

DISPUTE REVIEW BOARD

June 24, 1998

FAXED June 24, 1998

Mr. Gregory Lady, P.E.
Project Manager
Florida Department of Transportation
1041 S.E. 17th Street, Suite 200
Fort Lauderdale, FL 33316
FAX (954)-525-7586

Mr. Scott Armstrong
Project Manager
Traylor Bros. Inc.
1041 S.E. 17th Street, Suite 204
Fort Lauderdale, FL 33316
FAX (954)-467-2599

REF: SRA1A, SE 17th Street Causeway
SP Nos. 86180-3522-3523-6522
FAP No. XA-HDP-9210-(3)
WPI No. 4110739
Contract No. 19871

SUBJECT: Recommendations of the Dispute Review Board (DRB) Pertaining to the Issue of: Damage by the Contractor to the Newly Installed 30" HDPE Water Main While Constructing Test Pile for the Performance of a Lateral Load Test

Gentlemen:

On June 3, 1998, at the Department's project office, the Dispute Review Board (DRB) heard oral presentations from both parties relative to the subject issue. Prior to the oral presentations and in accordance with previously established procedures, the DRB received written documentation and rebuttal statements from both parties.

Background

The contract documents require a test pile program and replacement of an existing water line as part of the scope of the work. Addendum Three (3) to the contract documents modified the test pile location and the distance between the test piles.

Immediately after the notice to proceed, the Contractor requested a resequencing of the work to provide for placement of the 30" HDPE water main as the first order of work. The Department concurred and prepared/issued a contract change order incorporating this change. Both parties executed this contract change order.

Prior to commencing work on the test pile program, the Contractor requested relocation of two test pile to the west side of Pier 7. This request was approved by the Department. Subsequently, the Contractor once again requested relocation of the test piles, this time to the east side of Pier 7. This request was also approved by the Department. The approval included direction as to the location for one of the test pile leaving the location of the second pile to the discretion of the Contractor.

The installation of the new 30" water line was completed on December 22, 1997, approximately six weeks prior to the Contractor commencing test pile work. On January 27 or January 28 of 1998, the Contractor provided the as-built location of the 30" HDPE water main to the involved parties.

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places responsibility of notifying the engineer of errors and omissions in the plans and specifications directly upon the Contractor. "In this situation, the Contractor knew of the disparity but did not notify the Department of his findings."

- The Department claims the additional core requested by its geotechnical consultant was taken at the location of the defined test pile and not between the two piles in a north-south alignment as stated by the Contractor.

Contractor's Position and Statement of Facts

The Contractor contends the following contract specification is applicable to this issue:

7.11.6, Utilities

The Contractor agrees with the sequence of events previously stated in the background and FDOT's position and statement of the facts with the following exceptions and supplemental details.

- The Contractor's position is the added core boring was taken between the two test pile in a north-south alignment (parallel to the existing bridge footing).
- On Saturday, January 31, 1998, the Contractor's surveyors laid out the template for the lateral load test in a north-south alignment. While performing the work, the Contractor's surveyor noticed a conflict between Addendum Three, Drawings, wherein, the foundation load test drawing details the test pile to be distanced 8.23 meters center to center and the general information layout drawings which distanced the test pile center to center to be 5.83 meters. The surveyor conferred with the Contractor's engineer on site prior to finalizing the layout Saturday, January 31, 1998. The Department was never notified of the conflicting dimensions shown on the contract drawings prior to pile installation.
- The Contractor referenced the aforementioned change in sequence for constructing the 30" HDPE water main necessitated by the close proximity of the existing 16" water line with the proposed pilings of the temporary bridge.
- The Contractor surveyor located the test pile 8.23 meters center to center.
- The Contractor states he was not aware of the plan discrepancy until February 24, 1998 when the incident occurred.
- The Contractor provided detailed drawings of as-planned versus as-built conditions both prior to and after the issuance of Addendum Three.
- The Contractor contends that if the work was not resequenced, the interference would still have existed with the exception that the pile would have been placed first and the water line would have intersected the remains of the test pile.
- The Contractor contends the north-south orientation was understood by all parties to maintain the test parallel to and 7 meters from Pier 7 shafts. Additionally, the Department and its representatives were aware of the template and casing location.

