

DISPUTE REVIEW BOARD RECOMMENDATION

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May 31, 2002

Mr. Buckley K. Williams, C.C.C.
England-Thims & Miller, Inc.
1540 SR13 North
Jacksonville, FL 32259

Mr. Robert Holton
John Carlo, Inc.
14165 North Main Street
Jacksonville, FL 32218

RE: State Road 13 - Duval County
State Project 210223-1-52-01
Florida Department of Transportation - District Two

RECEIVED
JUN 4 2002
PALATKA CONST.

Subject: Issue No. 1 - Gravity Wall

Dear Sirs:

A dispute hearing requested by John Carlo, Inc. (Carlo) with the concurrence of England-Thims & Miller, Inc. (ETM) was conducted on May 28, 2002. The request was made by Carlo on behalf of the gravity wall subcontractor BGCO, Inc. Carlo requested through ETM, that a DRB hearing be conducted. The DRB Chairman received a letter from ETM on May 7, 2002 requesting the hearing which was scheduled at 3:00 p.m. on May 28, 2002.

Prior to the hearing Carlo provided the DRB Chairman and ETM documentation and position relating to the gravity wall. These documents were provided the other DRB members. At the hearing on May 28, 2002 both parties made oral presentations. Subcontractor BGCO answered questions posed by the Board. Representatives of the Department of Transportation were present, but did not participate.

The recommendations of the DRB are based upon a review of documents, plans and specifications, as well as extenuating circumstances. These are incorporated and made part of this decision.

ISSUE:

A plan error resulted in a significant reduction in quantity of the gravity wall to be constructed. Carlo was requesting an increase in payment to compensate for the reduction in the pay item quantity.

CONTRACTOR'S POSITION:

The contractor refers to the FDOT estimates manual, 400-1-11 (Retaining Walls) which states "PLAN QUANTITY" will be the basis of payment...and therefore should receive compensation for quantities on plan sheet 15. The reduction in cubic meters is 45% of the plan estimate; however, the contractor explained most of the work e.g. the number of set ups did not decrease. The only significant reduction would be the concrete pours.

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The contractor's bid was based on the original quantities and a 45% loss of this quantity is significant.

The contractor feels that specification 9-3.2.1, Error in Plan Quantity is met. The cost of roadway work is changed by 5.5%, which is above the 5% threshold. The plan quantity is 541.7 cubic meters and there is 624.26 LM of gravity wall to be installed. The field quantity measurement will decrease the plan quantity by 242.8 cubic meters.

In a May 10, 2002 letter to Carlo, BGCO contends that "The plans indicate what size wall and use the term "Max" in the description. We contend that the intent of the engineer of record was for the contractor to assume that the wall height varied, but payment would be made for the height wall indicated on the plans." And further states, "We contend the height of the gravity wall has not changed. The same line meter of wall shown on the plans and in summary is being constructed."

BGCO contends that calculating the actual height if the wall would have been difficult (prior to construction).

DEPARTMENT'S REBUTTAL POSITION (ETM):

ETM, representing the Department, reviewed Carlo's position statement and responded at the May 28, 2002 hearing.

Project personnel discovered that actual physical dimensions of the gravity wall was producing a "volumetric quantity" of work significantly less than the "plan quantity". BGCO and Carlo contend that the lesser quantity is a "significant change" and indicate full payment for the work is expected. "Department personnel contend that there is a 'substantial error' in plan quantity and payment will be based on 'final measured quantities.'"

In support of their position, they refer to FDOT Standard Specifications section 4.3.1 which defines significant change as (A) "The ----- differs materially in kind or nature —included in the original proposed construction, or"
(B) A major item of work as defined in 1-3 is.....decreased below 75% of the original contract quantity.

Also Specification 1-3 defines major item of work as having a value in excess of 5% of the original contract amount.

ETM points out that the total contract, including roadway, bridge and JPA reduces the contract of the gravity wall by only 3.7% of the total work and therefore is not a "significant change". ETM also rightfully pointed out that in accordance with specification 9-3.2.1, Error in Plan Quantity, that the gravity wall had a "substantial error" of more than 5% in planned, as well as final quantity. This was confirmed by the Engineers of Record.

