

Dispute Review Board Hearing Report
for
Sand Lake Road (482) Widening
from
International Drive to Florida's Turnpike
Including the
John Young Parkway Flyover Bridge
Contract Number T5552

Hearing Date: June 21, 2017

Hearing Attendees:

FDOT: Carlos Dawson, David Olund, Trevor Williams, Mike Heffinger

Transystems: Mark DeLorenzo, Robert Murphy, Luis Hernandez

Prince Contracting, LLC: Neil Parekh, Sean Ireland, Robert Burr

Dispute Review Board: Bill Ashton, Murray Yates, Robert Cedeno

Dispute: The dispute is regarding whether the Buy America provision under CFR 635.410 and FDOT Standard Specification 6-5.2 applies to the Contract between FDOT and Prince Contracting, LLC. (Prince) and, if so, to all, none or only portions of the projects contained in the Contract.

Prince's Position: FDOT awarded Contract T5552 to PRINCE for the reconstruction and widening of Sand Lake Road from International Drive to Florida's Turnpike, including the John Young Parkway flyover bridge. The bid package and resulting Contract included the removal and replacement of utility facilities for Orange County Utilities (OCU) and Orlando Utilities Commission (OUC) through 7 Financial Project IDs. The FDOT designated the Utility Work by Highway Contractor (UWHC) with 7 Financial Project IDs in the bid package and Contract by using the (-56) numerical system versus (-52) numerical system to distinguish the UWHC from the FDOT work. Although FDOT would administer the overall project, the UWHC would be paid by the local utilities through separate agreement (UWHCA) with FDOT. FDOT has directed PRINCE to adhere to the Buy

America Provision for all portions of the Contract, including the UWHC. Prince's claim is that all work for the project is exempt from Buy America by virtue of the response received to a pre-bid question and answer (Q & A) as follows:

Pre-bid question 14247: *Does the Buy America provision pertain to this Contract, in particular the Orange County Utility work?*

Response: *For utility work at FDOT expense, Buy America applies. For all others Buy America does not apply.*

Special Provision 2-4 in the Contract documents is the basis for the pre-bid question and answer procedure and, as such, each Q & A becomes a special provision. Prince's position is that the answer to question 14247 conflicts with Standard Specification 6-5.2 requiring Buy America for all iron and steel items incorporated into the project and, therefore, according to Standard Specification 5-2, Q & A 14247 has precedence over Standard Specification 6-5.2 requiring Buy America for the seven (7) UWHC projects.

FDOT's Position: The issue at hand is whether the Buy America provision under 23 CFR 635.410 applies to all of the work in the Contract. The scope of the work under the Contract between FDOT and Prince Contracting, LLC includes all utility work as specified under each of the Utility Work by Highway Contractor (UWHC) agreements. As such, the governing documents, more specifically the Buy America specification, applies to every item in the Contract.

This fact is irrespective of any agreement the Department has with a local agency or utility company. Moreover, the Buy America provision is not and cannot be altered by any Technical Special Provision provided by a utility agency for inclusion into the Contract. Any work for which the Department reimburses the Contractor requires materials made in the United States as described under the Buy America specification. All payments made to Prince under Contract T5552 are expended by FDOT.

Board Findings:

1. The dispute primarily evolves from a response to the aforementioned pre-bid question. This response is recognized as a special provision and, as such, has precedence over standard specification 6-5.2 which requires Buy American for all contracted iron and steel work. However, **based on the very specific wording of**

the question and response, the DRB 's interpretation is that **the question and its answer applies only to the Orange County Utility projects**. Specifically, the tables titled "TABULATION OF QUANTITIES" in the four (4) sets of plans prepared for Orange County Utilities state expressly "FDOT RESPONSIBILITY- REIMBURSABLE" and "COUNTY RESPONSIBILITY- NON-REIMBURSABLE or COUNTY RESPONSIBILITY REIMBURSABLE ". In the OCU plans, separate project numbers are identified for each condition as follows: Projects 5-56-01 and 4-56-01 are non-reimbursable and are considered Orange County's responsibility at their expense. Project 4-56-03 is reimbursable and is FDOT's responsibility at their expense. Project 5-56-02 is considered reimbursable at Orange County expense as it falls into the category of "for all others".

This is shown below:

Financial Project ID	Utility ID	Responsibility	Reimbursable	Non-reimbursable
407143-5-56-01	Orange County	County		x
407143-5-56-02	Orange County	County	x	
407143-4-56-01	Orange County	County		x
407143-4-56-03	Orange County	FDOT	x	

This express distinction between "FDOT RESPONSIBILITY and "COUNTY RESPONSIBILITY" read together with the pre-bid question and answer as to which entity bears the expense for the utility work at bid time likely created the issue that caused the dispute, as whoever raised the question attempted to clarify the distinction in determining the requirement of domestic versus foreign materials.

That Prince interpreted the response to nullify Buy America for the entire Contract is evidenced by their statements on page 3 of their rebuttal paper as follows: "Furthermore, Prince's price for the utility work on Sand Lake was higher than 2 bidders and, although less than 2 other bidders, the spread was not enough to cover the cost increase associated with supplying 100% domestic materials for the utility scope of work" and "Also, Prince only received import material quotes from their utility material suppliers as the suppliers were under the understanding that the Buy America provision did not apply to the utility portion of the contract".

Since the pre-bid question and response specifically references Orange County Utility work, the answer "for all others Buy America does not apply" is interpreted to mean only for Orange County Utility work and is referring only to utilities that are the responsibility of and at OCU expense as shown in the Tabulation of Quantities sheet(s) for Projects 5-56-01, 5-56-02 and 4-56-01. For the three (3) sets of Orlando Utility Commission plans the question and response is silent and therefore not applicable and has no bearing on the dispute. The designation of which party has "RESPONSIBILITY" for the "REIMBURSABLE" and "NON-REIMBURSABLE" utility work was not on any of the plans for Orlando Utility Commission work. Therefore, all OUC work needs to comply with Standard specification 6-5.2 under the Buy America requirement.

Recommendation: Based upon the findings, the Board makes the following recommendations:

1. The Contract intends that steel and iron products required for utility projects 5-56-01, 5-56-02 and 4-56-01 need not be of domestic origin.
2. The Contract intends that steel and iron products required for the other four (4) utility projects be obtained from a domestic source.

Respectfully submitted,



Murray Yates

Robert Cedeno

William D. Ashton, Chairman

Signed in behalf of and with approval
of the members of the DRB

