

DISPUTES REVIEW BOARD RECOMMENDATION

25 June, 2008

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Ref: US 41 (SR45), From a Point North of Bonita Beach Road to Old US 41, Financial Project ID: 195737-1-52-01: WPI#: 1114707, Contract No.: T-1022: Lee County: Disputes Review Board hearing regarding entitlement to recovery of direct and in-direct costs associated with the removal and replacement of span S-8 concrete deck on the Imperial River Bridge.

Dear Sirs:

The Florida Department of Transportation, (FDOT), and Astaldi Construction Corporation, (ACC), requested a hearing concerning the above referenced issue.

CONTRACTORS POSITION

We will state the Contractors position by referencing, copying and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Contractor.

The Contractors position paper has the following statements and references to document their claim for entitlement.

“On February 25, 2005, during the placement of the superstructure concrete at span S-8, ACC was delayed by an early morning rain. ACC resumed the placement once the rain passed, however KCCS instructed ACC to stop the placement because it believed a “cold joint” had arisen due to the unexpected weather delay. KCCS might have had the impression that the concrete was starting to harden, but this did not necessarily mean that a cold joint had already formed or was unavoidable. ACC is of the opinion that the action of KCCS to stop the deck pour was premature and resulted in unnecessary demolition of the cast portion of the deck.

ACC requests this DRB Board recognize that ACC is due recovery of its direct and indirect costs associated with this issue as this issue was unresolved at the time the parties entered into Supplemental Agreement SA No. 28. Further, ACC is due interest costs on the delayed payment in accordance to FDOT Standard Specification section 9-10 Interest Due on Delayed Payments.

On February 25, 2005, during the span S-8 pour of the 4th load, a heavy rain suspended the subsequent pours. The pours that were completed were covered with plastic until the rain had passed. ACC resumed concrete placement once the rain passed only to have KCCS stop all concrete placement on the same day. On February 25, 2005, KCCS advised ACC that a “cold joint” had arisen because of these unexpected weather conditions. ACC was advised to cease working until it received further instruction from KCCS.

On March 7, 2005, ACC transmitted a report that refuted FDOT’s claim that a cold joint existed and put FDOT on notice that it would seek to recover all costs and additional contract time associated with this issue.

The unnecessary issuance of a Stop Work Order by KCCS following the partial pour of deck pour S-8 on February 25, 2005, caused ACC to incur additional costs. ACC deems these costs compensable under Article 5-12 Notice of Claims of the FDOT Standard Specifications.

FDOT contends that a cold joint formed during placement due to rain and that the concrete had exceeded its allowable time for placement. The FDOT specifications are silent as to what constitutes a cold joint. They only deal with transit time and delivery under Article 346-8.8 Transit Time and Article 347-3.3 Delivery.

ACC contends that the action of KCCS to stop the deck pour was premature and resulted in the unnecessary demolition of the cast portion of the deck pour. The record is clear that ACC incurred a delay with the demolition and re-pour of the portion of the S-8 deck.

ACC requests this DRB Board recognize that ACC is due recovery of its direct and indirect costs associated with this issue as this issue was unresolved at the time the parties entered into Supplemental Agreement SA No. 28. This issue was identified as item #12 of the list of outstanding issues to be resolved by the parties following the execution of Supplemental Agreement SA No. 28. ACC also requests this DRB Board recognize that ACC is due interest costs on the delayed payment in accordance to FDOT Standard Specification section 9-10 Interest Due on Delayed Payments.”

REBUTTAL

“Attachment 1 to FDOT position refers to Article 346-8.8 Transit time. FDOT contends that the Stop Work Order was issued as ACC allegedly failed to compile with the 90 minute maximum allowable time for concrete placement. ACC does not agree with FDOT’s statement.

The February 25, 2005 Stop Work Order clearly stated that the order was issued as a result of an alleged cold joint and not in reference to Article 346-8.8, or exceeding the maximum allowable time for concrete placement.

FDOT interpretation of the February 25, 2005 daily report fails, as it does not depict the entire events encountered on that day. FDOT fails to recognize that on February 25, 2005, Williams Earth Sciences, Inc. observed that load #4 was completely discarded at 5:19 A.M. Loads #5 through #8 were observed to be over 90 minutes old and were therefore returned to the Batch Plant in accordance to Article 346-8.8. The deck was covered in plastic after load #4 was completed (5:19 A.M) to protect the concrete placed from the rain. Williams Earth Sciences observation also confirmed that the CEI (KCCS) unilaterally determined that there was a cold joint.

As part of ACC’s Request for an Equitable Adjustment (REA), ACC separated into two parts its compensation request previously submitted. The first part being, the deck stop work order and the second part being the concrete deck removal and re-pour of slab S-8. ACC seeks compensation for the second part in the amount of \$55,385.02.

ACC requests this DRB Board to recognize that entitlement is due and requests payment for the amount in dispute of \$55,385.02. In addition, ACC requests this DRB Board to recognize that ACC is also due interest costs in accordance to accordance to FDOT Standard Specification section 9-10 “Interest Due on Delayed Payments.”

