

DISPUTES REVIEW BOARD RECOMMENDATION
Adjust S-536A

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 time and
overhead costs for the Adjustment of S-536A structure.

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.

“Structure S-536A had to be modified and raised to avoid a conflict with an existing water main. ACC modified the structure in 1 day. The modification to the structure was recognized by KCCS to be a controlling item of work for which ACC was due a time extension to the Contract Completion date. The Department reneged on the 1 day time extension recognized.

On February 24, 2006, KCCS recognized that ACC was due \$4,238.04 and 1 day. KCCS noted that ACC’s proposal had underestimated the actual hours expended to relocate and modify S-536.

On March 3, 2006, ACC agreed with the KCCS entitlement analysis and requested a Field Supplemental Agreement (FSA) in the amount \$4,238.04 and 1 day.

On March 8, 2006, contrary to its entitlement analysis, KCCS recognized that ACC was only due \$4,210.98 and 0 days. KCCS contended that the modification work to S-536 was not on the critical path.

On March 9, 2006, ACC notified KCCS that it could not accept the proposal without the Contract time extension.

On August 2, 2006, FDOT issued Unilateral Payment for Supplemental Agreement (SA) No. 48, which included two payments for modification to structure S-536 in the amount of \$1,803.50 and \$2,407.48, for a total of \$4,210.98. Unilateral Payment for SA No. 48 did not recognize the 1 day of additional Contract time.

On December 6, 2006, KCCS recognized that ACC was due 1 additional Contract day. However, on December 21, 2006, KCCS withdrew its offer of the 1 day previously recognized.

The record is clear that ACC's modification to structure S-536A disrupted the critical path progress of work of the drainage pipe. The 1 day delay was recognized in KCCS' February 24, 2006 entitlement analysis. The analysis reported to ACC that a 1 day time extension would be added to the Contract Completion date. KCCS reneged on the time extension on March 8, 2006 only again to recognize that ACC was due the time extension on December 6, 2006. Again on December 21, 2006, KCCS reneged on the time extension due.

ACC requests this DRB Board to recognize that ACC is due the time entitlement recognized by the Department for this issue. ACC seeks the additional Contract time extension and recovery of its extended MOT and overhead costs for the 1 day recognized."

REBUTTAL

"ACC also requests this DRB Board to recognize that ACC is also due interest costs in accordance with FDOT Standard Specification section 9-10 "Interest Due on Delayed Payments"."

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 Adjustment of S-536A.

"The Department contends that this work was not on critical path at the time of delay (Oct. 18, 2005). The one day of time requested by ACC has been re-reviewed, and it has been determined that the delay did not affect critical path work, therefore, the one day time extension is denied along with the associated indirect costs of \$2,254.72."

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. There was a conflict with S-536A which required an adjustment to the structure.
2. The KCCS letter 484 dated February 24, 2006 recognized additional hours and 1 day of contract time due to ACC for this impact.
3. The KCCS letter 498 dated March 8, 2006 rescinded the 1 day of contract time stating that the activity was not on the critical path schedule.
4. The KCCS letter 628 dated December 6, 2006 found the ACC request to be accurate and reasonable and offered 1 day contract extensions.
5. The KCCS letter 638 dated December 21, 2006 rescinded the 1 day contract extension for this issue.
6. The work plan for the controlling item of work for the period 10-12-05 to 10-25-05 showed drainage to be a controlling item of work.

RECOMMENDATION

The Board finds that there is entitlement to the recognized time and costs associated with this issue.

The Board finds 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.

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", written over a horizontal line.

Don Henderson, PE