

## Recommendation of the Regional Dispute Review Board

Dispute No. 1, District 1

Hearing Date: March 26, 2013 Contractor: Quinn Construction, Inc.

PROJECT: FIN No. 413817-1-52-01  
FAP No. N/A  
Contract No. E1J12  
County: Sarasota, Highlands, Okeechobee  
Project Description: Bridge Repairs and Rehabilitation

DISPUTES: 1. Quantum for Additional Compensation for Added Traffic Control Restrictions on the Sarasota Bridge.

2. Entitlement for Additional Compensation for Striping Coats, All Three Bridges

3. Entitlement for Additional Compensation for Site Restoration, Sarasota and Highlands Bridges

DISPUTE 1: Quantum for Additional Compensation for Added Traffic Control Restrictions on the Sarasota Bridge.

### Contractor's Position:

The Quinn Construction, Inc. (QCI) position paper states, "The contract plans had no lane restrictions. After work began the Department imposed a lane closure restriction which mandated lane closures only from 7 pm to 6 am. This impacted the painting of Bridge No. 170098, US 41 (Sarasota Bridge). Proper Notice of Intent to Claim was submitted along with a certified claim on August 2, 2012. Entitlement to additional compensation was granted by the Department on November 30, 2012. However, the Department disagreed on the amount of damages."

"When the imposition of the Lane Closure Restriction was issued by the Department, the Engineer had the prerogative to negotiate a Supplemental Agreement for the cost of the extra work prior to the affected work taking place, as is stated in Section 4-3.2.1, or proceed in the accordance with paragraphs (a) thru (d) in that same section. The Engineer chose to proceed in accordance with paragraphs (a) thru (d). QCI submitted the costs in accordance with those paragraphs."

"The monetary damages were based on labor, equipment and allowable mark up. Further, a Measured Mile analysis was used to obtain the cost of the affected work versus unaffected

work. This industry accepted method was used since work in span 4 was not affected by the imposed traffic restriction thus a direct comparison can be made between affected and unaffected work. Attached are the cost records of both the affected and unaffected work. The summary of damages is as follows:"

Gemstone LLC	=	\$311,283.00
OCI Allowable Mark Up	=	\$18,064.15
OCI WTS Cost	=	\$14,376.48
Bond Expense	=	\$2,749.79
Interest (3.25%)	=	\$4,691.82
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TOTAL	=	\$351,165.24

From Gemstone, LLC's document, "COMPARISON OF COSTS FOR PAINTING OVER TRAFFIC AND NON-TRAFFIC AREAS":

"1. EXHIBIT 1 – AREA PAINTED UNDER TRAFFIC RESTRICTION

US 41 S.B. 55' Northside Length + 64' Southside Length = 118'/2 = 59' Avg. Length  
 US 41 N.B. 50' Northside Length + 48' Southside Length = 98'/2 = 49' Avg. Length

Area of Bridge Coated = 108' X 5 Girders X 21' = 11,340 S.F.

TOTAL COST		\$406,032.90
Cost per Square Foot	=	\$ 35.81

2. EXHIBIT 2 – AREA PAINTED IN SPAN 4 OUT OF TRAFFIC

Area of Bridge Coated = 78' Length X 5 Girder X 21' Around = 8190 S.F.

TOTAL COST		\$68,493.62
Cost per Square Foot	=	\$ 8.36

3. COST DIFFERENCE

Cost Difference per S.F. = \$35.81 - \$8.81 - \$8.36 = \$ 27.45

4. ADDITIONAL COST

11,340 S.F. X \$27.45	=	\$311.283.00"
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## "Conclusion"

"QCI has provided proper documentation which accurately shows the amount of damages. Additionally, the Department has not provided any documentation which shows where QCI's calculations are in error. QCI requests the Board find in favor of QCI for \$351,165.24."

