

DISPUTE REVIEW BOARD RECOMMENDATION

March 06, 2001

FAXED March 06, 2001

Mr. George S. Straker
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RE: Suncoast Parkway Section 6
FPIN No. 258907-1-52-01
WPI 7152031
State Project No.: 97080-3306

Subject: DRB Hearing – Seville Road Bridge Deletion

Dear Sirs:

The Owner, Florida Department of Transportation (Department), requested a hearing to determine **entitlement** of Smith & Company, Inc.'s (Smith) subcontractor Leware Construction Company (Leware) to **additional compensation for the deletion of contract work (Seville Road Bridge)** on the above referenced project. Should entitlement be established, the Dispute Review Board (Board) was not to decide the quantum of such entitlement at this time, as the parties would attempt to negotiate the value of entitlement.

Pertinent issues, correspondence and other information relating to the Department's and the Contractor's positions were forwarded to this Board for review and discussion at the hearing that was held on February 20, 2001.

CONTRACTOR'S POSITION:

Please find attached a copy of the position papers from Leware Construction Company (LCC) to Smith & Company, Inc. (SCI) concerning the Seville Road Bridge Deletion matter. SCI has reviewed the attached and considers it to be comprehensive and concise. With this in mind, we will not burden you with any additional information that must be considered for this matter, except to say that SCI supports our subcontractor in their pursuit of compensation for their losses and that SCI believes the standard pass-through mark-ups on any settlement should be allowed.

SUBCONTRACTOR'S POSITION:

Leware Position Regarding Deletion of Seville Road Bridge

The bridge work shown in the contract plans included the construction of eleven independent structures of three basic designs: Four structures were single span mainline bridges of Type III & IV AASHTO girders, four were multi-span mainline flat slab bridges, and three were two-span grade crossings with architectural pier caps and Bulb-Tee girders. Our subcontract for construction of these bridges on the Suncoast Parkway Section 6 was \$3,611, 000.

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The Seville Road grade crossing was started on January 28, 1999, with test pile installations. An authorized pile length list was subsequently furnished on February 26, 1999. By letter of March 26, 1999, we were instructed to stop all work on the Seville Road bridge as it was being deleted from the contract. This deletion resulted in a decrease of contracted revenue in the amount of \$362,622 (10%). On April 2, 1999 we filed a notice of intent to file a claim for this action and on December 2, 1999, a package summarizing the claim was submitted in the following amounts:

Labor	\$47,545
Materials	\$32,023
Supplies	\$7,666
Equipment & Depreciation	\$47,965
Jobsite Overhead	\$14,072
Home Office Overhead	\$65,399
Anticipated Profit	<u>\$25,384</u>
Total	\$243,655

In preparation of this claim we did not utilize the FDOT guidelines regarding markups on each category of costs submitted. We believe compensation for labor plus burden, materials, supplies, depreciation, overhead and profit would fairly and equitably compensate us for the incurred costs.

The Department responded to our December 1999 claim in June 2000. At that time they provided an analysis that offered hard cost compensation for materials and supplies with only markup for bond & insurance (1.5%). A Unilateral S.A. was offered in November 2000, for these amounts plus the Prime's markup. This offer was not in accordance with their guidelines regarding allowable markups and therefore did not show good faith.

The following is our position on each section of our claim:

Labor

The economy of scales validates the principle that the greater the volume of similar product, the lower the unit cost. This allows the spreading of costs experienced during the learning curve over a greater quantity. Although there is a point of diminishing return under this principle, it was not expected on the Suncoast project due to the quantities involved.

On Section 6 there were three overpass structures of nearly identical unique design. The deletion of one greatly effected the labor cost of the other two. Our original estimate of this principle is that the first structure would be built for bid projected labor plus 12.5 %. The second bridge would be 2.5 % over and the third 15 % under bid labor. By removing one third of the work, the learning curve never met the projected cost. Ultimately, over 1,000 manhours of labor were uncovered by the reduced pay quantities.

