

POSITION PAPER – NON-CRITICAL TEMPORARY WALL

Project Name: Widen HEFT from SR 836 to NW 106th Street (MP 26-34)

FPID No.: 435543-1-52-01

Contract No.: E8R80

County: Miami-Dade

DISPUTE:

Our understanding of the dispute is based on the ~~flowing~~ *following* points presented in the Contractor's letter dated October 28, 2019 ⁽¹⁾:

- Pursuant to Section 455-12.6.2, all "critical" Temporary Sheet Piling should be designed by the Department, included in the Plans, and paid by the Department under the requisite steel sheet piling (critical temporary) item (FDOT Pay-Item 455-133-2 (SHEET PILING STEEL, TEMPORARY-CRITICAL)).
- The Department's response to the Bid Questions was altogether vague and failed to provide a clear and unambiguous response to appropriately allow contractors to properly bid the temporary sheet pile item.
- Being a low-bid system, the contractor was tasked with needing to interpret whether temporary sheet pile on the project was deemed "critical" versus "non-critical."
- As set forth above, the definition used to determine a "critical" wall is "walls which are necessary to maintain the safety of the traveling public or structural integrity of nearby structures, roadways and utilities during construction."

DEPARTMENT POSITION:

Our position on the disputed items will establish that the Contractor was provided adequate information to make the necessary determination as to "the character, quality, and quantities of work to be performed" ⁽²⁾, in relationship to the NON-CRITICAL TEMPORARY WALL (TCW) as referenced in the Structural Plan Sheets ⁽³⁾, without confusion or ambiguity.

We begin by establishing the Contract requirements that address the Contractor's responsibility to **examine plans** and to *"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."* ⁽²⁾ and that *"The Bidder's submission of a Proposal is prima facie evidence that the Bidder has made an examination as described in this Article."* ⁽²⁾

We then call to your attention to the Contract STRUCTURE PLANS where on the **PAY ITEM NOTES** (p.B-37) it clearly and without ambiguity state that the responsibility for design, furnishing, installing, and removing the TCW's is the responsibility of the Contractor and that the cost is to be considered incidental of other related items. ⁽³⁾ We continue the examination on of the STRUCURE PLANS and clearly note that NON-CRITICAL TEMPORARY WALL(s) are identified to be used for the construction of foundations, end-bent walls, and MSE walls. ⁽³⁾ There is no confusion or ambiguity as to the intent of the Contract Plans or as to the fact that the responsibility lies on the Contractor to furnish, install, and design the TCW's; furthermore, there is no confusion or ambiguity that the cost should *"BE INCLUDED AS AN INCIDENTAL TO COST OF OTHER RELATED PAY ITEMS AND NO SEPARATE PAYMENT SHALL BE MADE."*

PAY ITEM NOTES (p.B-37)

"DESIGN OF NON-CRITICAL TEMPORARY WALLS SHALL BE THE RESPONSIBILITY OF CONTRACTOR. ALL COSTS FOR LABOR, MATERIALS, EQUIPMENT, DESIGN & CONSTRUCTION INCLUDING REMOVAL, AS DIRECTED BY THE ENGINEER, FOR ALL NON-CRITICAL TEMPORARY WALLS, AS SHOWN IN THE CONTRACT PLANS BUT NOT LIMITED TO, SHALL BE INCLUDED AS AN INCIDENTAL TO COST OF OTHER RELATED PAY ITEMS AND NO SEPARATE PAYMENT SHALL BE MADE, IN ACCORDANCE WITH SPECIFICATION SECTION 455-12.6.2."

We refer to the Contractor's initial item of dispute where it states that *"Pursuant to Section 455-12.6.2, all "critical" Temporary Sheet Piling should be designed by the Department..."* and offer the following as our position:

According to §5-2 *Coordination of Contract Documents*, the "Plans" are governing document over the "Standard Specifications" and as such the Contractor's responsibility for this work related to the TCW's has been established.

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According to §455-12.6.2 *Temporary Sheet Piling*: The Contractor first fails to acknowledge that the PAY ITEM NOTE clearly places the responsibility for the TCW’s on the Contractor and presumes that the Specification governs over the Plan, which is not the case. In addition, §455-12.6.2 clearly identifies two separate conditions for payment (1) “critical temporary steel sheet pile walls” that “are detailed in the Plans” and (2) “temporary steel sheet pile walls are not detailed in the Plans”, where the latter applies to this Project.

We refer to the Contractor’s second item of dispute where it states that the “response to the Bid Questions was altogether vague and failed to provide a clear and unambiguous response to appropriately allow contractors to properly bid the temporary sheet pile item.” and offer the following as our position:

We refer to the Bid Question #26244 ⁽⁴⁾ and note that the question was clear and referenced the **PAY ITEM NOTE** (p.B-37), MSE walls, and for the Department to quantify, design, and provide a method of payment “as Critical walls”. The response was equally clear, where the Department stated that “Based on this proposed layout and FDOT criteria, **the walls did not qualify as critical.**” There is no ambiguity in this response, the bidder should adhere to the **PAY ITEM NOTE** as provided for in the Plans.