## Department's Position:

From the Department's position paper, "The Contract Documents stated there were no lane closure restrictions. However, once construction began, the Department imposed lane closure restrictions, which impacted structural steel painting and traffic control causing additional costs. A certified claim was submitted on 8/2/2012 for \$348,473.42. The Department calculated the damages at approximately \$100,000. The amount of damages is in dispute."

"The Department does acknowledge entitlement for this issue. However, the method of how the Contractor arrived at the total cost of the impact is not recognized by the Department."

"For settlement purposes a resource approach was utilized, MOT setup times as well as clean up/MOT takedown time before and after each day's operation was used to determine extra costs."

"The fact is that the actual work performed (blasting, painting) would have been performed in the same amount of time using the same amount of man hours and equipment MINUS the delay setting up and taking down closures as well as prep and cleanup time at the end of each restricted time period. Any and all production work man hours and operating hours/costs are non-compensable."

## DRB Findings:

Since the Department conceded entitlement on this issue, the relevant findings concern methodology in determining costs.

QCI and their painting subcontractor, Gemstone LLC, elected to use a "Measured Mile" approach by comparing costs from daily records of the areas affected by the imposed lane restrictions to a section of the bridge not under traffic. This comparison is faulty in that it supposes no lane closures would have been needed if the contract had proceeded as originally planned. During the hearing both parties agreed that lane closures would have been required directly under the contractor's painting operation. The contractor's unimpeded costs do not include these extra MOT costs and resulting loss of production during each shift. Also, the contractor chose a limited area outside of traffic for comparison that came toward the end of the painting work for this bridge. This discounted any "learning curve" encountered in the initial stages of work common to all projects.

Conversely, the Department chose only to calculate costs for MOT setups and take downs and for the ARS "Rapid Deployment" elevating truck platform and lights for night work. The Contractor's labor and equipment rates were not challenged. Total amount in the Department's position paper is \$88, 810.10.

Information provided by the Contractor and undisputed by the Department stated that the ARS platform when extended provided a working area of only 14' X 38'. However, the working length in each lane was considerably longer than the 42' 9" bridge width due to the sharp skew angle of the bridge to the roadway underneath. This required multiple mobilizations in each lane. In contrast the hanging platforms otherwise used by the Contractor could span the entire working area of each lane closure. Under the original contract both parties conceded that lane closures could have been left in place for multiple shifts as long as certified maintenance personnel were on site.

The Department should have recognized losses in production that occur when work is confined to smaller areas than originally planned.

DRB Recommendation:

The Dispute Review Board has determined total quantum in the amount of \$147,000 for the Contractor in regards to the Added Traffic Control Restriction dispute.

DISPUTE 2: Entitlement for Additional Compensation for Striping Coats, All Three Bridges

Contractor's Position:

Quinn Construction, Inc. (QIC) maintains that there is a discrepancy between the plans and the supplemental special provisions in reference to the application of striping coats. The contract plans do not specify a striping coat to be applied. However, supplemental specification 561 requires striping coats. The discrepancy exists because "the Department has well established through the details shown on other projects plans contemporaneous with this project that the specific coating system which is to be applied is expressly shown in the given plans. When the Department wants Stripe Coats applied it is clearly stated within the coating system notes in the plans. On this project it is quite evident no Stripe Coat was listed in the Coating System, therefore, considering by Statute the Department publishes plans that are complete and accurate, the only conclusion that can be made at the time of bid is that no Stripe Coating is required."

"When several other projects, which are based on the exact same specification and supplements thereto as this one, show a Stripe Coat in the Plans; and a contractor such as Quinn Construction or Gemstone LLC are developing bids for those other projects as well as this one, and such a contractor sees the Department differentiates the plan notes related to the

need of a Stripe Coat, in order to be Consistent, Predictable and Repeatable it is evident no Stripe Coat was required on this project.”

“Furthermore, if one considers the Department’s position on this matter that the Supplemental Specification 561 refers to a Stripe Coat, again this simply creates a discrepancy between the Plans and Supplemental Specifications. Section 5-2 is clear that when such a discrepancy occurs, the Plans, being 3<sup>rd</sup> in hierarchy order, govern over the Supplemental Specifications which is 6<sup>th</sup> in hierarchy order.

