

**Dispute Review Board Hearing #2 Recommendations
for
Sand Lake Road (482) Widening
from
International Drive to Florida's Turnpike
Including the
John Young Parkway Flyover Bridge
Contract Number T5552**

Hearing Dates: October 20 and 30, 2017

Hearing Attendees:

FDOT: Carlos Dawson, David Orlund, 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

Background of Dispute: Shortly after being awarded Contract T5552 Prince Contracting, LLC (Prince) began acquisition of foreign made steel pipe based upon their interpretation of the Contract Documents. FDOT subsequently advised Prince in writing that foreign steel was not allowed for this project as a result of the Buy America Specification requirement. Prince then had to re-order and re-handle, for a second time prior to installation, the same size pipe and types of fittings made now of domestic steel to replace the foreign made material already stored on site. This caused a delay in the commencing of utility work and prompted Prince to file a Notice of Intent on December 15, 2016 to claim added compensation and delay costs because of the matter. The issue of the applicability of the Buy America Specification requirement was forwarded to the DRB and on June 21, 2017 a hearing was held. This resulted in the DRB recommending that a portion of the materials (utilities that were the responsibility of and at Orange County

Utility's expense) were not required to be furnished from domestic sources. All other steel materials were required to be from domestic sources. Both parties accepted the recommendation.

FDOT and Prince then began negotiations to determine the quantum involved. While the two parties agree that a delay occurred on a controlling work item and that there were associated costs, they are still negotiating. During these ongoing negotiations and, in attempting to establish costs, Prince took the position that project supervisory personnel connected with the delay were eligible for compensation as well. Unable to agree on the matter of supervisory cost, it was then referred to the DRB and a hearing was held on October 20 and 30, 2017.

Prince's Position: "Is Prince entitled to compensation for project supervisory personnel if the change to domestic steel caused a delay to a controlling work item and extended the Project completion date".

Prince takes the position that FDOT's decision and written direction caused additional work and delayed the Contract completion date. This, in Prince's opinion, constitutes Extra Work and Project Supervisory personnel are direct labor costs that must be compensated according to Construction Specification 4-3.2.1(1).

FDOT's Position: The Department's position is that Prince "is not entitled to compensation for Project Supervisory Personnel for the delay to a controlling item of work caused by the utilization of materials meeting the Buy America ruling from the June 21 hearing".

The Department further asserts that the work in question "is covered and included in the Project by the existing Contract Documents and thus is not considered Extra Work".

Findings: The dispute is centered on the matter of whether the additional work required by Prince in order to comply with the Buy America requirement did in fact result in Extra Work.

In FDOT Construction Specification "1-3 Definitions", "Extra Work" is defined as *"any "work" which is required by the Engineer to be performed and which is not otherwise covered or included in the project by the existing Contract Documents, whether it be in the nature of **additional work***, altered work, deleted work, work due to differing site conditions, or otherwise. This term does not include a "delay"*".

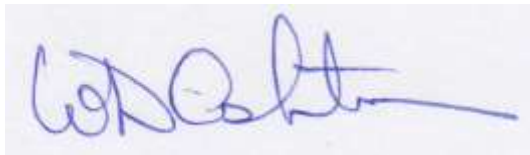
Based upon the facts and circumstances surrounding this matter, the Board finds that a limited amount of additional work (unrelated to the installation component of the work that will remain essentially unchanged) was required of Prince in order to comply with the Buy America requirement. This work falls squarely under the definition of "Extra Work" as it caused **additional work*** under the definition in FDOT Specification 1-3. Therefore, in accordance with the Specifications, the cost falls under Specification 4-3.2.1 Allowable Costs for Extra Work, specifically paragraph 1 dealing with "Labor and Burden". This stipulates that *"the Contractor will receive payment for actual costs of direct labor and burden for the additional and unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical personnel, **except when the additional or unforeseen work is a controlling work item and the performance of such controlling work actually extends completion of the contract***".*

* added for emphasis

Recommendations: The Board recommends as follows:

1. The limited amount of additional work required to conform to the Buy America Specification qualifies as Extra Work under FDOT Specification 1-3.
2. Since this was a controlling work item, the requirements of Specification 4-3.2.1(1) govern concerning allowable supervisory labor costs required to complete the extra work identified in the preceding findings.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "W. Ashton", is shown within a light blue rectangular box.

Murray Yates
Robert Cedeno
William Ashton, Chairman
Signed in behalf of and with approval
of the members of the Board