

**DISPUTES REVIEW BOARD RECOMMENDATION**  
**Differing Site Condition Station 125 to Station 128**

**RECEIVED**

**JUL 14 2008**

9 July, 2008

**KCCS**

Scott D. Woss, P.E.  
Senior Project Engineer  
KCCS  
1400 Colonial Blvd.  
Suite 260  
Ft. Myers, Fl. 33907

John Morgan  
Astaldi Const. Corp.  
8220 State Road 84  
Suite 300  
Davie, Fl. 33324

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 recover the costs for the changed site condition related to pipe work between stations 125+75 and 128+13.

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.

“ACC was delayed from installing the drainage pipe at Station 125+75 to Station 128+13 for ninety-five (95) days. ACC encountered the utility conflict with the existing gas main and the new S-528 drainage structure from May 13, 2005, to August 16, 2005, when KCCS provided the resolution on how to proceed with pipe work from Stations 125+75 to 128+13. The utility conflict constituted a differing site condition pursuant to Article 4-3.7 of the FDOT Standard Specification.

ACC requests this DRB Board recognize that location of the existing gas main at Stations 125+75 to 128+13 constituted a differing site condition pursuant to FDOT Standard Specification clause 4-3.7. Further, ACC requests this DRB Board recognize that ACC is due entitlement and recovery of additional costs.

On August 6, 2005, ACC informed KCCS that ACC had remobilized its drainage crew on July 30, 2005, at the work area only to cease work due to a 0.92mm minimum separation requirement between the water main and the reuse water line. The separation requirement forced the construction of the proposed work to move to the West, which resulted in a conflict with the gas main and Sprint telephone cables... As insufficient space was available for the new work, ACC requested FDOT instruct them on how to proceed with the construction of the re-use main. On August 16, 2005, KCCS provided the resolution on how to proceed with pipe work from Stations 125+75 to 128+13.

ACC remobilized the drainage crew to the area on August 22, 2005, and the work was completed by August 27, 2005.

ACC’s schedule update, current at the time the gas main and drainage pipe was first encountered, was ACC schedule designated “SRT2” data date of May 15, 2005. ACC schedule update “SRT2” reflected that the drainage pipe installation work activity ID #RW2443 – Re-use Main Modifications & Improvements was planned to start on May 16, 2005. Activity #RW2443 was shown to have twenty-two (22) days of float<sup>1</sup>

ACC schedule update data date of August 14, 2005, designated “SRT6” also reflected that activity #RW2443 had not actually started and was negative six (-6) days behind the overall Project critical path of work. “SRT6” reflected that Project completion was projected for April 8, 2006. Hence, the scheduled logic changes requested by FDOT and included in the schedule updates reflected that the completion of the project had slipped only eight (8) days, when in fact the actual status of the project was understood by ACC to have been delayed even more. In other words, had ACC not made logic and sequence changes to its schedule updates, the August 2005 update would have reflected that the project slipped by at least seventy (70) days.

---

<sup>1</sup> Float is calculated by the scheduling software program and represents the difference between the early start and late start or early finish and late finish date shown in the schedule. Float represents the amount of time an activity can slip and not affect the critical path activities governing the Project completion date.

ACC requests this DRB Board recognize that location of the existing gas main conflicted with the installation of the drainage structure S-528 at Stations 125+75 to 128+13 and constituted a differing site condition pursuant to FDOT Standard Specification clause 4-3.7. Further, ACC requests this DRB Board recognize that KCCS's August 16, 2005, directive to resolve the conflict was an alteration to the Contract work pursuant to Standard Specification clause 4-3.2, which ACC is due entitlement and recovery of additional costs. ACC's Request for an Equitable Adjustment (REA) seeks \$192,486.31 and seventy (70) days."

### **REBUTTAL**

"ACC does not agree with FDOT interpretation of Standard Specification 4-3.7. Article 4-3.7, clearly states that

*"During the progress of the work, **if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract**, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work."*[Emphasis added]

When read as a whole, Article 4-3.7 recognizes that actual conditions encountered in the field which are significantly different that what is indicated in the Contract documents constitutes a differing site condition.

