

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 for the Sprint delay at S-542.

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 structure S-542 as Sprint did not relocate their utility as required by the Utility Relocation schedule and meetings, and prior to ACC starting work at the area.

On August 11, 2005, ACC informed KCCS that on August 4, 2005, ACC’s pipe crew had encountered a conflict between the existing Sprint cable and the installation of the drainage structure S-542. Sprint had pledged to relocate the cable during the week of July 1 to July 18, 2005. At the conclusion of the Utility Relocation meeting No. 18 Sprint’s representative was not able to provide ACC with the status of the relocation of the cable.

The Sprint utility relocation schedule page 2 of 16 under item #2 required a 48 hour notice in addition to the actual days two (2) required to relocate the utility in question.

Sprint's representative had pledged that the utility would be relocated within the period of July 1 to July 18, 2005 while he was on vacation. Following Utility Relocation meeting No. 18 ACC inquired about the status of the relocation, however the Sprint representative was not able to provide an update.

On August 4, 2005 ACC was prepared install the S-542 structure however Sprint's utility had not been relocated. ACC's letter of August 11, 2005 confirmed that as of that date Sprint had yet to relocate their utility. As ACC was prevented from installing the drainage structure, ACC used the excavated area as one of many retention areas for dewatering the site, as FDOT had failed to secure a Water Use Permit for dewatering from the South Florida Water Management District.

ACC records reflect that the utility was eventually relocated by August 26, 2005 such that ACC was able to remobilize the drainage crew at S-542 to proceed with the work.

ACC requests this DRB Board to recognize that the conflict was due to Sprints failure to relocate their utility in advance of ACC's drainage pipe work as require by the Utility Work Schedule and Utility Relocation meetings. ACC Request for Equitable Adjustment (REA) seeks \$25,039.22 and four (4) days. ACC requests this DRB Board to recognize that ACC is due entitlement and recovery of additional costs."

REBUTTAL

"KCCS was notified of the delay on August 11, 2005, 7 days after the delay event was first encountered on August 4, 2005. In its letter to KCCS, ACC notified the Department of its intent to recover the costs associated with the delay event. KCCS acknowledged receipt of ACC notification and intent to claim on August 18, 2005. ACC notice was in keeping with Standard Specifications 5-12.2.

The direct and sole cause of delay involving the Sprint cable interference with S-542 was the responsibility of FDOT and the utility owner.

ACC requests this DRB Board to recognize that the conflict was due to Sprints failure to relocate their utility in advance of ACC's drainage pipe work as require by the Utility Work Schedule and Utility Relocation meetings. ACC Request for Equitable Adjustment (REA) seeks \$25,039.22 and four (4) days.

ACC requests this DRB Board to recognize that ACC is due entitlement and recovery of additional costs.”

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 Sprint delay.

“ACC originally submitted a claim on May 1, 2006 in the amount of \$24,717.33 and 4 days for alleged delays associated with interference of a Sprint cable in the vicinity of Structure S-542. Later, as part of ACC’s Request for Equitable Adjustment, ACC revised the claim amount to \$25,039.22 and four (4) days. The Department denied the claim based upon the fact that ACC had excavated a trench that subsequently filled with water, which prevented Sprint from performing their relocation work.

During the utility relocation meeting held on August 3, 2005, ACC indicated that a pipe crew would be moving to the vicinity of S-542 in the near future. Sprint representatives indicated that they had previously sent crews to perform the relocation work, but could not perform their operations due to other contractors working in that area. ACC encountered the conflict on August 4, 2005. During the utility meeting held on August 10, 2005, Sprint indicated that their forces could still not perform their relocation work due to interference with ACC forces. ACC had excavated a trench that filled with water thus preventing them from performing their relocation work

There still remains **\$ 25,039.22 and 4 days** in dispute for this issue.

At this time, the Department’s position is that ACC is due no entitlement for this issue.”

REBUTTAL

“ACC has not has not presented any new information in the position paper when compared to the original REA.

Also, in response (to) the ACC’s position, ACC has failed to address the issue that they prohibited Sprint from relocating their facilities by not providing reasonable access for them.”

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. This was not a critical path item.
2. At the hearing the Department agreed to revisit the issue and compensate ACC for disruption time for the drainage crew.
3. ACC agreed to this offer.

RECOMMENDATION

The Board finds that there is entitlement to the Contractor for the disruption compensation offered by the Department. This settles the issue.

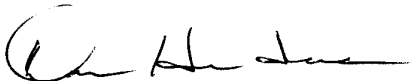
The Board sincerely appreciates the cooperation of all parties and the information presented for our review in making this recommendation.

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