

DISPUTE REVIEW BOARD RECOMMENDATIONS

DISPUTES A-D (FOR ENTITLEMENT ONLY)

Owner Florida Department OF Transportation (FDOT)

Owner's Construction Eng. & Inspection Firm (KCCS)

Contractor Cone & Graham Inc.

FDOT FPN; 2012214-3-52-01

Design-Build I-4 at SR 559 INTERCHANGE

CONTRACT NO. E1K75- POLK COUNTY

DESCRIPTION

Improvements to the I-4 at SR559 Interchange. Major items of work included demolition and reconstruction of SR-550 Bridge over I-4, Earthwork, Drainage, Paving, Walls, and necessary Items for the Interchange to new standards.

Issue Summary

There are 4 issue Statements to the DRB at this time, A, B, C, D.

CGI ISSUE A

Issue A (CGI) asks for Entitlement: Compensation for Additional Project Supervisory Costs, Maintenance of Traffic Costs and Quality Control Costs as a Result of Extra Work that Extended the Contract Duration

Impacted other utilities ability to complete their work. The change in MOT phasing similarly impacted project construction time. Once the new easement agreement was in place and the Florida Gas Transmission (FGT) new relocation plan was available, it became apparent that their schedule for relocation would impact construction progress.

To account for these impacts, a new baseline schedule was created for the project. As documented in CGI's letter to KCCS dated October 20, 2014 (see Attachment A) the time

required to construct the project increased from the as-bid 881 day schedule to the new revised baseline duration of 975 days, an Increase of 94 days.

Additional impacts caused by FGT's relocation activities were realized during construction . Ultimately, FGT impacted construction of longest path activities for an additional 66 days, bringing the total impact to the project to 160 days as documented in Contractor's Time Extension Request No. 2015-000.

There is no dispute between FDOT and CGI regarding the total number of days impact caused by FGT. FDOT extended contract time by 160 days of contract time through a Unilateral Payment on March 16, 2016 (attachment C). What is in dispute is the CGI's entitlement to payment for additional supervisory costs, additional maintenance of traffic costs and additional quality control costs as a result of extra work that extended the duration of the contract.

(CGI) says the absence of an easement agreement between Florida Gas Transmission (FGT) and FDOT directly impacted the Project. During the time of (FGT) & (FDOT NEGOTIATIONS TO SETTLE THE EASEMENT AGREEMENT (FDOT) DIRECTED (CGI) TO REDESIGN THE PROJECT AS FAR TO THE WEST AS POSSIBLE THIS TO GET THE NEW WORK AWAY FROM THE GAS LINE WORK.

Below is a chronology of correspondence that occurred between CGI and FDOT during negotiations on these issues. The details are in CGI's Position Paper Booklet.

- October 20, 2014 – CGI submits initial schedule analysis showing 94 days of delay due to FGT facility and relocation. (letter 3115-024)
- February 27, 2015 – CGI submits Contractor's Time Extension Request No. 2015-001 requesting 94 days of delay for the initial FGT schedule delay and 66 days for the delays to temporary pavement construction on SR 559 during construction for a total of 160 calendar days.
- March 4, 2015 – CGI submits request for allowable additional costs as a result of extra work and delay for the two time extension issues included in Contractor's Time Extension Request No. 2015-001. Costs composed of project supervisory time for extended contract duration and associated equipment costs.
- May 28, 2017 – KCCS responds to CGI's March 4, 2015 letter, offering a reduced amount of compensation and an extension of contract time of 160 days. The reduced amount of compensation is based on KCCS disallowing trucks associated directly with

the supervisory personnel and the deduction of the first 10 days of the delay towards the costs.

- June 12, 2015 - CGI response to KCCS offer acknowledging the reduction of the costs as a result of the “10 free days” but reasserting the position that they are entitled to additional supervisory costs as indicated in Specification 4-3.2.1.
- December 16, 2015 – Email from KCCS indicating the State Construction Office has concurred with KCCS’s position on additional supervisory costs.
- January 15, 2016 – Letter from CGI reasserting the position that supervisory costs are compensable for extra work that extended contract time and adding additional costs for lump sum payment items (Quality Control and MOT).
- April 15, 2016 Receipt of Unilateral Payment that includes payment for the portion of the FGT delay additional costs that FDOT agrees should be paid and an extension of contract time of 160 days. No additional supervisory or lump sum costs are included in the unilateral payment.

