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PROCUREMENT APPEALS

SEP 01 2011

4:45 pm BY *Vince P.*  
FILE NO. OPA-PA: 11-009

7 OFFICE OF PUBLIC ACCOUNTABILITY  
8 PROCUREMENT APPEALS

9  
10 IN THE APPEAL OF

11 )  
12 HUBTEC INTERNATIONAL CORP., )

13 )  
14 Appellant. )

DOCKET NO. OPA-PA 11-009

APPELLANT'S REMEDIES BRIEF

15 Appellant Hubtec International Corp. ("Hubtec") hereby submits its Remedies  
16 Brief in the above referenced case.

17 I.

18 MEMORANDUM

19 During the course of performing work pursuant to the contract awarded to Hubtec  
20 for Project No. GU-NH-002(104) Route 2 - Culvert and Slide Repair, Hubtec made  
21 numerous requests of the Department of Public Works ("DPW") relating to the job duties  
22 and application payments that were routinely ignored, unjustifiably denied and/or were  
23 responded to only after inexcusable delays. After termination, many of the claims in the

1 Application for Payment Nos. 7R and 8 remain unpaid.

2 The fundamental issue regarding payment on the claims made by Hubtec is that  
3 DPW asserts that payments are made on a certain percentage basis depending on the  
4 amount of work completed on the overall project. For example, under Item 20102-0000  
5 "Clearing and Grubbing of the Cetti Bay Culvert", Hubtec has completed all work  
6 required under the contract and has made a claim for one hundred percent (100%)  
7 payment on that work. However, DPW states that payment cannot be made that is greater  
8 than the percentage of the overall project completion which they quantify as being  
9 payment received versus the value of the contract. Rounding off the math, Hubtec  
10 received about Four Hundred Thousand Dollars (\$400,000.00) on a One Million Eight  
11 Hundred Thousand Dollar (\$1,800,000.00) contract and, thus, has performed about twenty  
12 two percent (22%) of the contract. With the outstanding claims taken into account, Hubtec  
13 has performed half of the contract. Furthermore, Hubtec has now been terminated from  
14 the contract and, when there is no dispute over the work done, Hubtec should be paid one  
15 hundred percent (100%) of what is outstanding regardless of the payment structure of the  
16 contract.

17 Hubtec seeks a finding that DPW breached the contract and, thus is not entitled to  
18 relief. At present, there remain outstanding claims for payment under the monthly  
19 Applications for Payment Nos. 7R and 8. DPW refuses to pay Hubtec for legitimate work  
20 performed pursuant to the contract and for additional costs for work performed pursuant  
21 to change orders or cost proposals submitted to DPW.

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II.

**PROGRESS PAYMENT**

**(PAYMENT APPLICATION NO. 7(R) - TOTAL  
REQUESTED AMOUNT BY HUBTEC:  
\$135,498.20).**

**A. CETTI BAY CULVERT:**

Item 20102-0000, "Clearing and Grubbing" (\$2,000.00).

Hubtec denies that additional clearing and grubbing was still required and asserts that Hubtec performed all work required under the requirements of the contract for "clearing and grubbing" at the Cetti Bay Culvert, including, but not limited to the inlet portion at this location. DPW argues that additional work may be required because of delays and weather conditions. Hubtec performed all work required and should be compensated. (Appellant's Exhibits Bates Stamp 0063).

**B. UMATAC BASEBALL CULVERT:**

1. Item 15701-000, "Soil and Erosion Control" (\$1,250.00).

Hubtec performed the work required pursuant to the contract. Hubtec claims an additional twenty-five percent (25%) for additional work performed. DPW refuses payment because it asserts fifty percent (50%) of the contract has not been performed. Had DPW paid Hubtec for all services rendered to date, fifty percent (50%) of the contract amount would have been achieved and regardless, the work has been completed and accepted by DPW.

Furthermore, since the contract has been terminated, Hubtec should be paid for one hundred percent (100%) of work performed, regardless of the percentage of project completion.

1                   2.     **Item 20302-1200, "Removal and Resetting of Guardrail" (\$2,750.00).**

2                   DPW mistakenly states that the guardrail was never reset and Hubtec is only owed  
3                   payment for thirty percent (30%) of the work. Hubtec asserts that the guardrail was  
4                   removed and reset according to the specifications outlined in the project documents. The  
5                   objection is easily resolved and DPW is investigating the matter. Hubtec is owed the  
6                   entire claimed amount of Two Thousand Seven Hundred Fifty Dollars (\$2,750.00).

7                   3.     **Item 20201-0100, "48" Reinforced Pipe Culvert" (\$60,000.00).**

8                   Hubtec installed eighty feet (80') of the reinforced pipe culvert in substantial  
9                   conformance as per specifications in the contract. The alleged last twenty feet (20') of  
10                  damage to the pipe and its misalignment did not effect the function of the culvert. Hubtec  
11                  claims payment for sixty feet (60') of the work and should be paid \$60,000 for services  
12                  rendered.