Unplanned deletion of work forced out-of-sequence construction. This, in turn, caused inefficiencies in labor. The contract schedule reflects that the project was to be constructed from north to south. Two separate piling operations were utilized to build from US98 south and from Centralia Road north at the same time. Our plan was to construct Seville and Landfill concurrently, taking advantage of the distance between the two sites (3,000'). With the deletion of Seville, Landfill Road was isolated from other structures by approximately 2½ miles. We estimate that at least one crew week (approximately 800 manhours) was lost due to inefficiencies caused by isolated operations.

Materials

Certain materials were purchased prior to deletion of the work. Bulb-Tee beams were designed and approved for construction on January 11. Authorized pile lengths were received on February 26 with casting beginning on March 1. Neoprene bearing pads were received in our yard on March 1. In an effort to reduce costs, certain piling were transferred to other FDOT projects or utilized at other sites on Section 6. Based on our prestress supplier waiving their request for additional compensation, we have agreed to reduce the material portion of the claim to \$4,313.64, a sum that the Department acknowledges as justifiable.

Supplies

Standard forming supplies were allocated to a job based on total project need. Specialty forms were allocated for the specific work item. As an example, the special column form was to be used 21 times on the Suncoast Parkway projects and special 6" fillers were to be used on the six columns on Section 6. As two columns were deleted, full

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costs were not recovered. Other reusable steel forms were charged as depreciation on a unit basis. Since the work was deleted, the fixed costs were spread over a lesser quantity, thereby increasing the unit cost. The Department has recognized our basis of estimated costs and agreed that the amount of \$7,666.41 for supplies is valid.

Uncovered Incurred Costs Equipment & Depreciation

Equipment expenses are those required to run our shop and maintain the fleet of Company owned equipment. Depreciation expense is based on equipment age with schedules updated annually. Based on the deletion of the work at Seville, equipment was inefficiently used at other sites on the project. Specifically, certain large pieces of equipment were idle at the Landfill Road site. Project logistics prohibited movement to other sites on a routine basis. Although there was deleted work there was little difference in equipment requirements or costs.

Jobsite Overhead

Jobsite overhead costs included expenses for supervisory labor (Superintendents), field engineering, and the field office. On the Suncoast Parkway projects, one field office served our work on Sections 4-6. Only the Section 6 portion was included in the calculations.

Home Office Overhead

Home office overhead is calculated based on actual expenses over a twelve-month period. As this project was bid on June 17, 1998, actual overhead cost from June 1997 through May 1998 were used in the bid calculations.

Equipment depreciation & ownership (13.2%), jobsite overhead (3.9%) and home office overhead (18.0%) are costs that are incurred at the time of contract execution. The coverage of these costs is committed to maintain a certain level of business. Expenses are allocated to projects based upon the full absorption over the full volume of the contract. These costs must be covered regardless of the volume of work, therefore, a reduction of contract volume decreases the coverage. When this occurs, a net loss is realized.

On the Suncoast Parkway Section 6 we contracted to construct eleven structures over a 24 month time span. Based on site availability provided by the Prime Contractor, our commitment to the project for this duration remained unchanged. Deletion of one structure had no impact on the total time of Leware's responsibility to the project.

Anticipated Profit

A decision to eliminate over 10% of our work effected total corporate performance during the life of the contract. With decreased revenue and profit, needed capital expenditures were postponed or delayed to a point where the impacts rippled through to other projects. As referenced in our statements regarding labor, the deletion of the work effected all other aspects of the project and reduced the potential profits on work at other sites. Our amount submitted of 7% of the deleted work value for anticipated profit should be considered fair and equitable.

Summary

In the Department's claim analysis we were denied amounts for everything other than supplies and materials. Ironically, their offer for supplies was based on the same principles that our other requests were based. The economy of scales and full absorption over full volume are standard accounting and estimating practices. Therefore, we feel that compensation should also be allowed for labor, equipment & depreciation, overhead, and profit.

