

GARTH L. WILSON
ENGINEERING AND CONSTRUCTION INSIGHTS

April 16, 2009

Chris Boespflug, Project Engineer
Colorado Department of Transportation
1050 Lee Hill Road
Boulder, CO 80302

Justin DuMond, Project Manager
Flatiron Constructors Intermountain
10090 I-25 Frontage Road
Longmont, CO 80504

Reference: CDOT Project IM-0253-160
FCI Job No. 4106

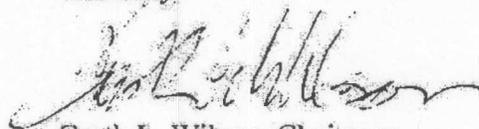
Dear Chris and Justin,

In response to your requests to the Disputes Resolution Board (DRB) to determine merit and quantum relative to Dispute #1 and #4 on the referenced Project, we enclose our recommendations herewith. In accordance with Subsection 105.22(g), one original signed copy of each recommendation is provided to each party.

We await further direction in this matter.

Inasmuch as this recommendation has been issued earlier than anticipated during our meeting of March 16, 2009, we suggest that submittal of the documents for the Disputes Package II might be made earlier than the date scheduled at that time (June 5, 2009). Please advise the DRB of your wishes.

Sincerely,



Garth L. Wilson, Chairman
For the DRB

Enclosures

cc: Bill Ashton
Dick Fullerton

8101 E. DARTMOUTH AVE. #49 • DENVER, CO • 80231-4259
PHONE: 303/368-8630 • CELL: 303/819-5558
E-MAIL: CONSULT.GARTH@COMCAST.NET

Dispute Review Board Recommendation

DISPUTE #1 -- Added Side Drain and Related Work - \$6,051.27 and zero time**Documents Reviewed:****A. Contract and Bond:**

1. Project No. IM 0253-160 Contract;
2. Special Provisions (Standard and Project);
3. Standard Specifications for Road and Bridge Construction (2005);
4. Supplemental Specifications;
5. Plans (Standard and Detailed);
6. Flatiron's Proposal;
7. Contract Modification Orders 1 through 7.

B. Correspondence:

1. CDOT Speed Memo #210 dated 1-15-08 (with Flatiron reply dated 1-18-08);
2. Flatiron letter dated 1-30-08;
3. CDOT Speed Memo #220 dated 2-1-08 (with Flatiron reply dated 2-8-08);
4. Flatiron letter dated 2-13-08;
5. CDOT Speed Memo # 235 dated 3-12-08 (with attached letter);
6. Flatiron letter dated 3-19-08;
7. Flatiron letter dated 4-30-08;
8. CDOT letter dated 5-5-08;
9. CDOT Speed Memo #273 dated 5-5-08;
10. Flatiron Pre-Hearing Position Paper dated 4-1-09 (with attachments);
11. CDOT Pre-Hearing Position Paper dated 4-14-09 (with attachments).

Discussion:**A. Sequence:**

From records examined by the Dispute Review Board (DRB), Flatiron received direction on January 15, 2008 to install a side drain involving a twin run of 60" x 38" Reinforced Concrete Pipe (RCP) and end sections at East Frontage Road Sta. 2884+55. On January 18, 2008 Flatiron requested additional compensation, promising to provide pricing by January 25, 2008. Flatiron proceeded to install the pipe segments, end sections and associated work between January 22 and 29, 2008. Pricing was not submitted for the "Additional cost" until January 30, 2008.

CDOT responded on February 1, 2008 to Flatiron's pricing - rejecting its request for additional compensation and advising that payments would be made at the original contract unit prices in the Contract.

After Flatiron's rejection on April 30, 2008 of the CDOT position, the matter was referred to the DRB.

B. Procedures:

Subsection 105.21 **Dispute Resolution** (as revised by CMO No. 3) provides specific steps to be taken when a dispute arises and before the issue is presented to the DRB.

