

DISPUTES REVIEW BOARD RECOMMENDATION  
Gas Main Conflict at Station 117+75 Rt.

18 July, 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 additional entitlement  
for a Gas Main conflict at Station 117+75 RT.

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 March 30, 2005, an existing gas main at Station 117+75 was found to be in conflict with the new storm culvert for the drainage structure S-516 to S-518. A field solution was provided that same day. KCCS was notified of the conflict on April 9, 2005 and advised that a cost proposal would be submitted to the Department. Utility interferences at the area were again encountered through to April 20, 2005. The work at the conflicting area was resumed in July 2005, only to be suspended by Hurricane Dennis. Following the hurricane, ACC resumed the conflict work and connected a conflict structure at Station 117+55 on July 18, 2005.

FDOT recognized that ACC was due funding for the utility conflict and issued Unilateral Payment for Supplement Agreement (SA) No. 45 in the amount of \$32,665.16 and 0 days. SA No. 45 did not recognize that ACC was due the 11 days requested. On December 6, 2006, KCCS recognized that ACC was due 10 additional Contract days, however on December 21, 2006, KCCS withdrew its 10 day offer.

On July 23, 2005, ACC submitted its cost proposal in the amount of \$131,351.22 and 21 days as a result of the conflict encountered at Station 117+75 Rt. ACC proposal included the cost of re-establishing the well points at the conflicting area and installing conflict boxes along the pipe run from S-516 to S-518.

On June 8, 2006, FDOT issued SA No. 45 in the amount of \$32,665.16 and 0 days.

On October 12, 2006, ACC provided KCCS with its entitlement analysis for the gas main conflict. ACC accepted the \$32,665.16 provided that the Department would recognize the 11 additional Contract days itemized in the analysis. On October 13, 2006, KCCS denied ACC entitlement analysis, and contended that the work was not a controlling item of work.

On December 1, 2006, the Department issued a Unilateral Payment for SA No. 45 in the amount of \$32,665.16 and 0 days. On December 6, 2006, KCCS recognized that ACC was due 10 additional Contract days. However, on December 21, 2006, KCCS withdrew its offer of the 10 days previously recognized.

The record is clear that ACC incurred a delay as a result of the gas main conflict and for the extra work performed at a later date to resolve the conflict. ACC time entitlement analysis of October 12, 2006 depicted that the wellpoints were re-established and the extra conflict box was installed during the period from July 5, 2005 to July 20, 2005. ACC analysis requested 11 additional Contract days for the added work that was required to complete the controlling item of work activity # RW2850.

ACC's schedule update, current at the time ACC returned to install the conflict structure, was designated "SRT4" and data dated June 30, 2005. The "SRT4" schedule update reflected Activity ID #RW2850 - "INST. 900 RCP FROM S-518D TO S-516" was critical to the Project. The Department's "Controlling Item of Work" form for the week of June 22, 2005 to July 5, 2005, confirmed that the utility interferences were affecting the progress of the drainage work. The "Controlling Item of Work" form for the following week (July 6, 2005 to July 19, 2005) depicted that the installation of the RCP pipe was one of the

controlling items of work.

In December 2006, KCCS did recognize that ACC was due a time extension for extra work of re-establishing the wellpoints and installing the conflict box and offered 10 days. However, on December 21, 2006, KCCS withdrew its offer of the 10 days previously recognized.

ACC requests this DRB Board to recognize that ACC is due additional entitlement for this issue. Unilateral Payment for SA No. 45 included payment for \$32,665.16 and 0 days. ACC seeks to recover \$24,801.90 for the extended overhead and MOT costs associated with the 11 additional Contract days requested; 10 days of which were recognized by the Department. ACC is also seeking to recover its extended overhead associated with the 3 days of disruption which occurred prior to the SA No. 28 Acceleration Agreement in the amount of \$5,975.94.”

#### **REBUTTAL**

“The issue of dispute on this matter is the additional time required to install the extra conflict boxes to resolve the conflict. ACC time entitlement analysis of October 12, 2006 depicted that the wellpoints were re-established and the extra conflict box was installed during the period from July 5, 2005 to July 20, 2005.

The conflict boxes were not depicted in the ACC schedule updates as funding for this extra contractual work was only received one year later on June 8, 2006 with the Department issuance of SA No. 45.”

