

DISPUTES REVIEW BOARD RECOMMENDATION  
ISSUE #28 FIBER OPTIC CABLES

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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 additional entitlement for the change to fiber optic cable.

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 revised Contract interconnect conduits on Plan sheet T-3A dated March 4, 2004, did not accommodate the Contract specified PE-39 copper cables also referenced on Plan sheet T-3A dated March 4, 2004.

Contract Plan Sheet T-3A note 2555-1-1, 2630-1-12, and 260-1-13 called for the conduit for the interconnect cable to be a minimum of 100mm (4") in diameter of schedule 40 PVC and installed in 6m (20') lengths (Page 5). At the request of the County, the Design of Record (PBS&J) on March 4, 2004, changed the requirements for the interconnect conduit. The revised Plan Sheet T-3A note 2555-1-1, 2630-1-12, and 2630-1-13 was changed to depict that three (3) runs of 31.75mm (1.25") diameter conduits were required (Page 6). The Contract specified PE-39 interconnect cable identified on the same Plan Sheet, under note 2632-8-112 and 2632-8-212, remained unchanged.

On October 25, 2006, under Request for Information (RFI) #60, ACC informed KCCS that the specified PE-39 interconnect cable could not work with the specified three run

1.25" conduit, as the Contract specified cable would exceed the minimum 40% conduit fill requirement per the National Electrical Code. ACC provided KCCS with five options to resolve the conflict; one of these options was to install a 24 count single mode fiber optic cabling throughout the project

On November 15, 2006, the County representative provided KCCS with the fiber optic specifications for the Project.

On January 3, 2007, MasTec submitted to ACC its price proposal for the fiber optic change in the amount of \$123,489.02. The proposal included the County's additional request to provide larger patch panels and different pre-terminations, but did not include MOT costs as MasTec was of the position the extra work could be performed without lane closures.

On January 20, 2007, KCCS replied to ACC's price proposal and questioned many aspects of MasTec's estimate, which prompted Lee County to request pricing on a different fiber optic configuration on February 9, 2007.

On March 14, 2007, ACC submitted a revised price proposal to KCCS in the amount of \$76,644.54 for the extra work and a Contract time extension through the completion of the extra work. ACC informed KCCS that there was a procurement lead time of 3 to 4 weeks for the material. The material would only be ordered after the means of payment was established.

On April 27, 2007, FDOT issued Unilateral Payment for SA No. 71 in the amount of \$76,644.54 and no time for the extra work.

## **REBUTTAL**

KCCS's January 20, 2007 letter responded to ACC's January 4, 2007 price proposal to procure and install fiber optic cables in lieu of the specified interconnect copper wiring.

A review of ACC May 14, 2007 letter and attachments clearly demonstrates that from October 20, 2006, when MasTec informed ACC of the problem, until May 2, 2007, when the Department issued Unilateral Supplemental Agreement No. 71, the Department and the County were refining the design and material requirements for the fiber optic interconnects. During this period in which the Department and the County were refining the interconnect design, the Department was also assessing Liquidated Damages against ACC for the late completion of the Contract.

ACC believes that the Project records provided to this DRB speak for themselves. ACC is compelled to reiterate that the revised price proposal submitted on March 14, 2007, informed the Department there would be a procurement lead time of 3 to 4 weeks for the material to arrive on site. The Department was also informed that the material would only be ordered after the means of payment was established. On April 27, 2007, 44 calendar days after ACC submitted the revised price proposal, the Department issued Unilateral Payment for SA No. 71. The Project records reflect that

MasTec ordered the material on or about April 11, 2007<sup>1</sup> and delivered on April 19, 2007.

## **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 fiber optic change.

On March 4, 2004, pursuant to a request from Lee County, Plan Sheet T3A was modified to change interconnect conduits from one single 4" conduit to three separate 1-1/8" conduits, as part of their upgrade to the county-wide interconnects signal system.

It was not until October 25, 2006 that ACC notified KCCS that there would be a problem installing the cable inside the smaller ducts, and submitted RFI #60.

ACC submitted a price proposal of \$185,538.47 and requested that contract time be extended until the work was completed

KCCS denied the price proposal based on incorrect quantities calculated by ACC's subcontractor, MasTec.

A revised price proposal was submitted by ACC on March 4, 2007 in the amount of \$76,644.54 and requested that contract time be extended until the work was completed.

KCCS agreed to the revised price, but did not agree to the time extension, resulting in USA #71, which paid ACC 76,644.54.54 and 0 days.

Please note that ACC's subcontractor, MasTec (Atlas) did not begin *actual* installation of the interconnect cables until April 19, 2007. Pursuant to ACC's claim for an additional \$11,951.88 and 113 days, (6) compensable), there is no merit. ACC failed to explain why their subcontractor did not *attempt* to begin working on the interconnect cables until mid-October, 2006, which was already well beyond the allowable contract time. Furthermore, ACC did not submit an RFI until 10/25/06.