13                 DPW disallows the claim asserting damage or lack of substantial compliance with  
14                 the contract. If DPW has accepted the work and used the installed sixty feet (60') of  
15                 culvert, Hubtec should be paid for that work. (Exhibit 2A1.1 and 2A1.3).

16                 4.     **Item 63501-0000, "Temporary Traffic Control" (\$2,500.00).**

17                 This is a lump sum item. Hubtec claims an additional twenty five percent (25%).  
18                 DPW does not deny the benefit received but denies the claim because it states only 20.3%  
19                 of the project is finished and payment cannot be made until fifty percent (50%) of the  
20                 project is done. DPW accepted the work and would be unjustly enriched if Hubtec is not  
21                 paid.

22                 5.     **Item 55201-0300, "Reinforced Concrete Wall".**

23                 The reinforced concrete wall was installed properly and was approved on two

1 occasions by the Construction Manager ("CM"). The wall is in conformance with all  
2 requirements and specifications and Hubtec is owed One Hundred Twenty Thousand  
3 Dollars (\$120,000.00).

4 DPW asserts that the wall is improperly built because Grade 40 rebar was used  
5 instead of the required Grade 60. Hubtec asserts that it used Grade 60. The rebar issue  
6 is under investigation by DPW and tests are being performed. The investigation should  
7 resolve this issue and if Hubtec is correct, they should be paid accordingly.

8 **III.**

9 **RECEIVABLE PAYMENTS**  
10 **FOR ADDITIONAL WORK DONE [CLAIMED].**

11 **A. UMATAC BASEBALL CULVERT:**

12 **1. Additional Claim for Laying Two Inch Drain**  
13 **Rock and Flowable Fill Concrete for Storm**  
14 **Drain Piping in the amount of \$12,903.34.**

15 Modifications to the design and changes to all pipes were required because of  
16 saturated soil and site conditions. The flowable fill concrete and drain rock was approved  
17 by the CM and DPW representative. This was additional work performed and accepted  
18 and Hubtec should be compensated. (Exhibit 2A.1.2 and 2A1.3).

19 **2. Additional Claim to Provide and Install**  
20 **Concrete Barriers and Signages in the amount**  
21 **of \$3,573.37.**

22 The obtaining and installation of concrete barriers and switching from traffic cones  
23 was required by the safety consultant and CM to conform to OSHA regulations and was  
not part of the base contract. These were additional services performed by Hubtec.  
(Exhibit 2A2.2, 2A2.3 and 2A2.4).

1                   3.    **Additional Claim for the Laying of Two Inch**  
2                            **Drain Rock and Flowable Fill Concrete for**  
                                  **Outlet Structure in the amount of \$25,605.63.**

3                   DPW asserts the steel used was non-conforming and the structure did not conform  
4                   to the lines and grades as shown in the plans. Hubtec performed the work in conformance  
5                   with contract requirements. Hubtec changed materials and used drain rock and flowable  
6                   fill concrete because the base course required by the specifications was not adequate.  
7                   Hubtec hired a professional surveyor to set lines and grades and the design was followed  
8                   and the work was approved by a DPW representative. (Exhibit 2A2.7 and 2A2.8).

9                   **B.    CETTI BAY CULVERT-OUTLET STRUCTURE.**

10                   1.    **Claim for Rock Cuts in the amount of \$3,939.20.**

11                   This work was performed for the benefit of the project and is seen as a "subsidiary  
12                   item" by DPW. The change order request for additional "Rock Cuts" was approved by  
13                   DPW , the work was accepted and Hubtec should be compensated. (Exhibit 2B.1).

14                   2.    **Additional Claim to Provide and Install**  
15                            **Concrete Barriers and Signages in the amount**  
                                  **of \$28,989.00.**

16                   As previously mentioned above, due to safety concerns by the safety consultant,  
17                   changes were ordered to the Traffic Control Plan at Cetti Bay Culvert. The project did not  
18                   call for concrete barriers. These were ordered to replace traffic cones because of the  
19                   adverse conditions and safety concerns. These additional barriers were provided by  
20                   Hubtec and installed and remain at the sites. Hubtec must be compensated. (Exhibit  
21                   2B1.1, 2B1.2).

22                   3.    **Additional Claim for Application of Shoring**  
23                            **System, Slope Protection and Sedimentation at**  
                                  **the site in the amount of \$11,267.60.**

1 DPW believes this is subsidiary work. This work was performed pursuant to a  
2 change order request which was reviewed and approved by the CM and signed off on by  
3 the DPW representative. This is additional work that Hubtec must be compensated for.  
4 (Exhibit 2B1.3).