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- Contractor contends that the drawings referencing the distance between pile were poorly and inadequately coordinated resulting in conflicting dimensions specified in various drawings.
- The Contractor's position is the Department is responsible for removing, adjusting, or otherwise protecting utilities lying within the structure limits in accordance with Specifications Section 7-11.6 Utilities.

Comments of the Dispute Review Board

Several standard specifications are involved with the issue. Both parties have taken exception to which sections are applicable. The Department takes exception to the Contractor's position that Section 7-11.6, Utilities, is applicable. The Contractor takes exception to the Department's position of withholding notification of a plan discrepancy.

The sequence of critical events pertaining to this issue are:

- Issuance of Addendum No. 3.
- Restructuring of the work mutually agreed to by contract change order
- Contractor's request for relocating lateral test pile
- Contractor's submittal of as-built alignment of the new 30" HDPE water line
- Department's inspector requesting such test pile be placed 6 meters center to center
- Contractor's personnel finding a plan dimension conflict
- The template and casing being in place for an extended period prior to installation of the test piles.

The DRB's Findings and Conclusions

- The as-bid sequence of the work theoretically would have caused the 30" HDPE water main to intersect the remains of the test pile. However, if the as-built location of the test piles were superimposed over the proposed 30" HDPE water line alignment (a prudent check in any event), the conflict would have been recognized.
- There is no substantiation that the Department's reason of providing only one pile indicated to the Contractor that the second pile could be placed in an arc about that single point.
- The Contractor states its surveyor and engineer found the conflicting plan dimensions while laying out the work and contends its management was not aware of the conflict with the water line until the incident occurred. Section 5-4, Errors or Omissions in Plans or Specifications states:

"The Contractor shall take no advantage of any apparent error or omission which he might discover in the plans or specifications but shall forthwith notify the engineer of such discovery who will then make such corrections and interpretations as he deems necessary for reflecting the actual spirit and intent of the Plans and Specifications."
"The Contractor shall take no advantage of any apparent error or omission

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While the DRB does not believe that the Contractor sought to take any advantage of the apparent error, the Contractor clearly has a duty to notify the engineer of the variance in dimensions between plan sheets when he or his employee become aware of such.

- Specifications section 7-11.6, Utilities, is not applicable to this issue. The utility which was damaged was a part of the Contractor's scope of work. The Contractor had previously determined and submitted to the Department the installed location of the new water main facility.
- Specifications section 5.10.1, Maintenance Until Final Acceptance, Section 5.6, Authority and Duties of the Engineer, and Section 7-14, Contractor's Responsibility for the Work, are determined to be the governing specifications to determine responsibility.

Specifically, 7.14 Contractor's Responsibility for the Work states:

"Until acceptance of the work by the Department, it shall be under the charge and custody of the Contractor and he shall take any necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the non execution of the work. The Contractor shall rebuild, repair, restore and make good without additional compensation all injury or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance, except that in the case of intense or catastrophic damage the Department may at its discretion reimburse the Contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor including, but not restricted to, acts of God, of the public enemy, or of governmental authorities."

Recommendations of the Board

The DRB has reached the following conclusions:

- That given the facts, sequence of the work, the contract documents and the Contractor's responsibility for the work, the Contractor's claim for reimbursement of added costs to replace the damaged section of the 30" HDPE water main is found to be non-reimbursable by the Department.

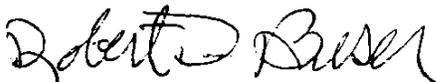
Respectfully submitted,

Mr. Bobby D. Buser P. E., DRB, Chairman

John H. Duke, DRB Member

J. Paul Silvestri, Jr., DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



Mr. Bobby D. Buser P. E.

DRB, Chairman

DRB, Chairman