 & 1100 Pipe, states "Valves and fittings shall be paid for under separate pay items." See Attachment 3, page 1 (page 47 of 55 of TSP).

BOARD FINDINGS:

- **As to Issue 1:**

The specifications state:

S E C T I O N III BID ITEMS FOR SANITARY SEWERS AND WATER MAINS

ITEM - 1090 & 1100 **Pipe**

Description: The work consists of furnishing all labor, equipment and materials and installing pipe. All ductile iron pipe shall have polyethylene encasement. The unit price shall include all costs necessary to install the pipe including survey layout (based upon property monuments established by others), material, polyethylene wrap on ductile iron pipe, tracer wire on PVC pipe, pavement cutting, extra pipe fitting material, sheeting, bracing, utility crossings, backfilling, pressure testing, disinfection, field layout, etc. Restoration of pavement, sidewalk, curb and gutter, and grass shall not be paid for as separate pay items but shall be included in the cost of laying pipe.

Measurement: The quantities of pipe to be **paid for** under this Item **shall be the length in feet of pipe measured along the centerline of the pipe through valves and fittings in place**, completed and accepted.

Sleeved Connections:

Description: The work consists of furnishing all labor and equipment and constructing sleeved connections to existing water mains. The unit price shall include notification of shutdown to property owners, dewatering, establishing alignment, moving and aligning old and new pipe, cleaning and cutting old pipe, sterilization and all other operations required to make the connection. **Valves and fittings shall be paid for under separate pay items.**

Restrained Joints:

Description: The work consists of furnishing all labor, equipment and materials, including retaining glands, bolts, special flanges, etc. and installing restrained joints on pipe and fitting not included in other items.

Note: **Payment** for sleeved connections, **restrained joints** and all appurtenances shall be **included in price of** meter **of pipe.**

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- Sheet 44 of PCU plans details Restrained Joint Requirements.

PIPE SIZE	TYPE FITTING					
	90°	45°	22 1/2°	11 1/4°	DEAD-END	TEE
102mm (4")	3	1	1	1	4	1
152mm (6")	4	2	1	1	6	1
203mm (8")	5	2	1	1	9	2
254mm (10")	6	3	1	1	10	3
305mm (12")	7	3	2	1	11	5
406mm (16")	8	4	2	1	14	6
508mm (20")	9	4	2	1	18	11
610mm (24")	10	4	2	1	22	13
762mm (30")	12	5	3	2	26	17
914mm (36")	13	6	3	2	30	21
1067mm (42")	14	6	3	2	34	25
1219mm (48")	15	7	3	2	38	29
1372mm (54")	16	7	4	2	40	32

TABLE APPLIES TO 6.1m (20) FOOT PIPE LENGTHS @ 11.03 M.B.C. (150 P.S.I.G.) TEST PRESSURE WITH 762MM (30) INCHES OF COVER OVER PIPE. NUMBERS SHOWN IN TABLE ARE THE NUMBER OF JOINTS FOR EACH SIDE OF FITTING.

EFFLUENT AND POTABLE WATER MAIN RESTRAINED JOINT REQUIREMENTS

This table does refer to the joints each side of a fitting.

The above specification refers to pipe and restrained joints required on the pipe.

- Therefore, the Board finds that the cost of the restrained joints on the pipe is included in the item for pipe.

Section 1.3.5.1 requires fittings to be restrained

SECTION I CONSTRUCTION AND WORKMANSHIP SPECIFICATIONS

Section 1.2 PIPE

1.2.5 PRESSURE AND LEAKAGE TESTS

1.2.5.2 LEAKAGE TEST (WATER MAINS)

1.2.5.2.5 PIPE LAYING

...

Restraining joints or concrete thrust blocks shall be placed at all bends, tees, plugs, and other fittings to provide lateral and/or vertical support. Thrust blocks shall conform to the details shown on the plans.

