

DISPUTES REVIEW BOARD RECOMMENDATION

February 9, 2005

Jon Gibson, P.E.
Project Engineer
HNTB
5575 S. Semoran Blvd., Suite 38
Orlando, FL 32822

Eric Norton
Project Manager
Hubbard Construction Company
P.O. Box 547217
Orlando, FL 32854-7217

Robert B. Cadle, P.E.
Project Manager
City of Orlando
Public Works Department
5100 L.B.McCloud Rd.
Orlando, FL 32811

Re: SR 436 Semoran Blvd. Project; FDOT FIN # 239454-2-56-04, JPA with the City of Orlando. Disputes Review Board Hearing regarding payment for Meg-a-lugs.

Gentlemen:

The Florida Department of Transportation (FDOT)/City of Orlando and Hubbard Construction Company requested a hearing concerning the above referenced issue. The contractor believes he should be paid, at the unit price per ton, for the meg-a-lugs used in conjunction with the fittings on the pipe that was installed under the JPA between the City of Orlando and the FDOT. The City believes that the cost of furnishing meg-a-lugs is included in the unit price per ton for fittings.

CONTRACTORS POSITION

The Contractor's position is stated by referencing, copying and paraphrasing their position paper and input from the hearing. Should the reader require further information please see the complete position paper of the contractor.

The Contractor's position paper has the following statements and references to document their request for payment for the meg-a-lugs.

Hubbard Construction has not been paid for any of the meg-a-lugs supplied and installed for the connection of the reclaim fittings to the City Of Orlando JPA 24 reclaimed water main. Hubbard has only been compensated for partial fitting weight. It is Hubbard's position that all fittings, inclusive of meg-a-lugs, nuts and bolts, are to be paid under the City of Orlando JPA tonnage pay item for fitting weight (Pay Item #1610-140). Hubbard references the JPA "Technical Special Provisions" page 9 of 42:

6. Fittings

- a. Measurement: The quantity of payment shall be the actual number of tons of each size (greater than 8-inch diameter), and type, for reclaimed water service and wastewater service satisfactorily furnished and installed. Fittings included within the limits of lump sum payment items will not be measured for payment under this item.
- b. Payment: Payment of the applicable unit price shall be full compensation for furnishing all labor, materials and equipment for a complete installation including excavation, sheeting, shoring and bracing, dewatering, backfill, compaction. Connection to pipes, restoration and clean-up. This item also includes interior linings, all mechanical restraining devices, nuts, and bolts required.

“Technical Special Provisions” page 22 of 42:

B.

2. Pressure Class

- a. Mechanical Joint, Fittings with restraining Devices: Meg-a-Lug system as manufactured by EBBA Iron or approved Equal. Minimum 250 psi (1.724 Mpa) pressure rating.

Hubbard asserts that the above quoted technical special provisions require that meg-a-lugs be used and further states the manufacturer (or approved equal). Hubbard used this information in bidding the project and they expected to get paid for providing and installing the meg-a-lugs at the unit price per ton as they normally do on all FDOT projects.

Hubbard further states that on June 17, 2004 they notified FDOT that they had not been paid for any of the meg-a-lugs installed to date and requested payment on the July 2004 pay estimate. The City of Orlando inspector on the project reviewed the partial as-builts to insure that all fittings were accounted for and accurately depicted on the as-builts. The City of Orlando conferred with the utility designer, PEC, and determined that the meg-a-lugs installed were part of each fitting, but would not pay for the weight of the meg-a-lugs installed at the unit price per ton. A meeting attended by FDOT, Hubbard, The City of Orlando and their designer PEC to resolve the payment or non-payment of the meg-a-lugs provided. The dispute could not be resolved so at the next scheduled meeting of the project DRB Hubbard requested a hearing to resolve the dispute.

FDOT/CITY OF ORLANDO’S POSITION

The FDOT/City’s position is stated by referencing, copying and paraphrasing their position paper and input from the hearing. Should the reader require further information please see the complete position paper of the contractor.

The City’s position paper has the following statements and references to document their denial of Hubbard’s request for payment for the meg-a-lugs.

The City's position with respect to Hubbard's claim for additional compensation for Meg-a-lug restraining devices for fittings on the reclaimed water line is that the claim was not presented in a timely manner in accordance with the project specifications for claims. Specification 5-12 requires that the contractor notify the Engineer before starting the work for which the claim is made. Therefore the claim should be rejected. However, if it is found that the Contractor does have the right to present this claim it is our position that additional compensation is not justified under the provisions of the contract. Specifically Technical Special Provisions page 9 of 42.

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In July of 2003 PEC submitted a memo to the City recommending that the weight of fittings be determined by using the American Ductile Iron Pipe Manual and requested that a copy be forwarded to Hubbard.

The City's position is that the Technical Special Provisions clearly state that the payment will be on a per ton basis for the fittings and that meg-a-lugs along with all other items incidental to installing the fitting (excavation, shoring, bracing, restraints etc.) are included in the unit price per ton. The actual weight of the fitting would be as determined by the table in the American Ductile Iron Pipe Manual.

DISPUTES REVIEW BOARD RECOMMENDATION

The Board is governed in our decision making process by the plans, specifications (standard, supplemental, technical and special) and the contract. Therefore our recommendation is based on the above documents.

This dispute is clearly a difference in interpretation of the specifications as both sides quote the identical sections of the specifications as justification for their position.

Section 5-12 (claims specification), as referenced by the City, does not apply here in that the Contractor has not filed a claim but is asking for full compensation as a contractual pay item.

The Board finds that Hubbard could not have notified the Engineer prior to starting the work for which they are asking for additional compensation because the work was already partly accomplished before they realized they were not being paid for the installation of the meg-a-lugs. When Hubbard realized they were not being paid for the installation of the meg-a-lugs they took action to try and resolve the matter. When a resolution could not be reached they requested a hearing.

There is certainly ambiguity in the Technical Special Provisions when both sides of a dispute quote identical sections to support their positions. The Bid Documents did not include the American Ductile Iron Pipe Manual, so Hubbard had no idea that they would not be paid on the actual weight of the fittings as is standard on FDOT projects but by the weights listed in the Manual.

The Board finds that the Contractor is entitled to be compensated for the cost of the meg-a-lugs.

The Board sincerely appreciates the cooperation of all parties and the information provided at the hearing for our review in making recommendations.

The Board unanimously reached the recommendation and reminds the parties that it is only a recommendation. If the Board has not heard from either party within 15 days of receiving this recommendation, the recommendation will be considered accepted by both parties.

Submitted by the Disputes Review board

Peter A. Markham, P.E., Chairman, Don Henderson, P.E., Member
George W. Seel, P.E., Member

Signed for and with the concurrence of all members.

Peter A. Markham, P.E.
Chairman