#### **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 Gas Main conflict.

“On March 30, 2005 ACC encountered a conflict with a 150 mm gas transmission line. On April 1, 2005 the design project manager transmitted a design for conflict manholes. On July 23, 2005 ACC submitted a request for a change order in the amount of \$131,351.22 and 21 days. On September 19, 2006 ACC letter 280 requested the undisputed portion of this impact be paid by unilateral supplemental agreement. On October 6, 2006 ACC letter 383 indicated the monetary amount of \$32,665.16 was unacceptable without a 7 day contract time extension. On October 11, 2006 KCCS letter # 609

requested an entitlement analysis be provided. On October 12, 2006 ACC letter 385 agreed with the monetary amount of \$32,665.16 and requested 11 days be granted. On October 13, 2006 KCCS letter # 610 informed ACC that the installation of the 900mm storm sewer between S-516 and S-518 was not a controlling item and attached copies of the controlling items of work. On November 29, 2006 USA 45 in the amount of \$32,665.16 and 0 days was fully executed by the department. On December 6, 2006 KCCS letter #622 submitted a letter to ACC for acceptance of a 10 day time extension. On December 21 2006 KCCS letter 638 rescinded the offer of a 10 day time extension letter.

**Amount in Dispute:**

There still remains **\$ 24,801.11 and 11 days** in dispute for this issue.

At this time, the Department's position is that ACC is due no entitlement for this issue. The Department contends that the work of installing S-516 to S-518 was not on critical path at the time the conflict was encountered. The entitlement analysis for the gas main conflict at station 117+75 Rt. describes why costs and time extensions are reasonable. Also included as backup for SA 45 was a summary of the work activities associated with this conflict. At the time of the conflict, schedule SRDD showed work activity RW2090 - Install 900 RCP from S-516 to S-518 to be accomplished within the time frame of May 24, 2005 to May 31, 2005. In addition schedule SRT2 - data date May 15, 2005 indicated work was 100% between S-116 and S-118. Also the work of installing conflict structures was not shown as a critical activity. The conflict was encountered on March 30, 2005 and resolved on April 1, 2005.

ACC's narrative found in volume 1 Page 61 of the REA stated that ACC's schedule update, current at the time ACC returned to install the conflict structure, was designated "SRT4" and data dated June 30, 2005. The "SRT4" schedule update reflected activity ID #RW2850 - "Install 900 RCP from S-518D to S-517" was critical to the project, REA volume 2 exhibit 9.12. In addition, the work of installing the conflict boxes was not shown as an activity on the critical path of SRT4.

**REBUTTAL**

...Gas Main Conflict at Station 117+75Rt includes an additional \$5,975.94 not previously mentioned in the REA or initial position statement. Because this amount was not previously included in the claim and is not certified, this office requests the DRB disallow this position modification and provide no ruling for this portion of the previously submitted claim.

The Department otherwise stands behind their position paper for the balance of the disputed amount.

## **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. In a letter dated December 6, 2006 the Department acknowledged a request from ACC for a 10 day time extension to the contract for the Gas Main Conflict between S-516 and S-518. The Department reviewed the request and found it to be accurate and reasonable in a letter dated December 6, 2006.
2. No time frame was given in the letter regarding acceptance of the 10 days offered for this issue.
3. The Department recognized that ACC was entitled to 10 days contract time extension of time due to the conflict.
4. In a letter dated December 21, 2006 the Department rescinded the offer of 10 days contract extension.
5. The request for the Board to consider the 3 days of disruption prior to SA 28 was requested in ACC's position paper.
6. Since this is not a quantum issue, only entitlement, as requested by the Department and the Contractor the Board will consider the request. Certification is not required for an entitlement issue.
7. SA 28 did leave the option open to reconsider indirect costs for 43 days of impacts.
8. Specification 9-6, Partial Payments states in part: *The Engineer will make approximate monthly payments, and the Department will correct all partial estimates and payments in the subsequent estimates and in the final estimate and payment.*
9. Specification 9-10, Interest due on Delayed Payments states: *The Department will determine and pay any interest due the Contractor for delays in final payment in accordance with Section 337.141 of the Florida Statutes.*

**RECOMMENDATION**

The Board finds that there is entitlement to the Contractor for the 10 days recognized by the Department as being reasonable and accurate.

The Board finds that there is entitlement to the Contractor for the costs associated with the 10 days.

The Board finds that there is entitlement to the time of impact prior to SA 28. The Department left 43 days open in SA 28 to be re evaluated.

The Board finds no entitlement to the Contractor for interest. The amount of compensation was not recognized by the Department until June 2008, and there has been no final payment paid on this contract. This recommendation on interest is different from our earlier recommendations due to the fact that it did not have a unilateral agreement where the Department agreed to compensation and did not make timely payments.

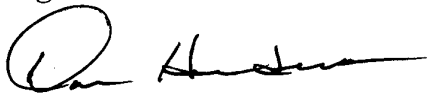
The Board sincerely appreciates the cooperation of all parties and the information presented for our review in making this recommendation.

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