

DISPUTES REVIEW BOARD RECOMMENDATION
Sprint Conflict Station 128+00 Rt. Rdwy

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 additional time and recovery of costs FOR THE Sprint Conflict at Sta. 128+00.

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 October 8, 2005, ACC encountered a conflict with an existing Sprint telephone cable and the new drainage pipe installation at Station 128+00 Rt. ACC remobilized its drainage pipe crew to a different area while the Sprint telephone cable was to be relocated by the Utility owner.

On October 14, 2005, ACC remobilized its drainage crew to the area to complete the work. As of this date, the Utility owner had not relocated its telephone cable. ACC had to expose the conflicting telephone cable and install the drainage pipe under the existing cable to complete the drainage work at the area.

The Department's "Controlling Item of Work" form for the week of September 28, 2005 to October 11, 2005 and for October 12, 2005 to October 25, 2005 confirmed that the drainage work was a critical item of work.

The Department recognized only 1 day for the delay and has paid ACC a portion of its costs associated with the 1 day delay. On December 6, 2006, KCCS recognized that ACC was due and additional 2 Contract days, however, on December 21, 2006, KCCS withdrew its 2 day offer.

On March 29, 2006, ACC issued its cost proposal for sprint conflict at Station 128+00 Rt. in the amount of \$16,780.06 and 7 additional Contract days.

KCCS entitlement analysis of April 13, 2006, recognized that ACC was due \$1,906.46 and a 1 day for the conflict. KCCS did not recognize ACC's hotel and per diem costs, and site overhead costs for the 7 days claimed by ACC. On April 14, 2006, the Department issued Field SA No. 2999-26-07 in the amount of \$1,906.46 and 1 additional Contract day. Field SA No. 2999-26-07 was not signed by ACC, and returned to KCCS on May 22, 2006.

On August 2, 2006, FDOT issued Unilateral Payment for Supplemental Agreement (SA) No. 48 which included payment for the Sprint conflict in the amount of \$1,906.46 and 1 day."

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 \$14,188.56 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 Sprint Conflict Issue.

"ACC originally submitted a claim on March 29, 2006 in the amount of \$16,780.06 and seven (7) days for alleged interference of a Sprint cable in the vicinity of Station 128+00 Rt. The Department processed a Unilateral Supplemental Agreement, part of which included \$1,906.46 and one (1) day, which ACC has acknowledged.

Later, as part of ACC's Request for Equitable Adjustment, ACC revised the claim amount to \$16,834.47 and six (6) days. ACC's cost proposal includes per diem and hotel costs. The claim also included \$13,943.86 for overhead. Supplemental Specification 5-12.6.2 allows compensation for indirect impacts and jobsite overhead provided that a delay to a controlling item of work is greater than ten (10) days and is caused solely by the Department. The original ten (10) days of indirect costs were previously absorbed by ACC on the earlier issue involving the major gas main conflict. This particular delay was caused by a third party's failure to accurately identify locations of their facility during the design phase.

Upon revisiting this issue, additional entitlement was granted for one day of indirect costs and extended MOT in the amount of \$2,645.91.

Amount in Dispute:

There still remains **\$ 14,188.56 and 6 days** in dispute for this issue.

At this time, the Department concedes their position that ACC is not due additional entitlement for this issue. Although this issue has been originally analyzed and revisited, in light of the fact that the original ten (10) days of indirect costs have already been absorbed by ACC on a separate issue, the Department will recognize the costs associated with the entire delay.

It is clear from the records included in the portion of Unilateral Supplemental Agreement related to this issue, that the delay did in fact occur from 10/08/06, and lasted through 10/14/06 for a total of seven (7) days. Therefore, the Department will recognize the balance in dispute.

The Department concedes its position and will recognize the disputed amount of \$14,188.56 and six (6) days.

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 the Department's review of this issue they determined that there was an additional 6 days impact to the schedule caused by this impact.
2. The Department did not finally and officially recognize that ACC was entitled to the 6 days until June 2008.

3. 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.*
4. 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 time as offered by the Department and accepted by ACC.

The Board does not find entitlement to the interest on the \$14,188.56. 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