ACC requests this DRB Board recognize that location of the existing gas main conflicted with the installation of the drainage structure S-528 at Stations 125+75 to 128+13 and constituted a differing site condition pursuant to FDOT Standard Specification clause 4-3.7. Further, ACC requests this DRB Board recognize that KCCS's August 16, 2005 directive to resolve the conflict was an alteration to the Contract work pursuant to Standard Specification clause 4-3.2, which ACC is due entitlement and recovery of additional costs. ACC's Request for an Equitable Adjustment (REA) seeks \$192,486.31 and seventy (70) days."

## **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 contractor submitted a claim for the delays associated with alleged differing site conditions near Signal Road from Station 125+84 to Station 128+13rt. The Department does not agree that the requirements of Supplemental Specification 4-3.7 were met which define a differing site condition.

At this time, ACC is requesting **\$192,564.81 and 70 days.**

Supplemental Specification 4-3.7 Differing Site Conditions states in part, "During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.

Upon written notification of differing site conditions from the Contractor, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of the work under the Contract, an adjustment will be made..."

Supplemental Specification 5-12.2.2 Claims for Delay states in part, "Where the Contractor deems that additional compensation or a time extension is due on account of delay... the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a controlling work item... and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay to a controlling work item, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's work by such delay."

Although the Department disagrees that this issue constitutes a differing site condition, the Department does recognize one day's worth of down time for the drainage crew associated with this issue and estimates the cost for the time to be \$4,800.00 for one day of delay. The incident did not affect the critical path, and therefore no additional time will be granted. Unilateral SA #79 is being processed to include \$4,800.00 and zero (0) days for this issue.

ACC claims that their pipe crew was delayed originally at Structure S-528 due a conflict with an existing gas main. ACC then attempted to relocate their crew to begin installation of the reuse water main north of Ten-Eight Street. At that time, ACC claims that their efforts were hampered due to a conflict with a BSU water main. KCCS responded to the claim referring ACC to Note 14 on sheet RCS-2, which requires the contractor to adjust pipeline alignment horizontally and or vertically to avoid conflicts with actual field conditions as uncovered during construction. To alleviate the conflict referred to in ACC's letter, a new location was proposed for the reuse line. Because this work was originally contemplated this condition does not differ materially or cause an increase or decrease in the cost or time required for the performance of the work. Therefore, this does not meet the requirements in the definition of "Differing Site Condition."

At this time, the Department's position is that ACC has been duly compensated in full as it relates to this issue. The Department does not believe that ACC is due any of the \$187,764.81 or the 70 days in dispute."

## **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. There was a changed site condition according to Specification 4-3.7. The existing gas main (subsurface) was not in the location as depicted on the plans.
2. ACC did demobilize and remobilize their drainage crew due to the gas main conflict.
3. The Department did compensate ACC for demob and remob of the drainage crew.

4. The Board reviewed all the schedules provide by the Contractor and the Department. We found that a change had been made to the schedules. We could not determine why the change was made or who requested the change. The Contractor stated that the Department requested the change; however we found no documentation to that effect.
5. The schedule, as part of the exhibits in the Contractor's position paper did show this activity, (RW2443), as a critical path activity. The schedule (SRT6) in the Contractor's position paper indicated that this activity (RW2443) was critical to project completion with (-) 6 days float.
6. The Board ran both SRT6 schedules provided by the Contractor and KCCS to determine if there were any differences between the two. There appears to a significant number of differences between the two. However activity RW2443 was the same on both schedules and did not agree with the exhibit in the Contractor's position paper.
7. Since this was a changed site condition the Contractor is required to give written notice if he *deems that additional compensation or a time extension is due on account of delay... the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a controlling work item... and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay to a controlling work item, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's work by such delay.*
8. In letter numbers 0161 and 0162 dated 20 May, 2005 ACC did notify the Department that "we find it necessary to inform the Department of our intent to recover all costs and any additional contract time, if necessary, for the expense & impact to our work in association to this matter".
9. The schedules provided to the Board for review (SRT2, SRT5, and SRT6) show activity RW2443 to have 22 days total float, 0 days total float and 9 days total float respectively.

**RECOMMENDATION**

The Board finds that there is no entitlement to the Contractor for this issue.

The Board also finds that the Contractor is entitled to demobilization and remobilization of the drainage crew for this impact.


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

A handwritten signature in black ink, appearing to read 'Don Henderson', with a large circular flourish at the beginning.

Don Henderson, PE