At issue is the ability of the Contractor to recover additional project supervisory costs, maintenance of traffic costs and quality control costs as a result of extra work and utility impacts that extended the project’s contract time. While the issue was presented for costs purposes as a single 160 day delay, this total duration is composed of two contract time extensions. The first is the 94 day time extension identified in the October 20, 2014 letter to FDOT. The second is the 66 day time extension identified in CGI’s time extension request 2015-001.

The first 94 day time extension that was identified and agreed to by both CGI and FDOT extended contract time as a result of changes to the construction plans to avoid FGT’s existing line during construction. FDOT directed CGI to realign SR 559 far towards the western right-of-way as possible to provide maximum separation from FTG’s existing line. In order to do so, the sequence of the project was impacted and additional work was required to drive additional piling, place additional beams and construct additional temporary pavement. The issue involved extra work that extended the actual completion date of the project.

The second time extension for 66 days came as a result of impacts by FGT that prevented CGI from working on the critical path activity. FGT advised CGI and FDOT that no work could be performed above their existing line while it was still active in the area designated in accepted CPM schedule. Temporary Pavement from Sta. 1022 to Sta. 111. This activity was on the

critical path on the October 2014 schedule update with a required start date of November 24, 2014. FGT did not allow CGI access to this area until February 4, 2015, resulting in an additional 66 day impact to project completion. Again there is no dispute between FDOT and CGI as to the number of days of impact. The dispute is again over entitlement to payment of project supervisory and other costs as a result of the extension of contract time.

CGI's Conclusion

Neither FDOT nor CGI dispute the impact that FGT's facilities had on the project. Both agree that extra work was performed and that extra work extended the contract duration. The duration of the extension is also not in dispute. At issue is the payment for additional project supervisory costs, maintenance of traffic costs, and quality control services costs as a result of extra work that extended the contract duration due to impacts to critical path activities. FDOT has denied this compensation based on Specification Section 5-12.6.1 which only deals with compensation for direct costs, indirect costs, expenses and profit of or from delay. Since this specification only allows payment of idled labor and equipment, which CGI's claim does not include. FDOT denies any additional supervisory or other Extra Work. FDOT's rejection ignores Section 5-12.6.1. Compensation for Extra work; two paragraphs prior in the specification and also Specification 4-3.2 which clearly indicated entitlement for these additional costs. Based on the facts that the additional costs are the result of extra work that extended the duration of the contract, CGI is entitled to the additional costs of project supervisory personnel, maintenance of traffic and quality control.

FDOT's Conclusion

90 Day Delay during construction: The FDOT and the contractor agreed to implement design modification to accommodate FGT;s facilities; these modifications and related additional work increased the duration of the baseline construction schedule by 90 days. For this part of the delay the FDOT granted a time extension for 90 calendar days and compensated the contractor for the extra work and the delay caused by the modifications as explained in detail in the FDOT's position paper.

70 Day Delay during construction: Completion of FGT utility relocation work took 670 days longer than originally anticipated. For this part of the delay, the Department granted a time extension of 70 calendar days and compensated the contractor for the 70 day delay as explained in detail in the FDOT;s position paper.

The Board as a group does not agree to adjudication of Issues A & B. (See Summary for Board Member 3's Recommendation)..

Recommendation from Board Members 1 & 2.

The Board agrees with C&G that they are entitled to the extra costs of supervision and supervisory equipment relating to the added time due to delays caused by FGT. Prior to beginning work, rates were agreed to for supervisory personnel for the project. The length of the project was extended by mutual agreement and there is no argument as to the participation of the supervisors for the duration of the extended project. When asked if, according to the Owner's records, the mathematical total based on agreed upon rates and actual time match that offer, the reaction was unresponsive. With no disagreement with the time involved, and the predetermined rates used, the Board feels C & G is entitled to the extended supervisory costs recovery. **The Board finds entitlement for this issue.**

CGI ISSUE B

FGT delay impact material, Labor & Subcontractor Cost Escalations

Facts

On July 27, 2012 it was noted that FDOT did not have FG's easement signed for project but it had been sent to FG for review on July 24, 2012. On August 9, 2012, FDOT told C & G that the project would be put on hold until FG's problem was solved. November 7, 2012, FDOT issues a notice to proceed on a limited basis. Nine Supplemental Agreements added 536 calendar days to the contract with no money, except for needs caused by the redesign of the project. C & G reserved their rights for "...in addition to the added project costs due to increases in quantities, we will also require adjustments to the contract as a result of extended time required to complete the contract." in a cover letter returned with SA# 2.