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DRB FINDINGS:

1. The plans for the wall contained a substantial design error.
2. The Department is responsible for the accuracy of estimated quantities for lump sum items (planned quantity).
3. The DRB concurs that the reduce work for the gravity wall does not meet the definition of Major Item of Work as the change was 3.7% of the total contract that included roadway, bridge and JPA activities.
4. The actual quantity of the gravity wall would be reduced 45% from the planned quantity.
5. Although the gravity wall does not meet all the requirements of a major item of work, it was 100% of the work for the sub-contractor.
6. A chart was prepared as an attachment that indicates planned volumes based on height and planned form work areas versus estimated revised volume, wall height and form work. Refer to attachment.
7. The 45% reduction in paid quantity is not matched by a reduction in contractor's expenditures, especially labor, equipment and form work. BGCO statement to this was compelling.

DRB RECOMMENDATION:

The Board recommends that the Department (ETM) consider that the gravity wall was the sole project for BGCO, the sub-contractor, and that a 45% loss of income would not compensate the sub-contractor for the work required. The Board is not recommending total compensation for the original quantity that was in error. The Department's procedures and specifications do allow for a supplemental agreement to be prepared for fair and equitable adjustment.

The Board sincerely appreciates the cooperation of all parties and the information presented for its review in making this recommendation.

Please remember that the response to the DRB and the other party of your acceptance or rejection of this recommendation is required within 15 days. Failure to respond constitutes an acceptance of this recommendation by both parties.

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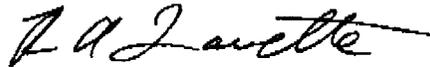
I certify that I have participated in all the meetings of issue 1 and concur with the findings and recommendations.

Respectfully Submitted

Disputes Review Board

Robert A. Lavette, P.E. DRB Chairman
William O. Downs, DRB Member
J. Phillips Cleland, Sr., DRB Member

SIGNED FOR WITH THE CONCURRENCE OF ALL MEMBERS:



Robert A. Lavette, DRB Chairman

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ATTACHMENT

ORIGINAL PLAN COMPENSATION

COMPENSATION: 541.7 CUBIC METERS AT \$461.62 PER CUBIC METER = \$250,059.55

WORK SCOPE INCLUDED:

- 10 LOCATIONS
- 624.2 LINEAR METERS OF WALL
- 1.09 METERS AVERAGE PLAN "MAX" HEIGHT
- 1.04 METERS AVERAGE PLAN HEIGHT
- 1533.7 SQ METERS PLAN "MAX" FORMING
- 1393.8 SQ METERS ACTIAL FORMING

ESTIMATED COSTS:	QUANTITY	UNIT PRICE	TOTAL	
CONCRETE:	541.7	\$80.00	\$43,336.00	\$69.43 PER LINEAR METER CONCRETE ONLY
LABOR, EQUIP, FORMS, ETC.:	1	\$206,723.55	\$206,723.55	\$148.32 PER SQUARE METER FORM /POUR STRIP
		TOTAL	\$250,059.55	\$400.61 PER LINEAR METER COMPLETE

REVISED PLAN COMPENSATION

COMPENSATION: 298.9 CUBIC METERS AT \$461.62 PER CUBIC METER = \$137,978.22

WORK SCOPE INCLUDES:

- 10 LOCATIONS
- 624.2 LINEAR METERS OF WALL
- 1.18 METERS ACTUAL PLAN "MAX" HEIGHT
- 1.04 METERS AVERAGE PLAN HEIGHT
- 1533.7 SQ METERS PLAN "MAX" FORMING
- 1393.8 SQ METERS ACTUAL FORMING

ESTIMATED COSTS:	QUANTITY	UNIT PRICE	TOTAL	
CONCRETE:	298.9	\$80.00	\$23,912.00	\$38.31 PER LINEAR METER CONCRETE ONLY
LABOR, EQUIP, FORMS, ETC.:	1	\$114,066.22	\$114,066.22	\$81.84 PER SQUARE METER FORM /POUR STRIP
		TOTAL	\$137,978.22	\$221.05 PER LINEAR METER COMPLETE