

DISPUTES REVIEW BOARD RECOMMENDATION
Riser Required at S-291

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 recover
costs of Modification (Riser) to S-291.

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.

“The S-291 and S-292 structures depicted in the Contract drawings were required to be modified as a result of the Department eliminating a section of pipe.

On February 26, 2004, KCSS reiterated its previous discussions and directed ACC to eliminate 33.8 meters of the drainage pipe between the structures S-291 and S-292, and modify both structures. Revised flow line elevations would be provided at a later date.

The drainage pipe from S-293 to S-291 was installed from January 16, 2006 to January 24, 2006. On January 24, 2006, ACC set the modified S-291

structure only to discover on the next day that the drainage pipe run from S-293 would be over the top of the S-291 structure. To resolve the problem, on January 25, 2006, KCCS provided ACC with a hand drawn sketch which included details requiring the fabrication of a riser to resolve the conflict at the structure.

KCCS's January 25, 2006 sketch was an additional change to the previously modified S-291 structure, and was necessary to achieve the required flow line for the pipe run. KCCS intended ACC to again modify the S-291 structure in the field rather than procure a new structure from its vendor.

The modified structure arrived on site on April 20, 2006, eighty five (85) days after the hand drawn sketch was issued. The structure delivered to the Project site had to be modified to accept the elliptical pipe. FDOT Daily report of June 19, 2006 reflects that ACC mobilized a drainage crew at S-291 to perform the work.

ACC requests this DRB Board to recognize that ACC is due entitlement for this issue. ACC seeks to recover the costs associated with modifications in the field of the S-291 structure and a time extension for the preparation, approval and delivery to site of the fabricated structure.”

REBUTTAL

“ACC requests this DRB Board to recognize that ACC is due entitlement for this issue. ACC seeks to recover the costs associated with the modifications in the field of the S-291 structure and a time extension for the preparation, approval and delivery to the site of the fabricated structure. ACC requests this DRB Board to recognize that ACC is also due interest costs in accordance with to 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 S-291 Riser issue.

“On February 13, 2004, FDOT agreed to allow ACC to modify Structure S-291 to eliminate the redundant pipe crossing proposed to cross US 41.... Because a pipe crossing was already constructed at Station 79+60+/- from the adjacent Better Roads project, ACC requested that proposed pipe crossing at station

80+40 +/- be eliminated and that they simply run a pipe south out of S-291 to adjacent project structure S-229. The Department agreed to this idea.

All work associated with modifying S-291 was to be done at no additional cost to the Department as the savings in MOT and time would more than offset the cost to modify the structure. The modifications to the structure were simple. They consisted of plugging the hole in the east side of the structure (where the pipe would have been placed across US 41) and adding a hole to the south side of the box (so that the run of pipe from S-291 to S-229 could be added.) For some unknown reason, numerous questions emerged from ACC regarding how this structure was to be modified including pipe sizes and flow lines. KCCS responded that they would coordinate the design revision but would need some minor survey data. ACC procrastinated in providing that data as the work was non-critical.

All items of work associated with this change were to be borne by the Contractor as it was to his benefit to eliminate the pipe crossing. Doing so saved a great deal of time as well as MOT costs, none of which have been shown as a credit in this claim.

Delays in obtaining the plan revision were a direct result of ACC's refusal to provide survey data needed in order to design the plan revision, and ACC's own procrastination in completing this work as it was never shown on the critical path.

At this time, the Department's position is that ACC is due no entitlement for this issue. The scope of work involved in modifying this structure was quite simple, and no credit was ever issued by ACC for all the time saved by eliminating the pipe crossing, nor was a rebate offered to the Department for decreased MOT costs. The Department did not delay in providing the required information needed for the structure modification once ACC provided the required survey information. There is no basis for this claim."

REBUTTAL

"The Department assisted ACC with their request to eliminate the pipe crossing. The modifications to S-291 were quite simple, and non-critical from a schedule standpoint. ACC elected to wait until nearly all other drainage work was completed before making the modification.

The Department responded in a partnering manner to eliminate the unnecessary work associated with the redundant pipe crossing.

The Department told ACC in the progress meeting held on March 3, 2004, that the flow line elevation for the south side of S-291 should match the existing west side. At that time, ACC was told verbally to shoot an elevation on the

structure at S-229 to be certain that the south flow line of S-291 would be higher. ACC assured the Department that the survey would be done, but they put off this work indefinitely, and did not revisit this issue until near the end of the project. In an attempt to assist ACC, KCCS provided a hand drawn sketch to ACC to assist in the Structure modification. It is the Department's position, however, that all costs, including redesign, should have been borne by the contractor.

In light of the above statements, it is the Department's position that ACC is not due any entitlement for this issue."

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. None of the participants with first hand knowledge of this issue were available for the hearing.
2. Initially the line crossing the highway between S-291 and S-292 was eliminated in a letter to ACC on February 26, 2004.
3. The February 26, 2004, letter indicated that a flow line would be provided to ACC.
4. The flow line was given to ACC in progress meeting #10 held on March 3, 2004.
5. ACC took no action on the above information, nor were any questions asked concerning this work until January, 2006, when pipe laying started in the area.
6. There was unanticipated extra work required by ACC to modify and place the riser on S-291.

RECOMMENDATION

The Board finds that there is entitlement to the costs associated with the modifications in the field to the S-291 structure.

The Board finds that there is no entitlement to an extension of time for the modification of the S-291 structure.

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.

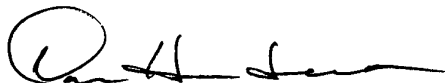
The Board sincerely appreciates the cooperation of all parties and the information presented for our review in making this recommendation.

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", written over a circular stamp or mark.

Don Henderson, PE