

October 16, 1998

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Re: State Project No.: 97870-3313
Contract No.: 19,727
Description: Bird Road Toll Plaza Replacement Florida Turnpike
County: Dade

SUBJECT: Recommendation of Disputes Review Board
Payment for Coarse Aggregate and Filter Fabric Used to Construct French Drain.

Florida Rock and Sand Co. Inc. (FRS) is a subcontractor to the Contractor RECCHI America, Inc., (RECCHI) on this project. Construction of French Drain items is among the work to be done by FRS on the project. FRS disputes the method of payment for the various items required to construct the French Drain and RECCHI has authorized them to bring the dispute before the project Disputes Review Board (DRB).

FRS submitted a written statement supporting their position on the issue in dispute to the DRB and to the Department of Transportation (DOT). ICF Kaiser Engineers submitted a written rebuttal stating the position of DOT in regard to the disputed issue to the DRB and the Contractor.

The DRB held a hearing on October 6, 1998 to consider the positions of the parties to the contract. Verbal testimony was received. The DRB is to consider only matters of entitlement at this time.

ISSUE: The plans and specifications contain several pay items that are applicable to the work of constructing French Drain. The Contractor's position is that separate payment is to be made under the pay item Ballast Rock (French Drain Aggregate) for all coarse aggregate and under the pay item Plastic Filter Fabric for all filter fabric used in the construction of all French Drain. The DOT position is that separate payment for coarse aggregate and filter fabric is to be made only for these materials used to construct the double 18" French Drain for which the pipe is paid for under the item Pipe Slotted or Perforated Culvert (Aluminum).

State Job No. 97870-3313 DRB Hearing on Payment for Coarse Aggregate & Filter Fabric Used in French Drain Construction.

CONTRACTOR'S POSITION

Article 443-7 of the 1994 Supplemental Specifications to the 1991 Standard Specifications provides two basis of payment for French Drain items: (1) When following the typical section payment shall be at the contract unit price per lineal foot for French Drain; or (2) When the French Drain has a significantly different cross section payment shall be made separately under the several related pay items. Note No. 10 on Standard Index Drawing No. 285 expands on Article 443-7 to define which pay items are to be used in a particular situation: (1) When French Drain follows the typical cross section it shall be paid for under the contract unit price for French Drain L.F. which includes the cost of coarse aggregate and filter fabric in place; (2) French Drains with a significantly different cross section shall be paid for under the contract prices for separate items (Slotted or Perforated Pipe Culvert, Ballast Rock and Plastic Filter Fabric). The paragraph dealing with payment for aggregate and filter fabric under the item, French Drain, contains the following: "...but shall not include payments for items paid for elsewhere."

How is a bidder to know which condition applies here since there is no definition of "significantly different cross section"? Our opinion is that once the contract provides separate pay items for Ballast Rock and Plastic Filter Fabric these items apply to all French Drain to be constructed.

Notes on plan sheet No. 18-A indicate that 29" X 45" French Drain is to be paid for as 36" French Drain and 38" X 60" French Drain is to be paid for as 48" French Drain. This note does not specifically state that payment for Ballast Rock or Filter Fabric is to be included in payment for 36" French Drain or 48" French Drain.

The following bid items were included in the contract:

- | | |
|-------------|---|
| 443-70-3 | French Drain (18') |
| 443-70-4 | French Drain (24") |
| 443-70-6 | French Drain (36") |
| 443-70-8 | French Drain (48") |
| 443-71-1 | Ballast Rock (French Drain Aggregate) |
| 514-71-1 | Plastic Filter Fabric (Subsurface) |
| 430-721-225 | Pipe Slotted or Perforated Culv. (Alum. 18" SS) |

The plan Summary of Drainage Structures (Sheet 17) shows a quantity of both Ballast Rock and Filter Fabric for each of the runs of french drain to be constructed using elliptical pipe.

State Job No. 97870-3313 DRB Hearing on Payment for Coarse Aggregate & Filter Fabric Used in French Drain Construction.

In light of the ambiguities in the specifications and plans, we based our bid unit price for the French Drain items on separate payment being provided for Ballast Rock and Filter Fabric in all instances.

