

**DISPUTES REVIEW BOARD RECOMMENDATION
ISSUE 22 GROUTING AT SPRING CREEK BRIDGE**

21 August, 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 overhead costs for the Grouting at Spring Creek Bridge.

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 hydro-demolition operation required by the Contract documents and shown on the plan sheet C-1 eroded the existing grout seams at the Spring Creek Bridge. To correct the problem, ACC was required to remove the remaining grout in place and replace it with new seams. This extra work directly affected ACC’s ability to maintain progress on its Contract work consistent with Article 3 of the Acceleration Agreement SA No. 28, and affected the “Bonus” Payment milestone date also established in the Acceleration Agreement.

The extra work was performed in a 12 day period from March 20, 2006 to April 1, 2006, which represented an additional 682.744m of grouting material to be installed. The Department's Controlling Item of Work forms for the period in which the extra work was performed confirmed that the Spring Creek Bridge deck pour was a controlling item of work.

On April 1, 2006, ACC completed replacing the grout seams and informed KCCS on April 5, 2006, that the cost for the extra work would be forth coming.

On May 2, 2006, ACC submitted its cost proposal for the extra work and requested KCCS to increase Bid Item #2400128 - Grouting Precast Deck Panels by 682.744 meters, and 12 days of additional Contract time.

On May 3, 2006, KCCS denied ACC proposal request. KCCS contended that Plan sheet C-29 called for the top surface of the existing panels to be only roughened to amplitude of 6 mm after milling the existing asphalt. During the hydro-demolition operation as much as 50 mm of the top surface was removed exposing the grout seams, and resulting in the extra work.

On May 17, 2006, KCCS recognized that additional funding was due and recommended an increase of 682.7m to the original quantity for Pay Item #2400128 from 430.300m to 1,113.0m.

On September 7, 2006, ACC confirmed that the additional 682.70m for Bid Item #2400128 had been paid, and requested a Supplemental Agreement for the additional 12 Contract days required to perform the extra work.

On December 6, 2006, KCCS confirmed that the extra work was performed over a 12 day period from March 20, 2006 to April 1, 2006 and contended that 4 days were previously granted by USA No. 60, however when USA No. 60 was later issued, it clearly recognized 0 days. As such, KCCS recognized that ACC was only due the remaining 8 days. On December 21, 2006, KCCS withdrew its offer of the 8 days previously recognized.

On February 16, 2007, the Department issued Unilateral Payment for SA No. 60 in the amount of \$52,567.90 and 0 days for the additional grout seams required at the Spring Creek Bridge.

On May 1, 2008, KCCS entitlement analysis for Unilateral Supplemental Agreement No. 79 recognized that ACC was due \$21,168.00 and 8 days for Issue # 22 Grouting at Spring Creek Bridge.

KCCS December 6, 2006 entitlement analysis confirmed that cleaning and grouting of the longitudinal joints was performed over a 12 day period from March 20, 2006 to April 1, 2006. However, KCCS recognized that ACC was only due 8 days as 4 days were noted to have been granted by SA No. 60.

KCCS erred on this position as Unilateral Payment for SA No. 60 did not grant a time extension.

FDOT Controlling Item of Work form from March 15, 2006 to March 28, 2006, and from March 29, 2006 to April 11, 2006 confirmed that forming and deck pour at the Spring Creek Bridge was a critical and controlling the finish date of the Project.”

REBUTTAL

“ACC schedule update designated “BS16” was dated December 20, 2005 (Pages 13-12). The extra work of filling the longitudinal joints with the approved grout was reported by KCCS to have been performed from March 20, 2006 to April 1, 2006 (Pages 13-15). The “BS16” schedule update dated December 20, 2005 was not the schedule update current at the time the extra work was performed, as the extra work was performed nearly three months later.

The one day plan duration for the grout work filling depicted in the “BS16” schedule update was for the 430.30 meters of new joints originally budgeted and not the additional 682.744 meters of existing joints that required removal of the old grout, cleaning and re-grouting of the joint.

ACC requests this DRB Board to recognize that ACC is due the 4 day time entitlement for this issue reported to have been included in USA No. 60. ACC seeks to recover the 4 days of additional Contract time recognized by the Department in KCCS’ concise issue statement that was supposedly recognized in SA No. 60 and the overhead and MOT costs associated with the 4 days. ACC seeks this DRB Board to also recognize that ACC is also due interest costs in accordance to FDOT Standard Specification section 5-12.5 “Pre-Settlement and Pre-Judgment Interest” for the amounts 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 indirect costs associated with Grouting at Spring Creek.

