

Regional Dispute Review Board

Recommendation Paper

Hearing Date: June 24, 2016

Steve Ayers
Ajax Paving Industries

Alex Adames
Florida Department of
Transportation

Subject: SR45 (US41) from S. of Club Drive at Baywood Dr. and from Reynolds St.
to Gulf Gate Dr.
Sarasota County
Contract #T1587

Gentlemen:

Ajax Paving Industries of Florida (Ajax), the Contractor, and the Florida Department of Transportation (FDOT) requested that the District 1, Regional Dispute Review Board (RDRB) meet to hear both parties' positions regarding a dispute which arose during the construction of the referenced project. The RDRB was asked to make a recommendation regarding entitlement to the Contractor.

On June 24, 2016, at approximately 8:30AM at the District Office in Bartow, the RDRB met to hear both parties present their positions and rebut the other parties' position. The RDRB was comprised of members Pat McCann, Charlie Wegman, and Jim Weeks, who served as Chairman. Ajax was represented by Steve Ayers, who was joined in presenting by Sean D'Agostino, with C-Squared, and Russell Gilbert, with Alford Construction, two of Ajax Subcontractors. FDOT was represented by Alex Adames, with support from Brian Blair, Gregory Falcone, Trisha Hartzell, and Marshall Douberley.

Contractor's Position

During two construction operations, Ajax's subcontractors C-Squared and Alford damaged utility facilities which were unmarked. C-Squared was removing and replacing a drainage conduit and Alford was installing guardrail. The Contractor's Position Paper and presentation was to show that they had taken required precautions, such as "Call Sunshine" for locates and soft-dig of marked facilities, and had exercised due care in their construction activities. In both cases where facilities were damaged, the facility was not marked by the facility's owner. The Contractor, therefore believes he is entitled to be compensated for repairs made as a result of the damage to facilities at the two locations.

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Department's Position

The FDOT position is that the Contractor failed to exercise reasonable caution as required by the Contract and Florida Statutes. The Department also asserted that the facilities, though maintained by Sarasota County, are actually owned by FDOT and the Department is not obligated to locate its own facilities for the Contractor on Department Rights-of-Way. The Department presented a timeline of events to demonstrate that the Contractor should have been aware of the facilities which were damaged.

Board Findings

Sheet #10 of the Plans lists Utility/Agency Owner. Sarasota County Utilities and Traffic are listed. At the C-Squared location Sarasota County Traffic stated "marked" but the Contractor presented photographs showing no marks in the location where the facility was damaged. At the Alford location Sarasota County Traffic stated "No Conflict".

Many meetings were held to try to prevent damages to existing utility facilities. For the most part these precautions were successful. There is an obligation by the Contractor to coordinate and inform his Subcontractors. For instance, lines found by Road Runner, a subcontractor to Ajax, should be communicated to other subcontractors doing later work in the same area.

Florida Statute 556.105, Underground Facility Damage Prevention and Safety addresses the Sunshine One-Call system. Paragraph (9) addresses positive responses, and (9) states: "An excavator shall verify the system's positive responses before beginning excavation."

The C-Squared work was extra work. The plan sheets for this work included no utility information.

Plan Sheet T-4 (Club Drive Signal Plan) shows "BFO" identified as "Existing Interconnect" crossing the existing cross drain.

C-Squared properly contacted the One-Call system and received notice from the system that the Sarasota County Traffic facilities were "Marked". When C-Squared found no markings at the site, they concluded that this meant there were no conflicts. C-Squared or Ajax should have taken the extra step of confirming the information with the County.

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During rebuttals, Ajax stated that the Sarasota County Traffic never marked ITS facilities. The Department's position is that since the ITS is state-owned and County maintained, the County does not have to respond to locate request. The contract documents, however, do not provide that there are state-owned utilities on site.

Board Recommendation

The Board reached consensus regarding the Alford damage. The Contractor is entitled to compensation. The maintaining agency, Sarasota County Traffic, stated that there was "No Conflict".

The Board also believes the Contractor is entitled to compensation regarding the C-Squared damage. Sunshine One-Call was notified and there were no visible locates. However, the fact that Sarasota County Traffic stated "marked" (although not marked) should have been viewed as a "positive response" and should have been verified with the system by the excavator. This caused this recommendation to not be unanimous with one member believing the Contractor did not do all he should have done before excavating.

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

I certify that I participated in the Hearing of this RDRB regarding the Dispute indicated above and concur with the findings and recommendations.

Respectfully Submitted,



James G. Weeks, Chairman

Pat McCann, Member

Charlie Wegman, Member