C&G did not enter into any subcontracts and purchase orders because of the following language added to all 9 of the Supplemental Agreements:

"This Supplemental Agreement recognizes the right of the Department to terminate the Contract for convenience effective contract day XXX. Should the Department elect to terminate the Contract effective contract day XXX, the Department shall only be obligated to pay the Contractor for : (a) the completed design work and mobilization costs described above which shall not exceed \$2,588,511.15 for design services and \$484,931.84 for mobilization costs and (b) such other work or costs permitted under Section 8-9.2 of the Design-Build Specifications provided such costs have been authorized by written directive of the Department. The Department shall have no other financial obligation to the Contractor of its subcontractors."

Department's Position: The Department finds that Specification Section 5-12.6.2.1, Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay does not allow compensation for these types of charges, "escalations costs", such as increases of labor cost, cost of living, material cost or subcontract costs, resulting from a delay to the project. Additionally, based on the fact that CGI is basing their request on a two year period which includes the total delay (including the 440 day portion of the delay), it is the Department's position that the executed SA's used for the suspension of work SA's #6,7,8 and 9 (signed and executed by both FDOT and CGI), do not allow for additional compensation resulting from the suspension of all work and operations for 440 days. These SA's constituted "a full and complete settlement" for the matters related to the SA's. Therefore, the Department finds that these charges have no merit.

Recommendation for Board Members 1 & 2

The Board determined that, due to the nature of the hold on the project, CGI, when signing SA #2, reserved their rights to escalation costs, etc. during the extended periods with the statement ... "we wanted to reiterate that in addition to the added project costs due to increases in quantities, we will also require adjustments to the contract as a result of extended time required to complete the contract." (attachment 4) **Therefore, the Board finds entitlement.**

CGI ISSUE C

Request for Entitlement for problems with pile driving for the Bridge.

Contractor's Position: During bridge foundation construction, C & G encountered subsurface differing site conditions as described in Specification 4-3.7 on six separate occasions and are listed as follows: Pier 3, Pile 7; Pier 3, Pile 2; End Bend 4, Piles 1-4; Pier 2, Piles 2 & 5; End Bent 4, Piles 6, 7 & 11; and Pier 3, Pile 13. As a result of encountering these unforeseen differing site conditions, C & G was required to redesign multiple foundations, conduct additional analysis of driven pile, splice several pile and furnish/install additional pile beyond those indicated in our Released for Construction plan set.

FDOT's Position: As part of the D-B contract, CGII has the responsibility and liability for performing geotechnical investigation, including determining number, location and depth of soil

borings; selection and design of the bridge foundation including selection of type of foundation, number and type of piles, determination of the required bearing resistance or capacity for each pile, selection of the location of test piles, determination of production pile lengths, development of driving criteria, and driving the piles to the required bearing capacity. During the pile driving operations, a series of issues developed that were inherent to the design and type of foundation selected by the D-B contractor. These issues included damaged piles, piles with insufficient capacity, and piles in need of splices. The D-B contractor is assuming no responsibility for these issues and contends that they should receive additional compensation for the remedial work to correct these issues, alleging that they are the result of “differing site conditions”.

Recommendation

Pier 3 Pile 7 Normally geotech investigations do not detect the presence of voids, boulders, and other anomalies. By the piling breaking near the tip and the sudden twisting violent enough in the template to break welds, the Board can assume that one or more of the above events took place. The Board believes that this item would qualify as a changed unknown condition and would justify for reimbursement.

The Board finds entitlement for Pier3 Pile 7.

The balance of the piling could be driven with splices and buildups and re-drives all under what would have been expected under any pile driving operation.

The Board finds no entitlement for the balance of the piling in this claim.