5 **4. Claim for Two Inch Drain Rock in the amount**  
6 **of \$2,636.52.**

7 This was a change order based on approved shop drawings by CM. Cost  
8 breakdown is being reviewed. (Exhibit 2.B1.8).

9 **C. CETTI BAY SLIDE.**

10 **1. Hubtec's Claim for Removal of Existing Three**  
11 **Inch thick Asphaltic Concrete in the amount of**  
12 **\$12,712.00.**

13 DPW claims this is subsidiary work and part of FP-03 Section 204. Regardless of  
14 the section, the removing of the asphaltic concrete was not part of the original bid and is  
15 additional work, which should be compensated.

16 Furthermore, this work was submitted as a change order on June 7, 2010 and  
17 approved by CM and PE on June 22, 2010. (Exhibit 2.C1.).

18 **2. Claim for Rock Cuts for Foundation in the**  
19 **amount of \$19,342.00.**

20 DPW asserts this is work already included in the contract. This work was not  
21 foreseen in normal excavation and was not provided to bidder during bid process. This  
22 was additional work not in the scope of the contract and submitted as change order on  
23 July 7, 2010 and approved by DCA and PE. (Exhibit 2.C1.3.).

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**3. Claim to Provide and Install Concrete Barriers and Signages in the amount of \$14,398.00.**

As stated above, the concrete barriers were ordered by the CM and safety officer to meet OSHA requirements to replace traffic cones and was not part of original temporary traffic control plan and was additional work approved on June 15, 2010, June 18, 2010 and June 25, 2010. (Exhibit 2.C1.3).

**4. Hubtec's Claim for Variant Quantity of Base Course Aggregate in the amount of \$1,925.00.**

DPW asserts Hubtec over-excavated and was not required. This was a variance in quantity request submitted by Hubtec on August 18, 2010 and Section 109 of FP-03 states payment will be made for actual quantities installed. An additional \$19.25 SY was installed resulted in an increase of \$1,925.00 which Hubtec should be paid for. (Exhibit 2.C1.4).

**5. Claim for Removal and Replacement of Base Course with Concrete in the amount of \$17,179.15.**

DPW states that this matter requires additional information before determination can be made. (Exhibit 2.C1.5).

**6. Claim for Variant Quantity of Concrete in the amount of \$6,304.00.**

Hubtec submitted a claim for more concrete in order to shore up the concrete wall at the Cetti Bay Slide. Additional concrete was needed because unforeseen rock was encountered requiring additional excavating and additional concrete was needed to shore up the area. DPW denies payment because contracts specifies the amount of concrete



1 needed, however, more was needed and this is additional and unforeseen work that  
2 should be compensated.

3 **D. UMATAC BASEBALL CULVERT, CETTI BAY CULVERT**  
4 **AND CETTI BAY SLIDE.**

5 **1. Contractor Sampling and Testing in the**  
6 **amount of \$4,495.61.**

7 Hubtec was not provided enough information in bid process. This was a change  
8 order cost proposal that was submitted on February 15, 2010 for contractor sampling and  
9 testing as required by the SCR and approved by DPW representative on same date.  
10 (Exhibit 2.2D1.2).

11 **2. Hubtec's Claim for 48" Reinforced Pipe Culvert**  
12 **at Umatac Baseball Culvert for 58.45 Lineal Feet**  
13 **at the Unit Price of \$1,000.00 for a Total Claim**  
**Amount of \$56,450.00.**

14 DPW asserts this is an overlap of an amount claimed. DPW also states that 60LF  
15 and not 22LF is claimed as stated in Hubtec's letter. DPW also asserts that the quantities  
16 claimed are undeterminable, and that the material did not conform to contract  
17 requirements. Furthermore, DPW asserts it needs more information to determine the  
18 claim.

19 **3. Hubtec's Claim for Removal and Replacing of**  
20 **Unsuitable Materials at Umatac Baseball**  
**Culvert in the Amount of \$11,603.15.**

21 DPW asserts the steel used was non-conforming and the structure did not conform  
22 to the lines and grades as shown in the plans. Hubtec performed the work in conformance  
23 with contract requirements. Hubtec changed materials and used drain rock and flowable

1 fill concrete because the base course required by the specifications was not adequate.  
2 Hubtec hired a professional surveyor to set lines and grades and the design was followed  
3 and the work was approved by a DPW representative. (Exhibit 2A2.7 and 2A2.8).

4 Appellant reserves the right to supplement this Brief if more information becomes  
5 available.

6 Dated this 1<sup>st</sup> day of September, 2011.

7 **TEKER | TORRES | TEKER**

8  
9 BY   
10 for **PHILLIP TORRES, ESQ.**  
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