

DISPUTE REVIEW BOARD DECISION

July 24, 1997

Faxed July 24, 1997

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Re: WPI No: 7143198
State Project No: 10190-3428/6428
F.A.P. No.: ACDPI-ACNH-0043-(6)(FO)
Contract: Interstate 4, Segment 2
Description: State Road 400 (I-4) from I-75 East to McIntosh Road
Counties: Hillsborough

Subject: I-4 Disputes Review Board - Issue #10
Recommendation of Disputes Review Board on the Dispute over Partial Payment for Delivery of Certain Materials per Subarticle 9-6.5 of DOT Standard Specifications

At the request of MK/Centennial (MK), the Consultant Resident Engineer, and The Cone Corporation (Cone), the Contractor, hereinafter referred to as the parties, the Disputes Review Board (DRB) held a hearing on July 11, 1997 to consider a dispute over application of Subarticle 9-6.5 Partial Payment for Delivery of Certain Materials to materials stockpiled for use in Temporary Barrier Wall, Temporary Attenuators, Vehicle Arresting Barriers and Staked Silt Fence. Each of the parties furnished to the Board, in advance of the hearing, written position statements with copies of pertinent correspondence between the parties and excerpts from the DOT Standard Specifications. This information was exchanged by the parties prior to the hearing.

Oral presentations were made to the DRB at the hearing including references to specific provisions of the contract.

ISSUE:

Cone had materials for construction of Temporary Barrier Wall, Temporary Attenuators, Vehicle Arresting Barriers and Staked Silt Fence delivered to the project and submitted a request for partial payment under Subarticle 9-6.5 along with invoices documenting the delivered cost of these materials. DOT made payment on Estimate No. 2, but then deducted the amount from a later Estimate. Cone gave written notice of intent to file a claim for interest on the moneys deducted.

Cone supported their request for an equitable adjustment with the following:

1. We are focusing our testimony on the major cost item, units used for Temporary Barrier Wall.
2. In regard to barrier wall units, we request payment for only those units newly purchased for later use on this job.
3. We disagree with the Department's position that partial payment cannot be made for the materials in question, because they were not "permanently incorporated in the work." for later use on this job. They base their interpretation of the contract on applying the wording to be permanently

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incorporated in the work” as contained in Subarticle 9-6.5.2 of the Standard Specifications. We contend that only Subarticle 9-6.5.1 applies in this case.

4. The contract documents do not specifically prohibit partial payment for materials used in maintenance of traffic or temporary erosion control features.
5. Having the materials in question here readily available at the job site is beneficial to DOT.

MK supported the Department of Transportation with the following:

1. Subarticle 9-6.5.2 of the Standard Specifications Drainage, Electrical, Sign, Structural and Miscellaneous Materials restricts partial payment for delivery of materials to materials that are to be permanently incorporated into the work.
2. Subarticle 102-1.1 defines Maintenance of Traffic as work to be done for the duration of the construction period.
3. Subarticle 104-6.4.1 defines Silt Fence as temporary work.
4. The contract provides for partial payment for only materials that will be incorporated into the work.

The findings of the DRB are as follows:

1. Subarticle 9-6.5 of the Standard Specifications was written before significant use of temporary traffic control and temporary erosion control items by DOT was a common practice. Therefore, it is not appropriate to strictly apply the wording of the Subarticle in this situation. It is also pointed out that omission of a comma after the word Structural in the heading of Subarticle 9-6.5.2 (Drainage, Electrical, Sign, Structural and Miscellaneous Materials) might mean that Miscellaneous refers to Structural.
2. It is obvious that the provisions of Subarticle 9-6.5 are to be used to avoid the contractor having to bear a substantial cost outlay incurred in purchasing materials that will not be used in the work for some time.
3. This dispute turns on the phrase “reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made” as contained in Subarticle 9-6.5.1(1) of the Standard Specifications. We think that “incorporated into the specific project” can refer to materials used in temporary items required by the contract provisions.

NOTE:

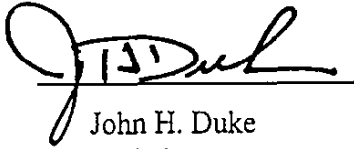
The Board recognizes that the Department has the right to limit partial payment for delivery of materials to cases where the outlay of money for purchase of materials for a particular work item is substantial. Otherwise, the paperwork burden to offset significant outlays of money be the Contractor will not be justified.

The Board, therefore, finds in favor of the Contractor.

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I certify that I participated in all of the meetings of the DRB regarding the Dispute indicated above and concur with the findings and recommendations.

I-4 Project Disputes Review Board



John H. Duke
Chairman



G. A. "Dolph" Hanson
Member



H. E. "Gene" Cowger
Member

CC: Brian McKishnie, P.E.