

DISPUTES REVIEW BOARD RECOMMENDATION
WO14---Modify S-128

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 compensation for WO14-Modify S-128 impacts.

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-128 structure did not have a block-out to receive the ACC 600 RCP from S-292 to S-128. ACC was directed to modify the structure in the field and complete the connection at a later date. The Project daily records reflect that the connection was actually performed over an 8 day period from June 21, 2006, to June 28, 2006, utilizing skilled divers.

The Department recognized the extra work and issued Unilateral Payment for Supplemental Agreement (SA) No. 44 which included payment for the S-128 extra work in the amount of \$21,745.10. The Department did not recognize the additional Contract time due to modify the structure and complete the connection.

KCCS did recognize on December 6, 2006, that ACC was due additional Contract time, however, on December 21, 2006, KCCS withdrew its offer of the 5 days previously recognized.

ACC requests this DRB Board to recognize that ACC is due additional entitlement for this issue. ACC's Request for Equitable Adjustment (REA) was seeking \$33,384.03 and 8 days of Contract time extension. ACC seeks recovery of the direct and indirect costs associated with the two days in January of 2006 when the drainage crew was disrupted by the S-128 conflict and the 8 days expended to complete the connection at the S-128 structure."

REBUTTAL

"The Department contends that it has not considered a time extension for this extra work as ACC was in the liquidated damages period of the Project, as such, a time extension was not warranted. The Department fails to recognize that the amended Contract Completion date was established as July 8, 2006. FDOT and ACC Daily reports reflect that the S-128 structure was plugged and the connections were made to structure S-292 from June 21, 2006 to June 28, 2006. FDOT Controlling Item of Work form, from June 21, 2006 to July 4, 2006 also recognized that modifications throughout the Project were deemed critical and controlling the finish date of the Project. It is ACC position that the extra work was performed well within the recognized Contract period and also a controlling item of work.

ACC further contends that on December 6, 2006, KCCS recognized that ACC was due 5 additional Contract days. However, on December 21, 2006 KCCS withdrew its offer of the 5 days previously recognized."

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 WO14- Modify S-128.

"On January 26, 2006 KCCS notified ACC that S-128 did not have a block-out in order to receive the 600mm RCP from S-292. ACC was informed this issue would be tracked in order to compensate by WO.

The entitlement analysis for WO #2999-26-14 pointed out that a time extension was not considered. The work was required to be performed within the allowable contract time and authorized time extensions. At the time of analysis of the conflict ACC was in LD's thus additional time was not warranted. Upon review, the Department recognized that two days of compensable time was justified (January 25, 2006 and January 26, 2006). SA 79 compensated for \$5291.82 and 2 days. No further entitlement is recognized."

REBUTTAL

"The Department stands behind its position paper, but would like to add the following:

Page 3 of Position Paper issue #19-Modify Structure S-128 is requesting 2 additional days not mentioned in the REA or initial position statement. Because this amount was not previously included in the claim and is not certified, this office requests the DRB disallow this position modification and provide no ruling for this portion of the previously submitted claim."

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. The Department recognized that there was extra work associated with the S-128 Structure and issued Unilateral Payment #44 in the amount of \$21,745.10 and no time.
2. The Department did not grant a time extension because the Contract was beyond the recognized Contract duration.
3. Because of additional Supplemental Agreements adding time to the Contract, it now appears that the work took place under the allowed Contract time extended, and was critical to project completion.
4. In a December 6, 2006, letter the Senior Project Engineer granted ACC's request for 5 days of additional contract time, and characterized the 5 days as "reasonable and accurate".
5. The 5 days were based upon ACC accepting certain conditions, but no time limit was placed upon ACC to accept.

6. In a December 21, 2006 letter the 5 day contract extension was withdrawn.
7. Work Order #14 compensated ACC \$5,291.82 and added 2 days to the contract for this issue.

RECOMMENDATION

The Board finds that there is entitlement to additional contract time and associated costs.

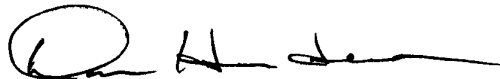
The Board sincerely appreciates the cooperation of all parties and the information presented for our review in making this recommendation.

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