1. The DRB is proceeding on the basis that those prescribed steps have generally been followed.
2. A hearing was arranged as prescribed by Subsection 105.22(d) and held as prescribed by Subsection 105.22(f) on April 14, 2009.

Dispute Review Board Recommendation

3. The DRB was advised during the hearing that a copy of each Position Paper was provided to the other party as required by subsection 105.22(e).

C. Positions:

1. Flatiron contends that the work required for the added side drain is covered by Subsection 104.02(c) *Significant Changes in the Character of the Work* so a price adjustment is due. Flatiron notes that the added side drain was not shown on the original contract plans so should be considered Extra Work (subsection 104.03) and payments should be made as provided therein under subsection 109.04 (Force Account).
2. CDOT believes work associated with the added side drain does not satisfy the definition of a "significant change" so subsection 109.03 **Compensation for Altered Quantities** mandates payment at contract unit prices.

D. Contract Provisions:

1. Subsection 104.02(c) provides in part that: "The basis of the adjustment [to the Contract] shall be agreed upon prior to the performance of the work".
2. Subsection 104.03 **Extra Work** states: "The Contractor shall perform unforeseen work, for which there is no price included in the Contract, whenever the extra work is necessary or desired for contract completion. This work shall be performed in accordance with the Contract and as directed, and will be paid for as provided for under subsection 109.04".
3. Subsection 109.03 **Compensation for Altered Quantities** states in part: "...Contractor shall accept as payment in full, payment at the original contract unit prices for the accepted quantities of work done".
4. Subsection 109.04 **Compensation for Changes and Force Account Work** states in part: "Compensation will be at unit prices or lump sum, or the Department may request the Contractor to do the work on a force account basis...." Details for payments under force account are provided.

DRB Evaluation:

1. The Flatiron Pre-Hearing cost estimate (\$35,662.36) contains significant differences in scope from the original estimate (\$43,398.38) presented on January 30, 2008 by Flatiron. The DRB was advised during the hearing that CDOT and Flatiron reached agreement on payment for the excavation, ditch embankment, topsoil, slope-finishing and backfill items which explains the bulk of that difference.
2. Flatiron requested payment based on new unit prices for the remaining work activities whereas CDOT made payments at original contract unit prices for surveying, remove asphalt, remove pipe, remove end sections, RCP, install end sections and asphalt patching.
3. Agreement has not been reached for the Mobilization component.
4. Applying the unit prices that reflect the positions taken by the parties shows:

i. Flatiron requested	= \$35,662.36
ii. CDOT paid	= <u>\$29,611.09</u>
iii. Difference claimed	= \$6,051.27.

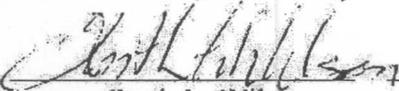
IM0253-160
Dispute Review Board Recommendation

DRB Recommendation:

1. The DRB decision is that the added work did not constitute a "significant change in the character of the work". Essentially identical work for side drains at Sta. 2880+03 and Sta. 2878+55 on the East Frontage Road was part of the original contract scope. CDOT was correct in paying for the work using original contract unit prices.
2. CDOT also paid for an ancillary 2 hours for extra surveying allowed under Subsection 105.12(a).
3. No payment for the incidental "Mobilization/Setup" charge is justified.
4. Both parties should have resolved the method of payment issue prior to the start of the work, particularly when Flatiron notified CDOT on the initial request to construct the added side drains that additional compensation was going to be requested. Neither party should have proceeded until that issue was resolved by following the appropriate Contract procedures.
5. In light of that notification, and the failure to reach agreement in advance, CDOT should have closely monitored and recorded the actual work effort.
6. Although the work was unforeseen at the time the project was bid, payment as extra work under subsection 104.03 would apply only in the event "...there is no price included in the Contract".

The DRB recommends that no further payment be made for this work.

Respectfully Submitted:


Garth L. Wilson

4/16/09
Date


William D. Ashton

4/16/09
Date


Richard Fullerton

4/16/2009
Date