

## DISPUTES REVIEW BOARD RECOMMENDATION

Force Main Conflict at Station 125+50 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 entitlement to interest  
cost for the Force Main Conflict at Station 125+50 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 September 20, 2005, ACC encountered a conflict with an existing sanitary force main and the new drainage pipe installation at Station 125+50 Rt. On September 22, 2005, a solution was provided by KCCS to resolve the conflict. By September 23, 2005, ACC completed the work and released its drainage crew to continue with the Contract work.

The Department recognized the delay and has paid ACC a portion of its cost proposal with Unilateral SA No. 48. The Department has not recognized the additional time requested by ACC. On December 6, 2006, KCCS recognized that ACC was due the 2 Contract days requested, however, on December 21, 2006 KCCS withdrew its 2 day offer.

The force main conflict was encountered on September 20, 2005, and prevented the drainage crew from installing the RCP pipe at that area until the conflict was resolved. The solution provided by the Department required ACC to cut a section of existing force main and install the RCP drainage pipe through the conflict section. The existing force main would then be reconnected by the Utility owner and a concrete trust block would then be poured to lock the two pipes together. This work was completed on September 23, 2005, which released the drainage crew to continue with the pipe installation.

The Department's "Controlling Item of Work" form for the week of September 14, 2005 to September 27, 2005 confirmed that the drainage work at Station 125+00 to 127+00 and the pile driving and deck forming at the Imperial River Bridge were both critical items of work."

### **REBUTTAL**

"ACC agrees with the Department's entitlement for this issue. ACC requests this DRB Board to recognize that ACC is also due interest costs in accordance to FDOT Standard Specification 9-10 "Interest Due on Delayed Payments" for the \$5,263.20 recognized by the Department to be paid."

### **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 this Force Main Issue.

"At this time the Department concedes their previous position and has concluded the Contractor is entitled to \$5,263.20 and two (2) days for indirect costs associated with this delay. A review of the original work order 2999-26-13 did not provide for indirect costs as stated in the entitlement analysis. The Work Plan - Controlling item of Work indicated this item was a critical activity. Also a copy of the schedule in effect at the time the conflict was encountered indicated activity RW2300 was a critical activity. Therefore this amount of money and time will be recognized by Supplemental Agreement and no further action is required by the disputes review board."

## **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 2 day time extension to the contract for the Force Main Conflict at Sta. 125+50. In this letter the Department reviewed the request and found it to be accurate and reasonable.
2. No time frame was given in the letter regarding acceptance of the 2 days offered for this issue.
3. The Department recognized that ACC was entitled to 2 days contract time extension of time due to this issue.
4. In a letter dated December 21, 2006 the Department rescinded the offer of 2 days contract extension.
5. The Department did not finally and officially recognize that ACC was entitled to the 2 days until June 2008.
6. 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.*
7. 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 2 days that the Department recognized on December 6, 2006 that ACC was due.

There is no entitlement to the interest for this issue. 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.

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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, stylized initial "D" at the beginning.

Don Henderson, PE