Throughout correspondence from the Department this issue has been addressed as the "deletion" of the Seville Road Bridge. For this reason Article 9-5, Deleted Work, should be the controlling specification.

The Department shall have the right to cancel the portions of the contract relating to construction of any acceptable item therein, by the payment to the Contractor of a fair and equitable amount covering all items of cost incurred prior to the date of cancellation or suspension of the work by order of the Engineer.

In closing, the Department induced a negative impact on Leware Construction Company, our subcontractors and suppliers by deleting contract work. The Department exercised their right to cancel the work, we in turn have exercised our right to fair and equitable compensation for their action.

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DEPARTMENT'S POSITION:

ISSUE BACKGROUND:

On or around March 26, 1999, the Florida Department of Transportation, Turnpike Division, ("Department") elected to delete work associated with the Contractually proposed construction of a grade separation bridge at Seville Road. By letter dated March 26, 1999 from Metric Engineering Inc., ("MEP" - Consultant CEI), Smith & Company, Inc. ("SCI") was formally directed to cease all work associated with the original proposed Seville Road bridge. Several pieces of correspondence followed over the next few months which provided clarification of the scope of work associated with the Seville Road bridge deletion. MEI letter of May 4, 1999 and the enclosed "Summary of Pay Item Changes", provide a complete itemization. (Backup pg. 58 to 64) Smith in turn advised their bridge subcontractor, Leware Construction Company ("Leware"), of the FDOT directed changes.

The result of the deductive plan change was to delete or modify 74 existing pay items of work for a net reduction in contract dollar amount of \$724,402.01.00. Subcontract documents reveal \$409,821.15 as the gross reduction in Leware revenue based on the original deductive change. Using the Prime Contractor's contract unit prices makes this figure a slightly higher \$419,582.55. (Backup pg 60) However, Leware performed \$57,260.23 of directly related work prior to implementation of the deletion, making the net effect of deductive change to Leware being \$352,560.92.

By letter of transmittal dated December 3, 1999, Smith notified Metric and provided a preliminary package (on behalf of their subcontractor Leware) requesting equitable compensation for the deletion of the Seville Bridge. (Backup pgs. 43 to 56) Subsequent to this submittal, and after several meetings to discuss the merits of their request, revised requests dated August 4, & September 8, 2000 were submitted by SCI on behalf of Leware. (Backup pgs. 16-23 & 25-28)

The original December 2, 1999 Leware request is in the amount of \$243,655.00 for "Department induced negative impact on Leware Construction Company..." The Leware request also included costs associated with material supplier alleged impacts (Dura-Stress, Inc.) of \$27,709.50. Subsequent revised requests of August 4, 2000 and September 8, 2000 (which now stands as the most recent), were modified to exclude certain costs Leware elected not to pursue.

The following summarizes current costs requested by Leware, to date, as originally depicted in their December 2, 1999 request and revised in subsequent August 4, 2000 and September 8, 2000 correspondence

Labor Costs	=	\$ 47,545.00
Materials Costs	=	4,313.64 (Agreed to by Leware & Department)
Supply Costs	=	7,666.41 (Agreed to by Leware & Department)
Uncovered Incurred Costs	=	127,436.00 (corrected math)
Anticipated Profit	=	0.00 (Waived by Leware)
Leware Bond @ 1.5%	=	<u>2804.42</u>
Subtotal		\$ 189,765.47 (Leware costs only.)

After reviewing the request and contractor provided documentation, an Engineer's determination concluded \$13,576.34 in additional material & supply costs (with bond mark-ups) was due the Contractor. The original determination was forwarded to the Contractor as an offer of final settlement which was rejected in part. Several meetings ensued and numerous correspondence was generated as a result of contractor attempts to justify additional costs above the Engineer's determination. No new information has been provided to date that would justify additional compensation beyond the Engineer's determination. With no apparent indication of a timely mutual resolution of the matter, the Department elected to make payment to the Contractor, via Unilateral Supplemental Agreement, the additional sums currently determined due. (Subsequently the Engineer's Estimate has been amended to \$12,342.15, excluding the Prime profit mark-up.) (See Back-up pgs. 1 to 8)