DEPARTMENT’S POSITION

We will state the Department’s position by referencing, copying and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Department.

The Department’s position paper has the following statements and references to document their claim for no entitlement to ACC for the concrete deck removal and re-pour of S-8 deck.

“The Contractor is claiming for \$55,385.02 and zero (0) days for the initial pour and subsequent demolition and repouring of Deck 8 of the Imperial River Bridge.

Pouring of the bridge deck was stopped by the Department because the concrete was not being poured per Specification. Due to rain, the concrete had exceeded its allowable time. In addition, there was a disagreement between the Department and the Contractor as to the existence of a cold joint associated with the pour.

The Department did not agree with the Contractor on this issue and therefore found no entitlement.

Standard Specification 346-8.8 Transit Time states, “Ensure compliance with the following maximum allowable time between the initial introduction of water into the mix and depositing the concrete in place:

Non-Agitator Trucks	Agitator Trucks
45 minutes	60 minutes
75 minutes*	90 minutes*

*When a water reducing and retarding admixture (Type D or Type G) is used. All time limits are subject to the ability of the Contractor to properly place and consolidate the concrete. When unable to place and consolidate the concrete within the time limits specified above, reduce the time limits to those limits which will result in acceptable placement and consolidation.”

Supplemental Specification 347-3.3 Delivery states in part, “The maximum allowable mixing and agitation time of concrete is 120 minutes.”

Supplemental Specification 400-7.7 Placing Concrete by Pumping states in part, “...Operate the pump to produce a continuous stream of concrete...”

Supplemental Specification 400-7.11.4 Method of Vibration states in part, “Use vibrators to consolidate properly placed concrete... Allow the vibrator to sink into the concrete by its own weight...”

The problem with the pour was the result of a downpour while ACC attempted to pour the concrete for the bridge deck. The delays associated with the rain caused the concrete to sit in the trucks and in the concrete pump truck beyond allowable time. The argument presented in ACC’s claim revolves around whether or not a cold joint had formed between the time the original concrete was poured, and that which was placed after the rain had stopped. ACC subsequently hired their QC firm to provide test data regarding cold joints and the setting time of the concrete mix design used for this pour.

The arguments presented in the claim are moot for a variety of reasons.

1. The methodology on the cold joint issue is flawed because the setting time of the concrete provided by Krehling Industries was provided under laboratory conditions, not actual field conditions.
2. The QC technician was testing the concrete in the rain, thus affecting the slump and air content results.
3. The fact that the concrete was placed beyond allowable time was never addressed in ACC's claim. The fact remains that the concrete was placed outside of the time limitations set forth by the Specifications.

The Department denies ACC's request for additional compensation related to this issue. The Department does not believe that ACC is due any of the \$55,385.02 in dispute."

REBUTTAL

"ACC has not presented any new supporting documentation or arguments in their position paper as compared to the REA."

FINDINGS OF FACT

The Board's decisions are governed by the plans, specifications (standard, supplemental, technical, special), and the contract. Therefore our recommendation is based on the above referenced documents, the hearing, and the following facts.

1. ACC attempted a concrete deck pour on the Imperial River Bridge Span 8. Rain began during truck #4 discharge.
2. KCCS issued a stop work order for the concrete placement.
3. KCCS's position changed from a cold joint issue to concrete exceeding its allowable time for placement. This position is based on Specification 346-8.8 and 347-3.3 which specifies transit and delivery times.
4. Neither party had a representative at the hearing that has first hand knowledge of what actually happened in the field. Therefore no one could provide the Board with the factual process of how long the concrete was in transit or time before complete discharge to the deck.
5. The Board was not provided any information on the yards of concrete planned for S-8 deck. However in the documentation we see that at least 9 trucks were to be used which would equate to approximately 90 CYs of concrete. The 4th load of concrete discharged at 5:19 AM. Trucks 5, 6, 7, and 8 were rejected because they were over the allowable time limit. Truck #9 discharged at 7:15 AM. There is a time differential of 116 minutes.

6. Specification 400-7.13.4 Placing Operations states...*On placements of 50yd³ (40m³) or less, the minimum placement rate is 20yd³/h (15m³/h). On placements of greater than 50yd³ (40 m³), the minimum placement rate is 30yd³/h (23 m³/h).*
7. The placement rate for the S-8 deck concrete did not meet this specification.

RECOMMENDATION

The Board finds that there is no entitlement to the Contractor for the concrete deck removal and re-pour of S-8 deck.

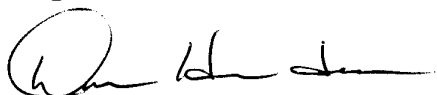
The Board sincerely appreciates the cooperation of all parties and the information presented for our review in making this recommendation.

The Board unanimously reached the recommendation and reminds the parties that it is only a recommendation. If the Board has not heard from either party within 15 days of receiving this recommendation, the recommendation will be considered accepted by both parties.

Submitted by the Disputes Review Board

Don Henderson, Chairman Jack Norton, Member Frank Consoli, Member

Signed for and with concurrence of all members



Don Henderson, PE