

May 16, 1996

Mr. Gary M. Granata, P.E.
PBS & J Construction Services, Inc.
5430 West Tyson Avenue
Tampa, Florida 33611

Mr. John D. Glass
Misener Marine Construction, Inc.
5440 West Tyson Avenue
Tampa, Florida 33611

RE: WPI NO.: 7113770
State Project No.: 10130-3544
F.A.P. NO.: ACBRF-295-1(36)-[FO]
Contract No.: 18734
Description: SR 600 (US 92), Gandy Bridge
Counties: Pinellas/Hillsborough

Subject: Gandy Bridge Project Disputes Review Board Findings of Fact Pertaining to Claim Relating to Additional End Block Beam Reinforcing Steel

At the request of PBS & J Construction Services, Inc. (PBS & J) and Misener Marine Construction, Inc. (Misener) hereafter referred to as the parties, the Gandy Bridge Project Disputes Review Board (DRB) was asked to rule on the above referenced subject.

The DRB has been furnished both written documentation as well as verbal presentations.

In arriving at its decision the DRB considered all material presented, both written and oral, and asked many questions pertaining to the subject claim. The basic dispute involves the method of payment for the additional reinforcing steel required by the FDOT's Engineer of Record for the end blocks of the VECP modified beams.

In its letter of August 24, 1995 (Exhibit 1) Misener requested compensation for this additional reinforcing steel which was added after execution of the VECP Supplemental Agreement No. 7 dated January 30, 1995. Initially the FDOT maintained that the additional costs should be considered under a Supplemental Agreement, but only at fifty percent (50%) of the cost. After hearings on this matter commenced on March 18, 1996, the FDOT amended its position to that of agreeing that Misener was entitled to recovery of its costs, overhead, profit and bond, but as a part of the final costs after completion of the VECP design process. This was confirmed in its letter of March 19, 1996 (Exhibit 2).

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Pertinent and Determining Information:

1. From the Project Specifications: Article 4-3.5 Value Engineering Incentive (4-3.5.4 Processing Procedures) Copy Attached (Exhibit 3)
2. Mr. John Temple, P.E., District Director of Operations (FDOT) letter dated December 19, 1994 clearly states that final (VECP) savings will be made upon approval of the revised plans. Letter Copy Attached (Exhibit 4)
3. Supplemental Agreement No. 7, dated January 30, 1995. This Supplemental Agreement (S/A) covers the (FDOT) acceptance of Misener's Value Engineering Change Proposal (VECP) dated December 13, 1994 and approved December 19, 1994. It very clearly states , that a subsequent S/A would be issued covering the contractors share of the VECP savings once the revised plans have been approved. (Exhibit 5)

After due consideration of all facts, contract specifications, pertinent documents and testimony presented, it is the opinion and conclusion of the DRB that Misener request for payment of the revised beam end block additional reinforcing steel costs, including "overhead, profit, and bond" per specification 4-3.5.3(2), be included in the final cost of the VECP and considered in determining the net savings under the VECP in accordance with Standard Specification 4-3.5 of the contract. The DRB's position is based upon the fact that no documentation nor testimony was presented by either party to contradict the FDOT's position that the agreed to compensation for the additional required reinforcing steel would be made by any means other than inclusion in the final costs and final VECP Supplemental Agreement after all costs and net savings to the contract had been determined.

Gandy Bridge Project Disputes Review Board



Richard M. Noblet
Chairman

cc: Marc Knapp