CGI ISSUE D

Request for entitlement for Florida Gas Transmission Access

Contractor’s Position Subsequent to being released to construction and after the implementation of our Phase I maintenance of traffic devices, Florida Gas Transmission had advised C & G that they would require two points of access along the SR-559 corridor in order to access their easement and facilitate the relocation of their facilities. The first point of access required the early removal of temporary K-Wall and resetting of an impact attenuator between approximate Sta. 59+12 to 65+00. This also required maintenance of the exposed edge of pavement to ensure compliance with applicable drop off protection requirements. The second point of access that was required was along the proposed Bay Lake Connector at approximate Sta. 607+40. This point of access required unanticipated grade work to allow access to the FGT easement. C&G respectfully requests a ruling on entitlement concerning the additional unforeseen work and that the Department be bound by the provisions of the contract which afford the Contractor the ability to recover costs for unforeseen extra work.

FDOT's Position: Design Build Division 1, Specification Section 4-1 clearly states that the D-B Firm has all liability and responsibility for all un known and/or differing site conditions; and including but not limited to any or all utilities, subsoil conditions, permits, etc. Specification Section 7-11.6.5 states the Design-Build Firm shall be responsible for coordinating with all existing utility companies that have facilities within the job limits or which will be affected in any way by the project and for coordinating all utility work with the Project. D-B Request for Proposal (RFP) Section V-C, Design and Construction criteria for Utility Coordination – This section states in part “The Design-Build Firm’s Utility Coordination Manager shall be responsible for managing all utility coordination, including, but not limited to the following:...identifying all existing utilities and coordinating any new installations, resolving utility conflicts...” The Design-Build Firm shall be responsible for all utility coordination efforts. The coordination efforts shall include, but are not limited to, design reviews, construction oversight...”

D-B Request for Proposal (RFP) Section V-L, Design and Construction Criteria for Temporary Traffic Control Plan- This section states in part “The Design-Build Firm shall design a safe and effective Temporary Traffic Control Plan to move vehicular traffic during all phases of construction. This shall include, but not be limited to construction phasing, utility relocation, drainage structure...” FGT, the Department and CGII had several meetings especially the meetings held on September 9, 2013, and October 14, 2014, to discuss the necessary coordination process with FGT. The discussions during these meetings included, but were not limited to, FGT relocation work plan, possible conflicts, construction in or in close proximity to the encroachment areas, FGT’s global agreement, and FGT Engineering and Construction specifications and requirements. In these discussions, it was evident that CGII had to provide access for FGT to perform their relocation work.

Recommendation

The Board finds that prior to the bid there was no contract with Florida Gas Transmission. It is an unknown factor of the scope of the work and who would perform the work. The access problem did not surface until after the contract was executed and the Contractor had no idea it would have to provide anything other than access to the work area which the Contractor did. The coordination of utilities does not include doing work for the utility companies but to ensure that they do not conflict with the utility companies as the utility companies perform their work.

The Board finds entitlement for this item Access Item Issue D.

Summary

Issue A: The Board Members 1 & 2 find entitlement for this issue.

Issue B: The Board Members 1 & 2 find entitlement.

Issue C: The Board as a group finds entitlement for Pier3 Pile 7.

The Board as a group finds no entitlement for the balance of the piling in this claim.

Issue D: The Board as a group finds entitlement for this item Access Item Issue D.

The position of Board Member 3 for issues A & B is as follows; Board Member 3 are similar and is addressing both. The Contractor signed and agreed to the terms and conditions of the 9 Supplemental Agreements. There is nothing in any of the SA's that allow for any of the additional costs that C&G is claiming. They accepted and signed all of the SA's. Paragraph 4 in the Supplemental Agreements is specific "The Department and the Contractor agree that the Contract Time Adjustment and Sum agreed to in the Supplemental Agreement constitutes a full and complete settlement of the matters set forth herein, including all direct and indirect costs for equipment, manpower, materials, overhead, profit and delay related to the issues set forth in the Supplemental Agreement. This settlement is limited to and applies to any claims arising out of or on account of the matters described and set forth in this Supplemental Agreement." The Contractor agreed and signed all 9 of the Supplemental Agreements.

The Board sincerely appreciates the cooperation of all parties and the information presented for its review in making these recommendations.

Please remember that a response to the DRB and the other party of our acceptance or rejection of each 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 meeting of this DRB regarding these issues and concur with the findings and recommendations.

Respectfully Submitted
Disputes Review Board

Dallas Wolford, DRB Chairman
Thomas Rice, DRB Member
Bill Deyo, P.E., DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:

Dallas Wolford
DRB Chairman