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SUMMARY OF RELEVANT COST INFORMATION

Individual Line Item Costs	Leware Contract Seville Bridge	Original Leware Claim Submission	Current Leware Claim Submission	Current Department Settlement Offer**
Labor Costs	From	\$47,545.00	\$47,545.00*	\$0.00
Material Costs	Subcontract	\$32,023.00	\$4,313.64	\$4,313.64
Supply Costs	Documents	\$7,666.00	\$7,666.41	\$7,666.41
Uncovered Incurred Costs*	See Back-up Pg. 60	\$127,436.00*	\$127,436.00*	\$0.00
Anticipated Profit		\$25,384.00	\$0.00	\$0.00
Mark-ups (Sub bond only)*		\$3,601.00	\$2804.42	\$179.69
TOTALS	\$409,821.15***	\$243,655.00	\$189,765.47*	\$12,159.74**

*Uncovered Incurred Costs are comprised of Equipment & Depreciation, Jobsite Overhead & Home Office Overhead. Although Leware has indicated a willingness to revise these costs no formal submission is on record.

**Original offer of to Prime of \$13,576.34 has been amended to \$12,342.15. (Excluded non-applicable markup. Including Prime bond.) \$12,159.74 represents Leware portion of offer.

***Total Leware subcontract = \$409,821.15. Actual amount of performed work = \$57,260.23. Net reduction to Leware subcontract = \$352,560.92.

CONTRACTOR'S POSITION ON ENTITLEMENT: See Leware December 2, 1999 letter. (Back-up pgs 43-56)
 See Leware August 4, 2000 letter. (Back-up pgs 25-28)
 See Leware September 8, 2000 letter (Back-up pgs 16-23)

Leware's original December 2, 1999 submittal states the overriding basis for entitlement as being founded in the fact that the deletion of the Seville Rd bridge resulted in a "decrease of new revenue in the amount of \$362,622.". The have requested compensation based on the contractual authorities, specifically Article 9-5 Deleted Work, which provided as follows:

"The Department shall have the right to cancel the portions of the contract relating to the construction of any acceptable item therein, by the payment to the Contractor of a fair and equitable amount covering all items of cost incurred prior to the date of cancellation of suspension of the work by order of the Engineer."

In more recent correspondence of August 4, 2000, Leware asserts entitlement under Article 9-5 based on their interpretation of 9-5 and the portion of its provisional language dealing with incurred costs. To date Leware's argument has been solely based on that interpretation of 9-5 which, from their correspondence, reads: "Incurred costs are those that the project is liable for from the beginning and are based on full absorption over the full volume."

Currently, under their September 8, 2000 letter, Leware continues to maintain their previously presented position based on Article 9-5 and continues to assert entitlement based on their interpretation of Article 9-5 and its language reference to "...cost incurred..". Leware's argument on this point, in its entirety, is a duplication of that conveyed in their August 4, 2000 correspondence although the September 8, 2000 submittal does include Leware's agreement with Department offered payments for material and supply costs.

DEPARTMENT'S POSITION ON ENTITLEMENT: See Engineers Entitlement Analysis (Back-up pgs 3 to 8)

The Department maintains the Contractual authorities, and provisions contained within, clearly and exhaustively address the issue of owner directed deductive changes to the Contract. The Contract is clear and with numerous references which state unambiguously the rights and responsibilities of the Contracting parties in instances where the Department elects to direct the increase or decrease to pay item quantities or delete, in its entirety, portions of the originally proposed work.

