

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of STRUCTURAL PRESERVATION  
SYSTEMS, INC. )

Under DGS Contract No. )  
BB-685-865-003 )

) Docket No. MSBCA 1440

December 19, 1989

Differing Site Condition - Neither the differing site condition clause nor dimensions clause of the contract required actual field measurement of the dimensions of the concrete encasement of a spandrel beam (the repair of which was the subject of the contract) in derogation of reliance on measurements appearing in the contract drawings.

APPEARANCE FOR APPELLANT:

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APPEARANCE FOR RESPONDENT:

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OPINION BY CHAIRMAN HARRISON

Appellant appeals from the lack of a procurement officer's final decision respecting its claim for an equitable adjustment arising out of performance of repair work to the concrete encasement of a steel spandrel beam at the Preston Street promenade, 301 W. Preston Street, Baltimore, Maryland.

Findings of Fact

1. On 27 May, 1987, Appellant was awarded Contract No. BB-685-865-003 with the Department of General Services (DGS) to perform certain spandrel beam concrete repair work at the Preston Street promenade, 301 W. Preston Street, Baltimore, Maryland.
2. On August 3, 1987, DGS authorized commencement of the work effective September 8, 1987. The work was completed on or about December 21, 1987.
3. The work initially consisted of removal of deteriorated concrete from the existing concrete encasement of the steel spandrel beam, cleaning and epoxy coating of the beam and rebar and re-encasement of the beam with new concrete/gunite. As extra work, DGS required that the new encasement be coated

with a buff colored Tamscoat brand coating to match the appearance of the surrounding areas.

4. By letters dated August 31, 1987, September 17, 1987, May 9, 1988 and July 1, 1988, Appellant advised DGS of various conditions encountered in the progress of the work which it considered to constitute changed conditions from those represented in the contract documents and in particular the contract drawings respecting the actual quantities of concrete and gunite required to be removed and replaced in the repair work. Additionally, Appellant complained of additional time and cost resulting from a requirement for hand chipping as opposed to hydro demolition in areas of the encasement outside of the face of the steel beam.

5. From the lack of a procurement officer's decision on its claim for an equitable adjustment for the various alleged changed conditions, Appellant appealed to this Board on March 3, 1989.

6. The hearing of the appeal, as a result of pre-hearing resolution of several of the disputed items by the parties, was limited to the issue of entitlement on the following alleged changed conditions (issues).

A. 5" Issue

The contract drawings represented that the depth of concrete to be removed from the face of the encasement to the web of the steel beam was 5" inches. Appellant calculated its bid on the basis of such dimension. In fact, the depth of concrete required to be removed and replaced averaged 6 inches.

B. 1'7"± Issue

The height of the beam encasement reflected in the drawings from the bottom (above street level) to the break point was 1'7"±. However, the actual height, discovered by Appellant when pricing the extra work for the Tamscoat brand coating, was 2'0".

The effect of A and B was to increase by 46% the volume of concrete and/or gunite required to be removed and replaced.

C. Hydro Demolition Issue

The invitation for bid requested an alternate bid based on a method of removal employing a 20,000 psi hydro demolition hose. DGS elected this method of removal. Hydro demolition worked in areas between

the face of the encasement and the web of the beam where the beam served as a backstop. However, outside the face of the beam the deteriorated condition of the concrete resulted in overbreaking the concrete, necessitating abandonment of hydro demolition and use of hand chipping in these area.

#### Decision

At the conclusion of the hearing of the appeal, DGS through counsel virtually conceded, and the Board found, that Appellant was entitled to rely on the representation in the contract drawings that the depth of concrete to be removed was 5". DGS concedes that it was unreasonable to expect a contractor prior to submitting its bid to actually field measure the depth from the face of the encasement to the web of the beam. Field measurement would have required either making a profile cut into the concrete from the face of the encasement to the face of the web of the beam or measuring such distance by electronic device. We find that this was not required of bidders and reliance on the depth dimension shown in the drawings was appropriate. Appellant therefore prevails on the 5" issue.

Appellant also prevails on the hydro demolition issue. DGS asked for an alternate bid based on hydro demolition and elected to proceed with this method of removal. While hand chipping was apparently required to avoid overbreaking in areas outside of the beam, the record reflects that hydro demolition is a state of the art method of removal that would have been appropriate but for the deteriorated condition of the concrete encountered. Appellant was not responsible for anticipating this condition when it submitted its alternate bid. DGS had the right to order hand chipping, but to the extent that Appellant engaged in hand chipping at the direction of DGS we find that such activity was in response to a changed condition that we do not find Appellant should have anticipated. Appellant therefore prevails on the hydro demolition issue.

We finally conclude that Appellant prevails on the 1'7"± issue. The actual height of the encasement was two (2) feet and not nineteen (19) inches plus or minus. We first observe that the five inch differential is a greater difference than should have been reasonably inferred from the ± designation on the drawings in compilation of a bid. We observe, as pointed out by Appellant, that the bottom of the encasement was twenty-three feet above street level. However, as

pointed out by DGS, field measurement was not rendered impossible thereby and could have been accomplished from the deck of the promenade by mere use of a plumb bob. Nevertheless, the issue is whether field measurement was required. We find, as urged by Appellant, it was not despite the  $\pm$  designation on the drawing. The contractor in preparing its bid was entitled to rely on the dimension given as being reasonably close (i.e., within an inch or two) to the actual condition (height) to be encountered. While the contract contains a standard site investigation clause, a standard differing site clause and a standard dimensions clause, none require actual field measurement in derogation of reliance on measurements appearing in the contract drawings at least in the absence of readily observable discrepancies in the drawings or at the site. See Kaiser Corporation, ASBCA No. 30047, 86-3 BCA ¶19,302 (1986); Klefsted Engineering Company, Inc. & Blackhawk Heating & Plumbing Co., Inc., VACAB No. 661, 68-2 BCA ¶7254 (1968).

DGS also argues that Appellant's claim respecting the 1'7"± issue is barred (presumably under the differing site condition clause or the dimension clause) by Appellant's failure to notify DGS of the actual condition or dimension encountered and the additional work occasioned thereby until May of 1988 when the original contract work was already complete. Appellant became aware of the actual two foot dimension in May of 1988 when it field measured the height of the encasement in connection with the follow on Transcoat work, and promptly notified DGS of the problem. We find this notice to have been timely. While it is perhaps difficult to understand why the Appellant did not perceive the height discrepancy while actually performing the encasement work, the record is devoid of any evidence from which the Board may infer that DGS was prejudiced by the failure of Appellant to identify the problem until after the work was complete.

The Appellant's appeal as to the above three issues is sustained and the matter is remanded to DGS for negotiation of an equitable adjustment.