

December 21, 1999

Mr. William J. Braniff, P.E.
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Mr. Enrique I. Espino, P.E.
Executive Vice President
RECCHI America, Inc.
9200 S. Dadeland Blvd. Suite 225
Miami, FL 33156

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

SUBJECT: Recommendation of Disputes Review Board
Additional Compensation for Lift Station Pumps Installed at Northbound Plaza
and Southbound Plaza
DISPUTE NO. 5 DOT TURNPIKE DISTRICT

The parties exchanged position papers, including documentation, on the issues in dispute here in advance of this hearing and at that time furnished the Disputes Review Board copies.

The DRB held a hearing on December 14, 1999, to consider the positions of the parties to the contract in regard to the matter in dispute. Verbal testimony was received. It was agreed that the DRB would consider both matters of entitlement and quantum during this hearing.

DISPUTE

The Contractor is seeking compensation for additional costs incurred by Florida Rock and Sand, a subcontractor, in furnishing lift station pumps at the Northbound Plaza and the Southbound Plaza. The Department required use of pumps manufactured by Hydromatic Pumps instead of the proposed less expensive pumps manufactured by Myers Pumps on which the subcontractor based their quote to RECCHI America. The reason stated by the Department for rejecting the Myers pumps was that they do not operate at 1,750 RPM as set out in 02731 -2.3(B) and 20731-2.3(C) of the Technical Specifications.

CONTRACTOR'S POSITION

The Contractor claims that they are entitled to additional compensation for the lift station pumps, because, during the shop drawing review process, the Department rejected the pumps on which their bid was based. This left the Contractor with no source of pumps meeting the specification requirements other than pumps manufactured by Hydromatic Pumps which are more expensive than the pumps they proposed to use.

The Department stated that the Myers pumps were rejected because they operate at 3,500 RPM and the specifications require pumps operating at 1,750 RPM.

During the bidding period, Florida Rock and Sand's supplier made them aware that pumps manufactured by Myers do not meet the 1,750 RPM criteria. However, relying on Article 6.2 of the Standard Specifications (Designation of a Specific Product as a Criterion ("Or Equal

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Clausc"))), the pump supplier advised Florida Rock and Sand that they consider the Myers pumps to be an "Or-Equal" to the Hydromatic pumps, because, in their opinion, the Myers pumps meet the level of quality established by the Department in the Articles of the Lift Stations Specification under the headings Pump Materials and Construction and Pump Schedule. They stated that lift station pumps are generally accepted as to operating characteristics based on horsepower and flow rate (GPM). The pump supplier was of the opinion the Myers pumps would be acceptable in view of the laws which prohibit a public agency from specifying a sole source of equipment.

Florida Rock and Sand is of the opinion that the Myers pumps, even though they operate at 3,500 RPM, meet the standard of quality set out in the Technical Specifications. Myers Pumps furnished a Comparison of Grinder Pumps Operating at 1,750 RPM and at 3,500 RPM to substantiate that the Myers pumps operating at 3,500 RPM have equal wear characteristics, are more efficient and have longer bearing life than pumps that operate at 1,750 RPM. They also point out that the trend for machinery design is toward higher speeds due to reduced cost, more reliability and higher efficiency

The Contractor contends that the less expensive but equal Myers pumps should have been accepted by the Department.

DOT POSITION

We consider all of the Operating Conditions set out in 02731-2.3(B) and 20731-2.3(C) of the Technical Specifications to be essential in order for these pumps to perform as intended. Our experience is that pumps operating at 1,750 RPM have a longer service life than those which operate at higher RPMs. and, thus, the 1,750 RPM requirement is a critical operating characteristic.

The 1,750 RPM requirement in the Operating Conditions for these pumps is clearly a material requirement of the Technical Specifications. While the Myers pumps meet the other performance standards, we are of the opinion that the RPM requirement is essential to assure equal quality, especially long-term performance.

The Turnpike has a policy of specifying a sole-source for some types of equipment.

RECOMMENDATION

The Disputes Review Board finds that Contractor is entitled to additional compensation for furnishing lift station pumps manufactured by Hydromatic.

EXPLANATION

During the hearing neither party could identify a pump, other than those manufactured by Hydromatic Pumps, which meets all of the Operating Conditions set out in the Technical Specifications. Therefore, it appears that the specification for the pumps in question is essentially a sole-source specification which is prohibited by law on public work unless the agency documents that specific functional performance characteristics (salient characteristics) possessed by the specified proprietary item are reasonably necessary.

In this instance, the Department did, in addition to naming a particular manufacturer and model number, set out in the Technical Specifications certain salient characteristics (functional performance features). However, with the testimony and exhibits presented, the Disputes Review Board was unable to conclusively determine that the salient characteristic dealing with RPMs is a functional performance feature which is reasonably necessary to meet legitimate minimum needs.

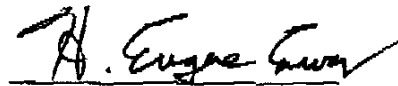
The Contractor testified that they knew at the time of bidding this work that the Myers pumps did not meet the 1,750 RPM operating condition contained in the Technical Specifications. However, relying on Article 6.2 of the Standard Specifications (Designation of a Specific Product as a Criterion ("Or-Equal" Clause)) and their knowledge of the importance of the RPM in achieving long-term performance they assumed the Department would accept these pumps as "equal for the purpose intended".

In view of the above reasoning, it was not unreasonable for the Contractor to assume at the time of bidding that the Engineer would judge the Myers pumps to meet the intended purpose even though they do not operate at 1,750 RPM. Therefore, there was no reason to challenge the Technical Specification until the Department refused to accept the Myers pumps.

There is reason to believe that the Contractor based his bid on using the less expensive Myers pumps and, in the opinion of the Board, this was a reasonable assumption. Requiring a pump manufactured by Hydromatic to be furnished appears to be an unreasonable interpretation of the specifications resulting in a constructive change to the contract.

I certify that all members of the Disputes Review Board participated in all meetings of the Board regarding this dispute and that all DRB Members concur with the Recommendation and Explanation contained herein.

12/21/99
Date


H. Eugene Cowger, P.E.
DRB Chairman

January 12, 2000

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Re: State Project No.: 97870-3313 District: Turnpike
Contract No.: 19,727
Description: Bird Road Toll Plaza Replacement Florida's Turnpike
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SUBJECT: Clarification of Recommendation of Disputes Review Board
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DISPUTE NO. 5 DOT TURNPIKE DISTRICT

CLARIFICATION OF RECOMMENDATION

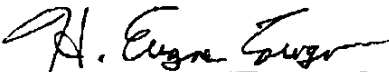
The Recommendation of the Disputes Review Board on December 21, 1999 stated: "The Disputes Review Board finds that the Contractor is entitled to additional compensation for furnishing lift station pumps manufactured by Hydromatic."

The Department of Transportation has now raised a question as to the amount of compensation due.

The Disputes Review Board intended its recommendation to mean the Contractor is entitled to the amount claimed which is \$5,422.96. This is the actual cost incurred by the Contractor in accordance with the Invoice dated March 2, 1999 from Hydro Pumps, Inc.

I certify that the above is in accordance with findings of the Disputes Review Board in this matter.

1/12/00
Date


H. Eugene Cowger, P. E.
DRB Chairman