“QCI/Gemstone, like all contractors, rely upon and base their respective bids on the information contained within the Contract documents. Considering the Plan Notes show no Stripe Coat within the Coating System and further considering when a Stripe Coat is required it is clearly described within the Coating System in the Plans the only logical conclusion is that no Stripe Coat was required on this project. As such, the cost was not included in the bid. When the department directed the Contractor to apply Stripe Coats, extra work resulted which warrants additional compensation.”

QCI includes copies of plan sheets similar to B-7 on several other projects which did mention striping coats as part of the coating systems.

Department’s Position:

“Stripe Coating is a Contract Requirement and not optional. There is no discrepancy in the Contract Documents.”

“One of the basis’ of claim is that because other contract plans show stripe coating in the “coating system” listed within the plan sheets, it should have been shown within this set of contract plans. The fact is stripe coating is an application process as defined in the supplemental specifications. Every specification cannot be labeled in the plans. If there was a question in regards to stripe coating it should have been asked prior to bid.”

“Furthermore, on a separate contract, T4243 ....the plans state the following.

“Apply a four coat system...The sequence of painting shall be as follows:

- i. Apply “stripe coat” of organic rich epoxy primer per section 560
- ii. Apply one full coat of organic rich epoxy primer
- iii. Caulk all faying surfaces, crevices, joints, gaps in accordance with Section 560
- iv. Apply stripe coat of epoxy intermediate paint
- v. Apply one full coat of epoxy intermediate paint
- vi. Apply one fully coat aliphatic polyurethane finish coat
- vii. Apply one full coat of clear coat

This plan sheet clearly shows a four coat system, the “stripe coat” is not included in the “four coat” reference. This clearly shows that stripe coating is an application requirement. Our Contract Plans did not specify a sequence of this type, only the coating materials.”

The Contract Plans (sheets B-7 & B-8) show the coating system as defined in Supplemental Specification 561-2. Nowhere within these two plan sheets is the application process noted. Therefore one must refer to supplemental specification 561-8 for guidance on the method and manner of performing the work as the definition of Specifications clearly states. The specifications complement the plans. There is no discrepancy."

#### DRB Findings:

On Plan Sheet B-7 under General Notes the coating system for Highlands County Bridge No. 090016 is specified as:

- a. 1<sup>st</sup> Coat -Organic Zinc-Rich Epoxy Primer
- b. 2<sup>nd</sup> Coat- Polyamide Epoxy Intermediate Coat
- c. 3<sup>rd</sup> Coat-Aliphatic Polyurethane Finish Coat, Finish Coat color shall be Federal Standard No. 595B, Table VIII, Shade no 36622 – Gloss (Light Gray)
- d. 4<sup>th</sup> Coat- Aliphatic Polyurethane Clear Coat, with Dye Additive (Outer Fascias Only)

The coating systems for bridges 170098 and 910001 in Sarasota and Okeechobee counties respectively are similarly specified on plan sheet B-7.

Supplemental Specification 561-8, Application, for this contract states:

561-8.1 General: *Apply a complete coating system to all structural steel surfaces except surfaces indicated in 561-7.*

*Prior to the application of any coating, inspect the substrate for contamination and defects, and prepare the surface in accordance with 561-6 before application of the next coat.*

*Apply each coat including a stripe coat in a color that contrasts with the substrate or preceding coat. For exterior surfaces, apply a finish coat color meeting Federal Standard, 595B, Shade 36622, unless otherwise specified in the Contract Documents.*

561-8.7 Stripe Coating: *Meet the requirements of 560-9.7*

560-9.7 Stripe Coating: *Apply stripe coats to achieve complete coverage and proper thickness on welds, corners, crevices, sharp edges, bolts, nuts, rivets, and rough or pitted surfaces.*

Specification 561-8 requires the application of a stripe coating. It states, "Apply each coat including (emphasis added) a stripe coat...." This means that the stripe coat is not considered an additional coat in the coating system to be applied but one included within each coat specified.

