

DATE: October 19, 2010

To: Miller Electric Company, ITS Div

AIM Engineering & Surveying, Inc.

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ISSUE:

Is Miller Electric Company, ITS Division due a Time Extension and Compensation for Damage caused by FDOT's failure to timely retrofit Beacon # 134.

CONTRACTOR'S POSITION:

MECO was responsible for integrating the existing Safety Barrier Cable System ("SBCS"), including the Beacons along Alligator Alley, to communicate with the new RTMC building and function with the new ITS. It was the FDOT's responsibility to ensure that all existing Beacons and SBCS devices were functioning properly before MECO started its retrofit work on the SBCS.

MECO persistently reminded FDOT of its obligation to restore the Beacons and SBCS devices to properly function so that MECO could complete its scope of work. FDOT did not complete its work on Beacon 134 until September 24, 2009. Based on the FDOT's consistent position that the 14-day Operational Test could not proceed until 100% of all the ITS work was performed, the FDOT's failure to timely complete their corrective work to the Beacons further delayed the Project. Notwithstanding the FDOT's own failure to timely perform, the FDOT wrongfully denied a time extension to MECO and used the FDOT's ongoing delay in completing the work at Beacon 134 as a basis to continue assessment of liquidated damages against MECO. MECO is entitled to a compensable time extension of 7 days for the delay caused by the FDOT's failure to timely retrofit Beacon 134.

FDOT'S POSITION:

The Request For Proposal (RFP) did not require the FDOT Asset Management contractor (who has responsibility for maintaining the Safety Barrier Cable System (SBCS)) to complete rehabilitation of all 268 SBCS beacons prior to Miller Electric Company (MECO) beginning the modification of the existing SBCS along I-75 in Collier County and integrating the SBCS with the central control equipment at the RTMC. Due to MECO's suggestion that it would be beneficial to have the rehab work complete prior to commencing their work on the system, a meeting was held on February 21, 2008 between all parties to define areas of responsibility within the system. On February 22, 2008, MECO sent an email summarizing these responsibilities. Beacon # 134 was not completely rehabilitated by the FDOT contractor until September 24, 2009. MECO has always held the position that they could not install the new components on Beacon # 134 as required by their contract until after the FDOT retrofit was completed. MECO is requesting a compensable time extension of 7 days due to a delay to the 14 day Operation Test.

While the Department recognizes that the Asset Management contractor did not complete their portion of the rehab work until September 24, 2009, this did not prevent MECO from starting the 14 day Operational Test as required by RFP. The denial of MECO's request for a compensable time extension was not based on the premise of whether or not FDOT completed their work, but rather on the fact that the Beacon work was never on the

project's critical path. This was outlined in HNTB's email of October 28, 2009 which noted that "...the Critical Path for the Project immediately jumped from the DMS Structures on September 14, 2009 to the work on the RTMC roof which was completed and accepted on September 30, 2009."

Lastly, HNTB did not prevent MECO from beginning the 14 day Operation Test due to Beacon #134 not being on line. In fact, HNTB in an email dated September 24, 2009 agreed that because the SBCS sub-system test was successful without Beacon #134, MECO should proceed with the 14 day Operation Test and that once Beacon #134 was installed that it could easily be confirmed to be functioning properly. This accommodation reveals the Department's intent to keep the project moving forward.

Per the FDOT Division I Standard Specification 8-7.3.2, Adjusting Contract Time, the Department may allow ...extension of time only for delays occurring during the Contract Time period or authorized extension of contract time...when failure by the Department to fulfill an obligation under the contract results in delays to the controlling items of work...".

Based on FDOT Division I Standard Specification 8-7.3.2, MECO is not entitled to a time extension because the activity of the 14 day Operational Test was never a controlling item of work on MECO's schedule.

DESIRED RULING:

Based on FDOT Division I Standard Specification 8-7.3.2, the Department requests the Board to rule that there is no entitlement for a time extension to the Contractor for this issue.

BOARD FINDINGS:

Article 8-7.3.2 of the FDOT Standard Specifications "Contract Time Extensions" states "*The Department may grant an extension of Contract Time when a **controlling item of work is delayed** by factors not reasonably anticipated or foreseeable at the time of bid.* The Board finds that MECO has not met their contract requirement to demonstrate that any delays associated with Beacon 134 were to a controlling item of work through an analysis of the Project Schedule.

BOARD RECOMMENDATION:

The Board recommends that there is no entitlement for additional money or time to the Contractor from the Department.

Please remember that a response to the DRB and the other party of your acceptance or rejection of this recommendation is required in 15 days. Failure to respond constitutes an acceptance of this recommendation by that party.

I certify that I have participated in all of the meetings of this DRB regarding this issue and concur with the findings and recommendations.

Respectfully submitted on behalf of the Board.

A handwritten signature in black ink, appearing to read "Peter A. Markham", written in a cursive style.

Peter A. Markham

DRB Chairman