“ACC is claiming for \$27,056.12 and twelve (12) days for payment of indirect costs as the result of an increased quantity of grout at the Spring Creek Bridge. After hydro-demolition of the existing structural overlay, it was observed that the existing grouted keyways had been cracked and the grout was partially

displaced leaving voids. In response, the Designer of Record advised that the joints would need to be grouted prior to placing the new structural overlay.

ACC performed the work, but there was disagreement on the number of days that should be granted for the extra work. The original Engineer's Estimate considered four (4) days of time to be granted because one of the crews had to postpone other critical activities in order to perform the work. At the time the work took place, schedule BS16 indicated that one (1) day was planned for the work of filling the longitudinal joints with approved grout. However, the activity showed -10 days are float, thereby making the schedule invalid.

Later, in an attempt to negotiate a settlement on this and several other issues, KCCS offered eight (8) days pending FDOT approval. This was agreed upon, but then ACC reneged on the offer.

A review of this issue found entitlement to \$21,168.00 and eight (8) days. This was subsequently incorporated into USA 79."

REBUTTAL

"ACC acknowledges that the Department has recognized \$52,567.90 to cover the cost of the work. Their position also acknowledges that they have been paid overhead expenses associated with 8 days of additional contract time. It is their position that the work took 12 days, and they are seeking the additional 4 days of contract time and associated costs.

ACC performed the work, but there was disagreement on the number of days that should be granted for the extra work....At the time the work took place, schedule BS16 indicated that one (1) day was planned for the work of filling the longitudinal joints with approved grout. Using this logic, and agreeing with ACC's analysis that the revised grout quantity increased by 158%, it would stand to reason that the revised duration for the task should be 3 days.

In KCCS's analysis of time related to this issue, the engineer's estimate shows that the schedule was impacted by four (4) days. These days were included originally in SA#60, which ACC refused to sign. This resulted in USA #60. USA 60 did not include the four (4) days, but should have.

In an attempt to negotiate a settlement on this and several other issues, KCCS offered eight (8) days pending FDOT approval, to bring the total number of days added to the Contract to twelve (12) as desired by ACC. This was agreed upon, but then ACC reneged on the offer, and KCCS withdrew the offer. Upon further review, however, it was determined that the twelve days previously offered could not be substantiated with a schedule review.

Nonetheless, and despite the above, the Department revisited this issue and recommended that eight (8) days, plus associated overhead in the amount of

\$21,168.00 be granted for this issue....It is not implied that the eight (8) days were to be additive to the four (4) previously determined and incorporated into SA 60.

Furthermore, the Contractor has failed to meet the contract requirements as it relates to a request for time on this issue. The Contractor did not notify the Department within ten days of commencement of this delay, nor have they provided an updated, as-build CPM schedule to demonstrate why the duration of this task should increase from 1 day to 12, given that there was only a 158% increase to the quantity of the pay item for this work.”

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. Removal and replacement of the grout seams at Spring Creek was extra work and a controlling item of work.
2. The extra work was recognized by KCCS in a letter dated May 5, 2006.
3. The Department did compensate ACC for the direct costs of the extra work in Unilateral Payment #60. No time was given for this work activity.
4. The work effort to remove and replace 50mm grout seams was greater than the effort of roughen and replace 6mm as called for in the plans and bid documents.
5. In a December 6, 2006 letter from KCCS they recognized that the request for 8 days time extension from ACC was reasonable and accurate. This letter did not state that it was a settlement offer nor did it have a timeframe for response from ACC.
6. In a December 21, 2006 KCCS rescinded the offer of 8 days time for this conflict.
7. This work was a controlling item of work.

RECOMMENDATION

The Board finds that there is entitlement to ACC for the time related to this issue. The Board recognized that the request for time from ACC is reasonable and accurate, as the Department did, in their December 6, 2006, which

determined 8 days were reasonable and accurate. In addition there is entitlement to interest on any determined quantum as outlined under FDOT Standard Specification section 5-12.5 "Pre-Settlement and Pre-Judgment Interest".


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", with a large, stylized initial "D" at the beginning.

Don Henderson, PE