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The Department does not deny that the deletion of the originally proposed Seville Rd Bridge may have resulted in impacts (costs) to the Contractor. However, the Department does maintain that the Contractor bears the burden of proving these costs. The Department feels this burden of proof has been generally and reasonably established as being Contractor furnished documentation evidencing actual costs which can be verified with credible back-up documentation in order to establish their fairness and ensure a mutually equitable settlement. A complete "Entitlement Analysis and Engineer's Estimate" has been developed, and used during interim settlement negotiations to date, based on this principle. (Back-up pgs 3 to 8)

The following outlines the specific pertinent authorities and the Department's position with regard to applicability and entitlement as they relate to the issue of Leware's request :

Article 2-3, Interpretation of Estimated Quantities

"The Department does not assume any responsibility that the final quantities will remain in accordance with the estimated quantities, nor shall the contractor claim misunderstanding or deception because of such estimate of quantities. The estimated quantities of work to be done or materials to be furnished may be increased, decreased, or omitted as hereinafter Provided "

Under the provisions of Article 2-3, the Contractor has been expressly made aware of the possibility of adjustments to the originally estimated quantities. This is an industry wide contract convention, standard and typical to the type of work inherent in doing business with the Department, and one which the Contractor has a proven history of experience with.

Under Article 2-3 it is the Department's position no entitlement is due the Contractor.

Article 4-3, Alterations of Plans or of Character of Work

"If alterations or changes in the quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract " [emphasis added]

"If the alterations or changes in the quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract. " [emphasis added]

"The term "significant change" shall be construed to apply only to the following circumstances

- (A) When the character of the work as altered differs materially in kind or nature for that involved or included in the original proposed construction or
- (B) When a major item of work as defined elsewhere in the contract, is increased in excess of 125 percent of decreased below 75 percent of the original contract quantity

Article 1-24, - Major Item of Work

"Any item of work having an original contract value in excess of five percent of the original contract amount shall be considered as a major item of work

A review of the individual and aggregate elements of the FDOT deductive change order, along with above cited applicable contractual authorities yields the following factual pieces of information :

1. Seventy-four (74)* separate original pay items of work had modifications to the original proposed contractual plan quantity. (See back-up pg 59)
2. Of the 74 pay items of work affected by the plan change, twenty (20) were a part of the scope of work contained in Leware's subcontract with Smith & Company, Inc. (See back-up pg. 60)
3. Of the 20 pay items contained in Leware's subcontract none meet the criteria established by contract's authorities for consideration as a "Major Item of Work".

*Of the above 74 pay items, one (1) meets the criteria established by contract authorities for consideration as a "Major Item of Work". Item 1-120- 1, Regular Excavation, has an original contract value of

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\$2,877,621.60 (2,398,018 c.y. @ \$1.20/c.y.) which represents a value of 9.7% of the original contract amount(\$29,66,874.01).

Although meeting the criteria set forth by the contract for a major item of work, Pay Item 1-120-1 did not experience a "significant change" as defined under 4-3.2 sub-paragraph B. The net percent change in quantity as compared to plan quantity was a -0.34% (reduced 8,150.00 c.y.).

Item 1-120-1 was/is not a part of the scope of work contained in Leware's subcontract with Smith & Company, Inc.

Under the provisions of Article 4-3 (in conjunction with Article 1-24), the Contractor has no basis for entitlement to costs resulting from the Department directed deductive change to pay item quantities. This is expressly conveyed in the conditions set forth under Article 4-3. No major items of work were affected within the thresholds of applicability for adjustment as established under Article 4-3 and 1-24. In addition, the Department finds the character of work remained the same and, to date, no arguments or evidence has been offered to the contrary.

Under Article 4-3 (and referenced Article 1-24) it is the Department's position no entitlement is due the Contractor.

Article 9-3, Compensation for Altered Quantities:

"9-3.1 General: "Whenever any change or combination of changes in the plans results in an increase or decrease in the original contract quantities, and the work added or eliminated is of the same general character as that shown on the original plans, the Contractor shall accept payment in full at the original contract unit prices for the actual quantities or work done and no allowance will be made for any loss of anticipated profits because of increase or decrease in quantities ..."