Plan sheet B-7 does not specify a stripe coat in the coating system. In this contract it is not necessary since the stripe coat requirement is contained in Supplemental Specification 561-8. Plan sheet B-7 contains no exclusionary language which confines all coating requirements to that document. Therefore, Plan Sheet B-7 does not take precedence over the Supplemental

Specification 561-8. There is no discrepancy in the contract documents regarding the application of a stripe coat. In fact, during the hearing, the subcontractor admitted that it could not remember (maybe only one instance) a FDOT painting job over the last 5-10 years that did not require a stripe coat.

DRB Recommendation:

The Dispute Review Board finds no entitlement for the contractor in regards to the Stripe Coat dispute.

Dispute 3: Entitlement for Additional Compensation for Site Restoration, Sarasota and Highlands Bridges

Contractors Position:

The contractor's position paper states, "This dispute is based on a changed condition at the Sarasota Bridge wherein the site received improvements by way of enhanced sodding and landscaping after the project was bid and under a separate contract unaffiliated with the Quinn Construction/FDOT contract. Quinn Construction and their subcontractor Gemstone LLC made every effort to preserve the enhanced site condition during bridge painting. Upon completion of painting operations but prior to Final Acceptance additional restoration of the enhanced landscaped area was ordered by the Department. That restoration included the addition of dirt, sod and landscape plants which was deemed extra work by Quinn Construction."

"This dispute also includes additional site restoration at the Highlands Bridge. After completion of the bridge repairs at the Highlands Bridge the site was in the same condition to that which existed at the start of construction. However, the Department directed placement of new sod in areas where none existed prior to the bridge repair work. After completion of the restoration at the two bridges, a certified claim of the additional cost to perform this work was submitted on 8/30/12. The Department denied entitlement on 10/8/12 thus leading to this dispute."

"QCI was ordered to restore these areas to conditions which did not exist prior to bid. QCI could not have reasonably anticipated this requirement at time of bid and as such is entitled to recover the additional costs. QCI requests the Board find Entitlement.

Department's Position:

The Department quotes specification 7-11 Preservation of Property, specifically 7-11.1 General: *Preserve from damage all property which is in the vicinity of or is in any way affected by the work, the removal or destruction of which is not specified in the plans. This applies to public and private property, public and private utilities (except as modified by the provisions of 7-11.6), trees, shrubs crops, signs, monuments, fences, guardrail, pipe and underground*

*structures...Whenever the Contractor's activities damage or injure such property, immediately restore it to a condition similar or equal to that existing before such damage occurred, at no expense to the Department.*

Further the Department states, "It was Quinn Construction's responsibility to restore the property to a condition similar or equal to that existing before such damage occurred, at no expense to the Department."

In regard to the Sarasota Bridge, No. 170098, "these damages could have been easily avoided by simply storing equipment and materials away from the shrubs, not walking through the shrubbed areas, and by parking project vehicles elsewhere as evidenced by before and after photos. This project was let on February 17, 2011. The alleged unforeseen condition (shrubs) was starting to be installed before the letting date, this is confirmed by correspondence from Sarasota County, which oversaw the landscaping project. Landscape work began in January 2011, ending in March 2011. Additionally the basis of claim has changed since the initial NOI. The original notice stated that the lane closure restrictions were the cause, now the basis of entitlement of the submitted claim is due to changed conditions in respect to landscaping enhancements at the time of bid."