1.3 FITTINGS

1.3.1 DESCRIPTION

1.3.1.1 The work covered under this section is intended to describe the required work to be performed in the installation of fittings for the different kinds of pipe as described in these Technical Special Provisions.

1.3.3 INSTALLATION

1.3.3.1 Fittings shall be set and joined to the pipe and each type of joint as described in Section 1.2 "Pipe" of these Technical Special Provisions.

1.3.5 ANCHORING, THRUST BLOCKING AND RESTRAINING

1.3.5.1 All fittings shall be restrained by means of restraining devices such as retainer glands, restraining gaskets, or other acceptable restraints.

The pay item for fittings states:

ITEM - 1610 -Ductile Iron Fittings

Description: The work consists of furnishing all labor and equipment and materials and installing ductile iron fittings not included in other items. The unit price shall cover the cost of furnishing the fittings, transportation, jointing materials, bolts, gaskets,

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polyethylene wrap and all necessary labor. Wherever reaction backing is necessary, the cost of furnishing and installing thrust blocks shall be included in the unit price for Ductile Iron Fittings.

Measurement: The quantities of ductile iron fittings to be paid for under this Item shall be the **weight of the fitting** required as **per manufacture's specified weight per fitting, including bolts and glands**, in tons measured in place, completed and accepted. The weight of gaskets, **jointing materials**, etc., **shall not be included in the computation of ductile iron tonnage**.

Payment shall be made under:

Item No. 1610-140 -- Ductile Iron Fittings (F&I)
(CL.150) per ton

- Therefore, the Board finds that the cost of the restrained joint at the fitting is included in the item for fitting.
- There is however, the possibility that since the payment for the number of restrained joints is included in the price of the pipe or fitting resulting in a "blended" cost for the item, that the Contractor or the Owner might be entitled to an equitable adjustment. This is even more provable since the project has been redesigned several times and the tonnage of fittings reduced substantially. There was insufficient information furnished at the hearing for the Board to determine if this may be true.

- **As to Issue 2:**

The Contract Specifications state:

SECTION II MATERIAL TECHNICAL SPECIFICATIONS

2.3 FITTINGS

2.3.1 DUCTILE IRON/CAST IRON FITTINGS

2.3.1.1 DUCTILE IRON FITTINGS

2.3.1.1.1 Shall be standard design equivalent to Class 150 minimum, **short body** conforming with **AWWA C-110** (ANSI Specification A21.10). Fittings shall have a cement-mortar lining with seal coating in compliance with AWWA Standard C-104 (ANSI Specification A21.4). Exterior coating shall be standard bituminous coating of one (1) mil thickness.

- This is an error in that **AWWA C-110 refers to a long body fitting**.

Huges Supply Inc.'s quote, dated 11/12/2003, which was prior to the bid date of 12/03/2003, states:

1610-140

FITTINGS WATER	15.00 TN	\$	3,762.00	\$	56,430.00
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TOTAL TONS AND DOLLARS FOUND	22.085 TN	\$	3,762.00
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NOTE: WE ARE ONLY ENTERING IN OUR TOTAL THE TONS

THAT THE BID FORM CALLS FOR AS WE FOUND MORE

THAN THE BID CALLS FOR. **SPEC'S CALL FOR C110 FITTINGS.**

NOTE: **ALL FITTINGS ARE C110 MJ CEMENT LINED PER TECHNICAL SPECS.**

- Therefore, the Board finds that the Contractor reasonably bid and furnished long body fittings.

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...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. ...¹

BOARD RECOMMENDATION:

Based on the materials supplied to the Board and presentations to the Board at the DRB hearing the Board finds that the Contractor may be due an equitable adjustment for the number of restrained joints on the pipe/fittings. Further, the Contractor is entitled to payment for long bodied fittings.

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 these Issues and concur with the findings and recommendations.

Respectfully Submitted

Disputes Review Board

John H. Duke, Sr.; DRB Chairman
Lester Furney; DRB Member
Jimmy Lairscey; 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

¹ DRBF Practices and Procedures Section 1 – Chapter 6