We disagree with the DOT position that payment for coarse aggregate and filter fabric is included in the unit price for the items designated as French Drain. It is our position that the quantities of coarse aggregate and filter fabric used to construct all french drain should be paid for separately under the items for Ballast Rock and Plastic Filter Fabric.

DOT POSITION

There are two scenarios under which French Drain can be paid: (1) payment per linear foot of french drain constructed including pipe, rock and filter fabric; (2) separate payment under individual components, linear feet of pipe, cubic yards of rock and square yards of fabric. There is nothing in the contract to indicate that only one of these scenarios will be used on the job.

Article 443-7 of the 1994 Supplemental Specifications to the 1991 Standard Specifications clearly states that payment for rock and fabric is included in the unit price for French Drain when the Pay Item No. is in the 470-70-XX series. This is reinforced by Note No. 10 on Standard Index Drawing No. 285 which states: "French drains following the typical cross section shall be paid for under the contract unit price for French Drain, LF.

The only place in the Plan Summary of Drainage Structures where Ballast Rock and Plastic Filter Fabric are separately quantified is for the double 18" French Drain (Pipe Slotted or Perforated Culv. (Alum. 18" SS) and the elliptical pipe French Drain. The plan notes on Sheet No. 18-A make it clear that the elliptical pipe items are to be paid for under the equivalent round pipe pay items. It is important to recognize that these notes do not say pipe only. The double 18" French Drain is the only non-standard typical section. There are no pay items for 18", 24", 36" or 48" french drain pipe only.

It was readily apparent to the bidders that the individual pay items for french drain components apply only to the double french drain for which there is a Slotted or Perforated Pipe Culvert pay item.

The quantities of Ballast Rock and Plastic Filter Fabric shown in the Plan Summary of Drainage Structures for the elliptical pipe french drain were included for information only because the trench cross section is not the standard one shown on Index No. 285.

State Job No. 97870-3313 DRB Hearing on Payment for Coarse Aggregate & Filter Fabric Used in French Drain Construction.

DRB FINDINGS

There are no separate pay items for 18" or 24" french drain pipe or any implication that there is to be separate payment for the coarse aggregate or filter cloth used to construct this work. Therefore, it is clear that payment for the pipe, the coarse aggregate and the filter fabric used to construct the 18" and 24" French Drain items is to be included in payment for the item French Drain.

However, there is an ambiguity in regard to payment for the coarse aggregate and filter fabric used to construct the elliptical French Drain items (29"X45" and 38"X60") as listed in the Summary of Drainage Structure (Plan Sheet No. 17) at Structure Nos. OS-108, OS-114, OS-121 and OS-125. Separate pay quantities are shown for Ballast Rock and Plastic Filter Fabric for these items and these tabulated quantities were included in the Plan Quantities for those items (See TOTALS-Plan Quantity---Plan Sheet No. 18). Also, Note Nos. 21 and 22 on Plan Sheet No. 18A state that the elliptical pipe french drain is to be paid as an equivalent size round French Drain without specifically setting out that the cost of coarse aggregate and filter fabric is also to paid for under those items.

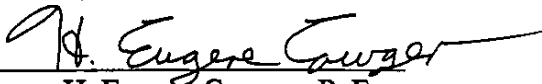
There is no dispute that payment for coarse aggregate and filter fabric used to construct double 18" french drain is to be under the separate pay items for Ballast Rock and Plastic Filter Fabric.

DRB RECOMMENDATIONS

The Board recommends that DOT pay the Contractor for the coarse aggregate and filter fabric used to construct 29" X 45" and 38" X 60" french drain (At Structure Nos. OS-108, OS-114, OS-121 and OS-125) separately under the pay items for Ballast Rock and Plastic Filter Fabric (Subsurface) and pay for the pipe used to construct these runs of french drain under the pay items for the equivalent size round pipe.

I certify that all members of the DRB participated in all meetings of the DRB regarding this dispute and that all DRB Members concur with the findings and recommendations contained herein.

10/16/98
Date


H. Eugene Cowger, P. E.
Chairman