Question:	26244: There are numerous areas on the project where <u>MSE walls are shown and the strap lengths warrant temporary anchored sheet pile walls (NW 25th street, NW 41st street, NW 58th street).</u> Structures Plan sheet B-37 <u>general notes dictates that design for temp non-critical sheet pile walls is the responsibility of the contractor.</u> Many "non-critical" walls will be upwards of 28' feet tall, within close proximity of traffic, and will affect public safety. <u>Should these be considered as Critical walls, and will design and quantities be provided for these wall, and how will they be paid for?</u>	Posted:	6/3/2019 9:50:42 AM
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Answer:	FDOT Structures Detailing Manual (SDM) Figure 19.7-1 and FDM 262 define the criteria for when temporary walls are considered critical based on wall height and distance to edge of travel lane. As shown in the contract plans, non-critical temporary walls are anticipated and approximate plan locations immediately adjacent to limits of excavation are shown. <u>Based on this proposed layout and FDOT criteria, the walls did not qualify as critical.</u>	Status:	ANSWER PUBLISHED
		Posted:	6/7/2019 11:36:03 AM

The follow-up Bid Question #26308 ⁽⁴⁾ and note that the bidder acknowledged “that **temporary sheet piling** will be required at the referenced locations” but challenged the Department’s definition and sites the last section of §455-12.6.2 as governing, requesting a design and pay item, and alludes to a claim should the prior not be complied with. In this scenario the bidder is attempting to change the Department’s definition of “critical” which was clearly explained and surmised in Bid Question #26244, where the Department stated that “Based on this proposed layout and FDOT criteria, the walls **did not qualify as critical.**” Again, there is no ambiguity in this response, the bidder is clearly attempting to persuade the Department to change the Structures Detailing and Design Manuals for the purpose of adding a pay item to account for the TCW’s.

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Question:	26308: As a follow up to Question #26244, it is evident that temporary sheet piling will be required at the referenced locations, and by definition they should be considered critical. In accordance with Standard Specification 455-12.6.2, <u>"If the wall is not shown in the Plans, but deemed to be critical as determined by the Engineer, then a design shall be furnished by the Department and paid for separately under steel sheet piling (critical temporary)."</u> Please provide the necessary design, contract documents and pay item to include the substantial cost for this work in the bid. <u>If this information is not provided prior to the bid, the Turnpike may be subject to claims by the Contractor for extra compensation and time.</u>	Posted: 6/6/2019 12:11:53 PM
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Answer:	Please see Response 26244.	Status: ANSWER PUBLISHED
		Posted: 6/7/2019 11:53:01 AM

We refer to the Contractor’s third item of dispute where it states that the “the contractor was tasked with needing to interpret whether temporary sheet pile on the project was deemed "critical" versus "non-critical" and offer the based on the STRUTURE PLANS, PAY ITEM NOTE, and the BID Q&A it was clear that the NON-CRITICAL TEMPORARY WALLS shown on the STRUTURE PLANS are to be the responsibility of the Contractor in accordance with the PAY ITEM NOTE (p.B-37); there was no need or requirement to discern between "critical", "non-critical", or otherwise, the information was provided for in the Plans.

We refer to the Contractor’s fourth item of dispute where it states that the “the definition used to determine a "critical" wall is "walls which are necessary **to maintain the safety of the traveling public** or structural integrity of nearby structures, roadways and utilities during construction” and offer the following as our position:

We call your attention to §5-1.4 Shop Drawings, ⁽²⁾ where the Department will require that the Contractor provide a shop drawing for the TCW’s, which will be reviewed by the EOR and FTE Structure’s department as part of the review process; therefore, the Temporary Sheet Pile walls, whether deemed “critical” or “noncritical”, will undergo a thorough review and evaluation from the Department to assure public safety.

POSITION SUMMARY:

Based on our review of the information provided, it is our Position that the Contract STRUCURE PLANS provide clear and unambiguous information and direction for the Contractor to determine the character, quality, and quantities of the work related to the NON-CRITICAL TEMPORARY WALLS (TCW), for the cost of the TCW to have been included as incidental to other related Pay Items, and that there will not be separate payment made for TCW’s. Furthermore, the Q&A related to this issue further supports our position that the issue is Pay Item driven and should not be used a presumption to challenge the Department’s Structures Detailing and/or Design Manuals for the purpose of adding a pay item to account for the TCW’s

REFERENCED INFORMATION:

Attach.	Description	Page Count
Ref.1_ HEC1935 NOI	Contractor’s letter stating their initial position on the matter.	6
Ref.2_ Referenced Specifications	Relevant Specifications referenced in the Department’s position.	5
Ref.3_ Refernced TCW PLANS	Relevant Plan sheets referenced in the Department’s position.	36
Ref.4_ ADD No. 4-Bid Q&A Report	ADDENDUM No. 4-Bid Q&A Report.	15