Under the provisions of Article 9-3, the Contractor has been expressly made aware of the possibility of adjustments to the originally estimated quantities and been advised of the remedy for such adjustment with clear and unambiguous specifics regarding the Contractor's rights, the Department's intent and any obligation of the Department to the Contractor. (Note: The Contractor has recognized this provision, if only partially, of the contract as they have agreed to "waive" their claim for profits. See Leware's September 8, 2000 letter)

Under Article 9-3 it is the Department's position no entitlement is due the Contractor.

Article 9-5, Deleted Work

"The Department shall have the right to cancel the portions of the contract relating to the construction of any acceptable item therein, by the payment to the Contractor of a fair and equitable amount covering all items of cost incurred prior to the date of cancellation or suspension of the work by order of the Engineer."

A review of Article 9-5, Deleted Work yields a potential avenue of applicability. Under the provisions of Article 9-5, Deleted Work, they are entitled fair and equitable compensation for costs incurred prior to the date of cancellation or suspension of the work. :

The fundamental question of entitlement under Article 9-5 is not being disputed by the Department. However, a key distinction with regard to the extent and scope of entitlement needs to be made. This distinction revolves around the interpretation of Article 9-5 and the portion of 9-5 which states "items of cost incurred prior to the date of cancellation..". From Leware's September 8, 2000 correspondence "Incurred costs are those that the project is liable for from the beginning and are based on full absorption over the full volume."

The Department can not agree with this subjective extension and broadening of the contractual provisions.

It is the Department's position the intent of 9-5 is to provide fair and equitable reimbursements for actual costs experienced by the contractor up until the date of the canceled work. It is not apparent that 9-5 is intended to remedy the effects of future planned revenue and/or shortfalls which may or may not materialize. It is the Department's position that the Contractor is entitled to 100% of those costs actually experienced prior to the date of cancellation and not expected costs to be experienced at a future date.

Under the provisions of Article 9-5, the Contractor has been expressly made aware of the possibility of adjustments to the originally estimated quantities and been advised (via Contract provisions) of the remedy for

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such adjustment. Article 9-5 provides specifics regarding the Contractor's rights, the Department's intent and the scope of any obligation of the Department to the Contractor.

Under Article 9-5, it is the Department's position entitlement is due the Contractor for 100% of actual costs resulting from the deductive change and incurred prior to the March 29, 1999 notice of cancellation. However, this is provided those costs can be evidenced with documentation meeting reasonable standards of proof. Again, the Department feels this burden of proof is borne by the Contractor and consists of documentation evidencing actual costs which can be verified to establish their fairness and ensure a mutually equitable settlement. To date, the only cost related documentation submitted and meeting this criteria has been related to materials and supplies which the Department has recognized formally via a claim settlement offer and the issuance of a Unilateral Supplemental Agreement for reimbursement of the material and supply costs.

Department Closing Statements on Entitlement

- The only avenue for remedy by the Contractor is under the Contract provisions as contained in Article 9-5. The scope of applicability is limited to those costs actually incurred prior to the directed deductive change date of March 29, 1999.
- The Contract must be considered as a whole and in doing so it is apparent that the sole provision for which the Contractor has any recourse is contained within Article 9-5. However, although 9-5 is the appropriate provision, weight should be given to other provisions which when viewed as a whole clearly demonstrate the Department's overall intent in instances of deductive change.
- It is the Department's position the Contract provisions are exhaustive in addressing the issue of owner directed deductive changes. Had it been the Department's intent to provide a remedy, under the premise furthered in Contractor arguments, the provisions would expressly state such remedy.
- Moving beyond the issue of entitlement, other than material and supply costs (which have been agreed to), the Contractor has yet to provide any verifiable actual cost information, supported with credible back-up documentation, in order to establish any due fair and equitable settlement. This point has been conveyed to the Contractor (Leware) on numerous occasions and addressed in several pieces of correspondence.

SUBCONTRACTOR'S REBUTTAL:

The Subcontractor did not furnish any written rebuttal to the Board.