The Department also quotes 2-4 Examination of Contract Documents and Site of Work. (Special Provisions) *Examine the Contract Documents and the site of the proposed work carefully before submitting a proposal for the work contemplated. Investigate the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished and as to the requirements of all Contract Documents.*

As to the Highlands County bridge, the Department states, "At Bridge 090016 in Highlands County, the project site was in worse condition after construction than prior to construction. This is evidenced by the attached before (Pages II-79 thru II-87) and after photos (II-88 thru II-95) as well as photos of sodding (II-96 & II-97). The area in and around Gemstone's lay-down area is completely un-stabilized. This condition did not exist before construction began. The contractor is required to restore the property to a condition similar or equal to that existing before such damage occurred, at no expense to the Department."

DRB Findings:

Sarasota Bridge:

The subject project was let on February 17, 2011. According an e-mail dated February 26, 2013 from Gerard Levesque, Sarasota County government, their landscaping contractor began operations in the area of the bridge on January 26, 2011 thru March 10, 2011. Gemstone LLC, painting subcontractor to Quinn Construction Inc., began work at the bridge in February 2012. As observed in photos taken in January 2012 another contractor working for the Department on an unrelated project set up an equipment yard adjacent to the bridge on the Right-of-Way. Vehicle traffic patterns through the grassy areas in the vicinity of their yard and the bridge are evident.

Landscaping unrelated to the project commenced in the area QCI would need to begin bridge painting only 22 days prior to bid. Since the bid documents made no mention of the landscaping work it is possible that no contractor bidding on this job could have fully understood the extent and ultimate effects of the landscaping work as it was ongoing before and after the bid. In addition, the other contractor and his equipment yard impacted the grass to some extent in the construction area. Some of the landscaped areas are close to the overhang of the bridge where equipment would need to be positioned to access the exterior beams and handrail.

Other photographs submitted by the Department showed stationary equipment (i.e., fuel tank, etc.) placed in the landscaped areas during the painting operations resulting in damage to the new plants. This equipment was the property of Gemstone, LLC. Sufficient areas existed at the time of the work to place this equipment outside of the landscaped areas. However, the painting contractor was forced to work around and over the landscaping beds to complete the project.

#### Highlands Bridge:

The contractor used the northeast approach of the bridge to access the contract work. In addition to QCI at least two of their subcontractors also accessed the project from this point and used the area adjacent for equipment lay down. Aerial photographs taken prior to construction in January 2011 show the site as relatively sandy with grass adjacent to and beyond the roadway. Areas such as these are vulnerable to vehicular traffic, especially during the drier months of the year.

A timeline of the contractor's work was not provided in the position papers but it appears that a substantial portion was accomplished in the early months of 2012, normally those with some of the lowest average rainfall.

Pictures supplied by the Department show this area heavily impacted by the Contractor's operations. Vehicular tire ruts and a loss of vegetation are evident. The Department subsequently required QCI to re-grade and sod a discrete area adjacent to and beyond the roadway in the affected area. Watering of the sod was accomplished by others. Subsequent pictures taken in June 2012 show a recovery of vegetation. The actions of the Department on this site appear to be prudent and reflect its authority under the contract to preserve the stability and integrity of the Right-of-Way.

#### DRB Recommendation:

#### Sarasota Bridge, Site Restoration dispute:

The Disputes Review Board finds limited entitlement for the contractor at this site where damage to the grass and landscaping was the result of normal operations and movement of equipment in proximity to the landscaping beds and not the placement of stationary equipment directly on top of them.

Highlands Bridge, Site Restoration dispute:

The Disputes Review Board finds no entitlement for the contractor in regard to this location.

The Board sincerely appreciates the cooperation of all parties and the information presented for its review in making this recommendation. The Disputes Review Board's recommendation should not prevent, or preclude, the parties from negotiating an equitable solution (should it be appropriate) to any issue pursuant to their partnering agreement.

Please remember that a response to the Board and the other party of your acceptance or rejection of the recommendation is required within 15 days. Failure to respond constitutes an acceptance of this recommendation by the non-responding party.

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

Signed for, and with the concurrence of all members.

Members: Harold Massa, Thomas Shafer, and Allan Adderley

Allan Adderley, P.E.

Chairman