

**DISPUTES REVIEW BOARD RECOMMENDATION
ISSUE 24 MODIFY BRIDGE PEDESTRIAN LIGHTS**

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
unrecognized MOT costs.

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 Bridge and Pedestrian light pole assembly depicted in the Contract drawings was defective and required to be modified. The Department recognized that the corrective work was required and issued Unilateral Payment for SA No. 61 in the amount of \$19,540.45 and 5 additional Contract days.

The Department did not recognize all of ACC MOT costs associated with the 5 day time extension granted.

On July 7, 2006, KCCS issued RFI #70 to the Designer of Record (PBS&J) regarding the installation of the pedestrian lighting assembly and the roadway

luminaire at the Imperial River Bridge. PBS&J replied to KCCS RFI #70 on July 21, 2006. PBS&J reply required the pole manufacturer to provide a bracket adapter plate to bolt onto the light pole assembly to resolve the luminaire issue. On July 24, 2006, KCCS forwarded PBS&J reply and requested ACC lighting subcontractor, Mastec, to provide a repair procedure.

On November 7, 2006, ACC submitted its cost proposal to modify the pedestrian lights depicted in the Contract drawings in the amount of \$22,822.50 and 5 Contract days, along with statement that ACC was reserving its rights and to readdress the issue after all impacts have been realized.

On November 11, 2006, KCCS acknowledged ACC cost proposal and recognized that ACC was due \$14,856.59 for the extra work. KCCS entitlement analysis recognized ACC overhead costs and only 10 hours for the MOT truck costs for the 5 days.

On November 13, 2006, ACC took exception to KCCS entitlement analysis. The Department only recognized 10 hours of the 50 hours requested for the MOT crew and had also erred with the indirect daily cost rate applied. ACC requested the Department to issue a Unilateral Payment in the amount that was requested in ACC revised cost proposal and reserved to right to readdress issue after all impacts have been realized.

On January 25, 2007, the Department issued Unilateral Payment for SA No. 61 in the amount of \$19,540.45 and 5 Contract days. The Entitlement analysis included with USA No. 61, confirmed that the Engineers valuation was based on the estimated time required to perform the work plus a reasonable markup. The analysis also noted that the MOT crews were negotiated and agreed between the Engineer and the Contractor, however no specifics to the agreement were provided by the Department.

FDOT has recognized the additional 5 day Contract time extension, but only 10 hours for ACC MOT expenses. FDOT does not recognize all of ACC's MOT costs (50 hours) associated with the 5 day time extension granted by Unilateral Payment for SA No. 61."

REBUTTAL

"ACC requests this DRB Board to recognize that ACC is due additional entitlement for this issue. ACC seeks to recover unrecognized MOT costs, this being the 16 hours of straight time plus 4 hours of overtime, including the proper burden with motels and per diem costs, the Equipment costs for the 10 hours, the elimination of liquidated damages during this Unforeseen Extra work and the MOT devices that were not compensated for the 5 days of time extension. These costs were not recognized by the Department with its Unilateral Payment for SA No. 61. ACC seeks this DRB Board to recognize that

should additional entitlement be due, then 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 the Modification of the Pedestrian Lights.

"The lighting plans and the bridge plans did not agree with the placement of the bridge mounted lights. Plan Sheets L-11 and L-12 indicate the light pole installations should be mounted on the traffic railing. Also, note 2 on Sheet L-5 requires that the bridge/ped assembly be provided on the opposite side of the pole to illuminate the walkway. The Imperial River Bridge plans, however, indicate that the light pole pilasters are constructed on the back of the parapet wall. The pilasters and conduits were constructed in accordance with the bridge plans. Therefore, in order to illuminate the walkway instead of the river, it was necessary to modify the poles so that both the street luminaire and the pedestrian luminaire would be on the same side of the pole.

A review of the REA indicates ACC has now modified the original cost proposal request to \$25,955.51. ACC has increased the agreed upon MOT hours from 30 hours, to 40 hours of regular and 10 hours of overtime. ACC is seeking a balance of \$6,415.06. No supporting documents such as time sheets or daily reports were provided to support this change.

KCCS has reviewed its original Entitlement Analysis. We can find no further entitlement for this claim and therefore our position remains unchanged."

REBUTTAL

"This office has reviewed the Position Paper # 24 from Astaldi Construction Corporation and takes exception to some of the statements as they were presented. The first sentence of ACC's position paper states that the light pole assembly depicted in the contract drawings was defective. That was not the case or the issue. The lighting plans and the structural plans did not agree and a minor modification was required to properly orient the pedestrian lights for the walkway.

The cost for the modification was discussed and agreed upon (KCCS Position

Paper #19, and concise issue statement letter 720,). Furthermore the ACC Position Paper describes work of setting up barriers. This was not the case and did not happen. All work that was accomplished was behind existing concrete traffic railing previously installed as part of this contract. No documentation has been provided by ACC to indicate additional entitlement is due. The last sentence of page 2 of ACC's Position Paper states "The corrective work was planned to be performed after all other work requiring lane closures was completed." No records can be found that support that statement.

All work that took place as a result of this contract modification has been properly paid for and this office can find no justification for additional entitlement."

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. Modifications to the light structures were required due to a design error.
2. This work was done behind an established MOT lane closure. In the Department's rebuttal they stated the lane closures did not happen. However in the hearing KCCS stated that there were lane closures for this activity.
3. The Department did not recognize all the cost of the time for this MOT operation.
4. The Contractor provided a daily log of work for 5 days of MOT during the modification work for the pedestrian lights on the Bridges. These logs showed the crew working more than 8 hour days. The Department did not refute the accuracy of the daily log sheets.
5. At the hearing ACC stated that they had to bring their crews in from another project 15 miles away to set up the MOT required each day that the lighting subcontractor was working on the modifications made due to the design error.

RECOMMENDATION

The Board finds that there is entitlement to ACC for the MOT operation used for the modification of the Bridge Pedestrian Lights. KCCS stated at the hearing that a MOT lane closure was used for this activity.

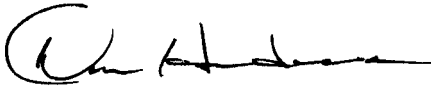
The Board sincerely appreciates the cooperation of all parties and the information presented for our review in making this recommendation.

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 in a cursive style.

Don Henderson, PE