

DISPUTES REVIEW BOARD RECOMMENDATION  
ISSUE #30 EXTENDED SIDEWALK

12 October, 2008

Scott D. Woss, P.E.  
Senior Project Engineer  
KCCS  
1400 Colonial Blvd.  
Suite 260  
Ft. Myers, Fl. 33907

John Morgan  
Astaldi Const. Corp.  
8220 State Road 84  
Suite 300  
Davie, Fl. 33324

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 extended sidewalk to pedestrian light.

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 designer of record had the duty to the Department to ensure the design met ADA requirements. ACC constructed the sidewalks and installed the P-8 signal lighting assembly in accordance with the Contract drawings provided.

On February 8, 2007, KCCS requested ACC extend the concrete sidewalk at Station 130+34 to meet the existing pedestrian light pole on the southwest corner of US 41 and Old 41, such that the permanent works could meet ADA requirements.

Contract Plan sheet T-7 dated January 9, 2003, showed the installation of the pedestrian signal P8 to be mounted on the existing pedestal.

On February 8, 2007, KCCS requested ACC to extend the concrete sidewalk at Station 130+34 to meet the existing pedestrian light pole on the southwest corner of US 41 and Old 41.

On February 14, 2007, ACC submitted to KCCS its costs to perform the extra work in the amount of \$4,570.78 and one (1) day of additional Contract time.

On February 22, 2007, KCCS denied ACC's proposal request. KCCS noted that the sidewalk was extended as the pedestrian signal assemblies were not constructed close enough to the sidewalk to meet ADA requirements. ACC responded on the same day and provided KCCS with the Contract plan sheet T-7 which showed that MasTec was to utilize the existing pedestal to install the new signal device.

The sidewalks were constructed in accordance with the roadway Contract drawings. The pedestrian P8 signal lighting was installed to the existing pedestal in accordance with Contract plan sheet T-7. The coordination of the roadway and signalization drawings was the responsibility of the designer of record. The designer of record had the duty to the Department to ensure its design met ADA requirements. ACC constructed the sidewalks and installed the P-8 signal lighting assembly in accordance with the Contract drawings provided.

By February 8, 2007, it was evident that the design did not meet ADA requirements which prompted KCCS to direct ACC to extend the concrete sidewalk. The extra work to extend the sidewalk was added 203 calendar days after the amended July 20, 2006 Final Contract Completion date and during the same period in which the Department was assessing Liquidated Damages against ACC. Contrary to articles 8-7.3.1 and 8-7.3.2, the Department did not recognize ACC's time extension request for the late addition of the extra work, nor did the Department recognize the impact of its failure to the completion of ACC construction.

## **REBUTTAL**

A comparison of the plan sheet 53, and the as-built survey conducted in the same area clearly demonstrate the added work.

Contract specified Class 1 concrete has a compressive strength of 2,500 psi or 17MPA. The Sakrete concrete poured to extend the sidewalk has a compressive strength of 4,000 psi or 27MPA. The Sakrete placed met these compressive strength requirements, as confirmed by the packaging UPC code.

It is ACC's position that Mr. Dan Quinn with KCCS approved the use of Sakrete to extend the sidewalk.

## **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 extending the sidewalk.

On February 8, and 9, 2007, an ACC crew placed Sackrete for a sidewalk extension in the vicinity of the ped poles at station 123+53 and station 130+34.

On February 16, 2007 KCCS received ACC letter 414 requesting payment of \$4,570.78 and one day for work of extending the sidewalk in the vicinity of the ped pole at the SW corner on US 41 and Old 41.

KCCS responded on 2/22/2007 within letter 662, that no additional entitlement was due as it was a result of a placement error by the Sub-Contractor.

ACC responded with letter 416 , dated 2/22/07 requesting the Department to reconsider their position as plan sheet T-7 indicated that Mastec was to utilize an existing ped assembly.

KCCS has reviewed all of the pertinent back up related to this issue. In addition field visits have been made and pictures have been taken of the site. An error was made in KCCS letter 662 by stating the ped pole was placed in the wrong place. Clearly the note on plan sheet T-7 supports the fact that an existing pole assembly was to be used. However this does not change the fact that the sidewalk was constructed in the wrong location. This is supported by plan sheet T-7 and sheet 53. It should be noted that the sidewalk was supposed to incorporate the existing ped light assembly within its limits as depicted on plan sheet T-7. The actual location as depicted by the images shown show the sidewalk in the wrong location, passing to the west.

Standard Specification 8-7.3 states in part: "The Department may grant an extension of Contract time when it increases the contract amount due to overruns in original Contract items, adds new work items, or provides for unforeseen work" This was a case in which corrective action was required as the result of ACC placing the sidewalk in the wrong place.

## **REBUTTAL**

It is the Department's position that the sidewalk was designed in accordance with ADA standards, and due to the Contractor's error, it was

poured in the wrong place, which prompted the need for an additional concrete pad to be poured such that ADA requirements would be met with respect to the location of the existing pedestrian pole.

It later came to the Engineer's attention that the concrete used was not Class I concrete, and therefore does not meet the requirements for materials used on FDOT projects, and therefore is not eligible for payment. Furthermore, the deficiency was not evident until the final walk-thru, and therefore is a punch list item. The work does not qualify as extra work.

**FINDINGS OF FACT**

This issue was discussed and settled at the hearing.

**RECOMMENDATION**

This issue was settled at the hearing, therefore no recommendation is required from the Board.

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

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