Upon review of the REA, ACC failed to demonstrate why their subcontractor, MasTec began their work on the interconnect system much later than originally planned. The work on the interconnect system was not affected by other critical activities taking place during most of the construction. With respect to the duration of the task, ACC states that the interconnect work began on April 19, 2007 and continued through May 25, 2007. With respect to this issue, it is important to recognize that KCCS did not receive an RFI for this issue until October 25, 2006. Nothing prevented ACC/MasTec from beginning their work on the interconnect cables on or near the originally planned

dated, nor did ACC provide a detailed analysis or correlate any impact to the critical path in their CPM schedule and present it in the REA.

Lastly, please note that ACC was already behind schedule and being assessed liquidated damages for reasons unrelated to this issue and within their control. The other incomplete or incorrect Contract work (such as other signal-related items) being performed was at no fault of the Department, and to return liquidated damages for this issue has no merit.

## **REBUTTAL**

The Department's position is that ACC has already been compensated fairly for this issue and that the time requested is neither warranted nor was the request for time extension done in accordance with Specification 8-7.3.2.

Upon review of the ACC's position paper, they have still failed to demonstrate why their subcontractor, MasTec began their work on the interconnect system much later than originally planned.

Furthermore, it is important to reiterate that the work on the interconnect system was not affected by other critical activities taking place during most of the construction. With respect to the duration of the task, ACC states that the interconnect work began on April 19, 2007 and continued through May 25, 2007. However, nothing prevented ACC/MasTec from beginning their work on the interconnect cables on or near the originally planned date, nor did ACC provide a detailed analysis or correlate any impact to the critical path in their CPM schedule and present it in the REA or position paper.

Further, it is also important to note that ACC was behind schedule and being assessed liquidated damages for reasons unrelated to this issue and within their control. The other incomplete or incorrect Contract work (such as other signal-related items) being performed was at no fault of the Department, and to return liquidated damages for this issue has no merit.

Lastly, ACC did not give proper notice to the Department in that they did not request a time extension and provide proper backup information within 30 days after the end of the delay in accordance with Specification 8-7.3.2.

## **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. At the request of the Lee County the interconnect conduits were changed from one 100 mm (4") diameter conduit to three 31.75 mm (1.25") diameter conduits on plan sheet T-3A, dated March 4, 2004.
2. Plan sheet T-3A, dated March 4, 2004, revised the interconnect conduits, but failed to revise the PE-39 copper cables, also shown on the same plan sheet.

3. It appears that no analysis was made, at that time, to determine if the specified PE-39 copper cables would fit in the revised conduits.
4. This is either an ambiguity in the plans or a plan error.
5. During the hearing ACC's subcontractor, MasTec, noted that they had written a purchase order for the specified PE-39 copper cable early in the project, but explained that they would release the PE-39 cable for shipment when it was required on the project, their normal practice.
6. During the hearing MasTec explained that they did not release the cable for delivery until near the time all the drainage and other underground work was complete because they do not normally place the cable in the conduit until it will be safe from being dug up by the underground crews.
7. At the hearing MasTec stated that when their superintendent saw the PE-39 copper cable in MasTec's shop he stated it would not fit in the existing conduits. Presumably this is when RFI #60 was prepared.
8. On October 25, 2006, ACC submitted RFI #60 to KCCS notifying them that the PE-39 copper cable specified would not fit inside the 1.25" conduit installed on the project, and suggesting possible alternatives.
9. Following the RFI, the County submitted their fiber optic specifications and MasTec provided a price for the work including additional items requested by the County (larger patch panels and different pre-terminations). ACC submitted this to the County and the KCCS questioned the cost. The County upon seeing the cost requested a different fiber optic configuration.
10. This all took place over the Holidays (Thanksgiving, Christmas and New years) and into early February, 2007.
11. Between February 7, and March 14, 2007, the County requested further items to be included and a price for a new fiber optic configuration was presented to KCCS. KCCS issued a unilateral supplemental agreement to ACC on April 27, 2007. The materials had previously been ordered on April 11, 2007. The fiber optic cable arrived on April 19, 2007 and the installation was completed on May 25, 2007.
12. Final acceptance of the project was granted on May 27, 2007.
13. This was not added work. Interconnect cabling was required in the original contract plans. It was a change of material that required coordination time with the County, pricing and finally installation.
14. Unilateral Payment #71 compensated the Contractor for material and labor for the fiber optic cable installation.

15. ACC provided notice of intent to claim a time extension and the cost in various letters during the period of time all of the above was taking place. See letter #405 dated January 4, 2007, and letter #418 dated March 14, 2007.

**RECOMMENDATION**

The Board finds that there is entitlement to the Contractor for this issue.

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



Don Henderson, PE