DEPARTMENT'S REBUTTAL:

Please accept the following as the Florida Department of Transportation, Turnpike Division's ("Department") rebuttal to the recently submitted Contractor position paper forwarded by Smith & Company, Inc. ("SCI") on behalf of their subcontractor, Leware Construction Company ("Leware"). In reviewing the following, please note the Department's response has been organized to coincide with the format and flow of the Contractor's position paper for ease of review. (Copy enclosed).

Item 1: Page Two, Paragraph 1:

The Department disagrees with the Contract's statement "This offer was not in accordance with their guidelines regarding allowable markups and therefore did not show good faith."

It is our position that Article 9-5, Deleted Work is the governing contract provision most applicable to the Seville Rd. Bridge deletion. The Department's guidelines regarding allowable markups are detailed in other areas of the Contract documents. It appears the Contractor is incorrectly applying other Contract provisions relative to "Additional or Unforeseen Extra Work" as detailed in Article 4-3.2.3.

Item 2: Page Three, Paragraph 3 "Jobsite Overhead":

The Department has yet to receive any "cost incurred" information concerning the Contractor's statement "On the Suncoast Parkway projects, one field office served our work on Sections 4-6. Only the Section 6 portion was included in the calculations."

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Item 3: Page Four, Paragraph 1 "Anticipated Profit":

The Department disagrees with the Contract's statement: "Our amount submitted of 7% of the deleted work value for anticipated profit should be considered fair and equitable."

Our offer was in fact fair and equitable based on the applicable contract specification, Article 9-5, and provisions for "payment to the Contractor of a fair and equitable amount covering all items of cost incurred prior to the date of cancellation" of the work. No mention of profit is made under Article 9-5 as it is not representative of Contractor actual item costs.

Item 4: Page Four, Paragraph 2 "Summary":

The Department disagrees with the Contract's statement: "Ironically, their offer for supplies was based on the same principles that our other requests were based."

The offer for supplies was based on the Contractor's contention the costs requested were representative of actual purchased supplies designated to construct the entire Seville Rd. bridge but instead were only used to construct portions of the work and had no salvageable value. As with materials, a portion of this cost is directly attributable to an actual physical product, provided by the Contractor, that became unnecessary as a result of the FDOT directive. As these are actual verifiable costs, for which the Contractor has no way of recouping, the Department elected to compensate the Contractor for them.

Conversely, the Contractor's "other requests" were founded in a flawed basis of inefficiencies introduced as a result of resequencing their schedule of operations and on a learning curve effect. This has been thoroughly discussed in our Position Paper and the Engineer's Analysis contained in the Position Paper backup information section.

BOARD FINDINGS:

- The Department did not delete certain items in their entirety.
- It is the opinion of the Board that, in accordance with Section 9-3 and Section 9-5 of the Standard Specifications, the Contractor should be paid contract prices for any items completed, and reimbursed for the cost of any materials or supplies purchased for the Seville Road Bridge prior to its deletion.
- Certain of the original contract unit price items are the result of the blending of the total cost for any like item for the contract as represented in the original bid (item total estimated cost all bridges divided by the total estimated quantity).
- The impact of deleting a portion of the quantity **may** have altered the character and cost of the remaining work as contemplated in Article 4-3.
- This impact would have incurred on the date of deletion of the cancelled work.
- Since the Contractor contends that the elimination of one of these practically identical grade separation structures, affected total corporate performance on this contract, he should be reimbursed for any impact costs to the remaining work **which can be properly documented**, in accordance with Article 4-3.2.1 of the Standard Specifications.
- The Contractor bears the burden of providing and reasonably proving these cost.

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BOARD RECOMMENDATION:

Based on the materials supplied to the Board and presentations to the Board at the DRB hearing the Board finds entitlement to the Contractor's position as noted above and encourages the parties to negotiate equitable compensation to Leware for the impact to the undeleted work which can be properly documented.

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

Please remember that a 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.

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

Respectfully Submitted

Disputes Review Board

G. A. "Dolph" Hanson, P.E.; DRB Chairman

John H. Duke, Sr.; DRB Member

E. K. Richardson, P.E.; DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



G. A. "Dolph" Hanson, P.E.; DRB Chairman