

September 28, 2009

Disputes Review Board Recommendation

To: Miller Electric Company
ITS Div
Attn: Steve Pristas
18810 State Road 84, Suite 104
Ft. Lauderdale, FL 33315

Tony Chin
AIM Engineering
P.O. Box 1235
Lehigh Acres, FL 33970

I-75 RTMC and I-75 Corridor FMS and ITS Integration Project
414733-1-52-01; 416412-1-52-01; and 416413-1-52-01

DRB Hearing Issue

The Disputes Review Board conducted a hearing on September 16, 2009, to allow the parties to make oral presentations regarding whether the Contractor is entitled to recover time and money for constructing a larger Regional Transportation Management Center (RTMC) building than the Contractor alleges was required by the Request for Proposal (RFP).

CONTRACTOR'S POSITION

The Contractor maintains that the RFP specified the construction of a 45,010 SF RTMC building.

The building was ultimately constructed with an area of 50,500 SF. The RFP, in Part 1 and in Attachment F, describes the design and construction of a 45,010 SF RTMC with no mention of the area being approximate.

The Contractor acknowledges that RFP Attachment A in Section 01002, Architectural Design Requirements, states that "Room locations as shown and room areas as listed are approximate". The Contractor dismisses this language by saying that a reference to the room area being "approximate" is not the same as a minimum usable square foot requirement. The argument is made that it would be more reasonable to conclude that the 43,597 SF of approximate room area tabulated in Attachment "A" is consistent with the 45,010 SF required by the RFP.

The Contractor makes an argument that the RFP is ambiguous as it relates to the RTMC area and this ambiguity, by contract law, should be construed against the drafter of the document. A further argument is made that, assuming the RFP requirement for 45,010 SF is at odds with the "approximate" language in Attachment B, there is nothing in the precedence of documents in Article 5-2 that would give Attachment B priority.

DEPARTMENT'S POSITION

The Department argues that design criteria are provided in an RFP document with the expectation that the design-build firm selected will complete the design of the building and all necessary appurtenances. Further, the RFP does not commit the Department to make studies or designs for the preparation of any proposal. The RFP instructs, "Proposers shall examine the contract documents ...carefully before submitting a proposal for the work contemplated".

The Department points out that Attachment B to the RFP contains dimensioned floor plans having an area of approximately 50,500 SF. This supports the fact that 45,010 SF is not the intended gross area of the building.

A RTMC technical meeting was held on March 9, 2007, and the Department alleges that representatives of the Contractor and the Architect acknowledged therein that the footprint of the building is closer to 49,000 SF. The Department contends further that it is standard practice in the design-build building construction business to provide minimum usable areas in the RFP with the knowledge and expectation by the parties that the ultimate building area will be larger after the design-build firm has provided for HVAC and complied with all life safety and other codes.

BOARD FINDINGS

The Board finds that Section 01002 of Attachment "A", Architectural Design Criteria, Paragraph 1.1.A.1 is quite clear in instructing proposers that the design-build firm is to provide architectural and engineering design services. It is just as clear in Paragraph 3 when it instructs;

"Design and layout of all rooms and functional spaces to conform to the reference standards, drawings, and criteria included in the Design-Build Criteria Documents. Room locations as shown and room areas as listed are approximate. Coordinate actual room dimensions and locations by functional relationships, local code and ADA requirements....."

The Contractor included with its Technical Proposal preliminary plans for the RTMC that depict an overall building area of approximately 50,000 SF. Rooms shown in these plans differ from the approximate areas shown in the RFP and, in most cases, are larger. Three sergeants offices (Rooms 1054 – 1056) listed in the RFP at 360 SF are dimensioned at 403 SF in the Proposal. Similarly, a training conference area (Rooms 1025 A & B) is listed at 1,500 in the RFP, yet dimensioned at 1,566 SF.

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These examples show the Board that the Contractor understood the process and that the Proposal included the construction of an RTMC building of approximately 50,000 SF.

In accepting the Contractor's position in this matter, one must assume that the Department had done sufficient design to determine the ultimate area of the RTMC building. The design-build RFP warns that the Department has done no design and, in the Board's opinion, makes it clear that the design-build team is to design the building based on the RFP criteria and arrive at an ultimate area for the structure. The Board finds that the Contractor is not entitled to recover for the alleged overrun in RTMC building area.

Signed by the Chairman with agreement of all members.

Peter A. Markham, P.E., Chairman