

DISPUTES REVIEW BOARD RECOMMENDATION
RCS/BSU Conflict at Station 125+62 Rt. Rdwy.

18 July, 2008

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 additional entitlement for the RCS/BSU Conflict at Station 125+62.

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 November 21, 2005, ACC encountered a utility conflict at Station 125+62.5 with the BSU and RCS utilities. ACC suspended its drainage operation at the Station until November 30, 2005, when the Utility Owner provided ACC with the necessary information to complete the relocation of the line encountered.

On November 30, 2005, when ACC remobilized, it again encountered a utility conflict with the Reclaim Water line at Station 126+00 Lt. The actual location of the water line was reported to be several feet away from the location depicted in the plans and utility location flagging. A solution was provided by the Department on December 1, 2005. ACC was required to remove the existing utility during the drainage installation run. Once the drainage run to structure

S-535 was complete, RCS would re-install the utility with its own labor force. KCCS was notified of these events on December 2, 2005 (Page 4).

December 5, 2005, KCCS acknowledged ACC's written notification of the delay.

On May 2, 2006, ACC submitted to KCCS its cost proposal for the RCS and BSU conflict at Station 125+62 in the amount of \$43,950.96 and 9 days of additional Contact time.

On May 16, 2006, KCCS responded to ACC's cost proposal and recognized that ACC was due \$8,432.92 and 0 days for additional Contract time.

On September 19, 2006, FDOT issued Unilateral Payment for SA No. 51 in the amount of \$8,432.92 and 0 days.

FDOT "Controlling Item of Work" form for the week of November 23, 2005, to December 6, 2005, confirmed that the drainage pipe installation through out the Project was critical and controlling the finish date of the Project.

ACC's schedule, current at the time the conflict was encountered, was ACC schedule designated "BS15" data date of November 25, 2005 (Page 25). ACC schedule update "BS15" reflected that the drainage pipe installation work activity ID #RW2600 - "INST. 600 RCP FROM S-535 TO S-533" was planned to start on November 29, 2005, and to be completed on December 3, 2005. Activity #RW2600 was critical and controlling the Project path for completion at the time."

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 \$44,252.64 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 the RCS/BSU Conflict.

"At this time, the Department's concedes its previous position that ACC is not due additional entitlement for this issue. Upon revisiting the project records, it

is clear that ACC's drainage crew was impacted for nine (9) days between 11/21/05 and 12/05/05 (taking days out for Thanksgiving and Sundays.) The delay was not proven to be on the critical path, therefore, no additional time should be considered. However, it can be shown through project documentation that the drainage crew was unable to mitigate the delay and find productive work elsewhere on the project during that timeframe.

Upon review of ACC's proposal, the costs are deemed reasonable, and therefore, the Department will recognize the disputed entitlement in the amount of \$44,252.64.

Desired Ruling:

The Department concedes its previous position and will recognize the disputed amount of \$44,252.64 and zero (0) days. No further action will be required of the 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. ACC agrees with the Department's entitlement for this issue.
2. The Department did not finally and officially recognize that ACC was entitled to the \$44,252.64 until June, 2008.

RECOMMENDATION

The Board finds that there is entitlement to the Contractor for the funding offered by the Department and accepted by ACC.

The Board does not find entitlement to ACC for interest on 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 recommendation due to the fact that it did not have a unilateral agreement where the Department agreed to compensation and did not make timely payments.

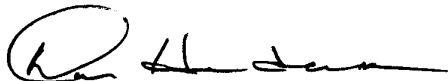
The Board sincerely appreciates the cooperation of all parties and the information presented for our review in making this recommendation.

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

A handwritten signature in black ink, appearing to read "Don Henderson". The signature is written in a cursive style with a large initial "D".

Don Henderson, PE