

D-1

August 15, 2000

Mr. John Hardy
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Mr. Rick Roberts
FDOT District 1
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State Rd. 951, Collier County
FN 195320-1-52-01
FAP No. 3251-006-P
District 1
DRB Issue No. 3

Dear Sirs:

Utility Conflict

The Florida Department of Transportation (Department) and Atlantic Civil Inc. (Contractor) requested a hearing to determine quantum on direct costs associated with the removal of a sub aqueous waterline discovered on the project site. The Contractor's subcontractor, Gimrock Construction, Inc. (GCI), believes that they are due more money than the Department has offered as compensation.

A hearing to determine quantum was held on August 1, 2000 at the Department's District Office located in Bartow, Florida. Representatives of ACI, FDOT, and LBA were in attendance. GCI did not attend the hearing.

ISSUE: The Department has offered compensation to the Contractor in the amount of \$61,460.00. The Contractor has requested \$98,450.00

Background

On December 22, 1998, while installing piles at End Bent 1 of the McIlvane Bay Bridge, a waterline (not shown on the plans) was encountered, which prevented installation of Pile No. 9. GCI notified FR&S of the obstruction and requested direction. GCI shut down its operations over Christmas and New Years (12/24/98 through 01/03/99, inclusive), as planned. During this shutdown, FR&S investigated the obstruction with FDOT and Florida Water Services (FWS). FWS, who ultimately proved to be the waterline owner, claimed it did not have an in-service pipe in the vicinity of the obstructed pile.

Both parties presented position packages to the Board at the Hearing. It should be noted that the position papers submitted by ACI's subcontractor, GCI, were copies of older correspondence which had been submitted to the Contractor on July 1, 1999.

Contractor's Position

The recommended amount does not account for disruption of the work on December 23, 1998 (i.e., on the day that the waterline was first encountered).

The recommended amount does not account for any piling equipment or support equipment associated with the pile driving operations.

The recommended amount does not account for waterline removal costs, although, in closing, Mr. Dunne states "waterline removal costs appear to be justified, and are the responsibility of Florida Water Services, Inc."

The costs associated with the items mentioned above are \$3,138, \$8,952 and \$19,236, respectively. These amounts, when combined with LBA's recommended amount of \$67,124, give \$98,450 as Gimrock's total direct cost, incurred as a result of the waterline interference/obstruction.

Department's Position

Gimrock did not schedule nor perform any project work between December 24, 1998 and January 3, 1999. Work resumed on January 4, 1999, and the obstruction was determined to be a Florida Water Services, Inc. (FWS) 12" diameter, steel river crossing pipe carrying treated effluent for irrigation at the Marco Shores Golf Club on January 14, 1999.

This 12" river crossing line was removed on January 15, 1999, and Pile No. 9 was driven at End Bent No. 5, and January 18, 1999 at End Bent No. 1. Bay Bridge production piling complete. Gimrock's CPM submittal indicates Activity No. 2001 - Drive Production Piles at E.B. # 1, Bay Bridge between 12/22/98 and 1/4/99. Gimrock agrees that it had a planned Christmas/New year Holiday shutdown between 12/24/98 and 1/3/99, with work resuming on 1/4/99.

Gimrock's request includes (2) vibratory hammers for the entire period from 12/23/98 to 1/18/99 when there was only one hammer on the jobsite until 1/5/99 when the second one arrived. The estimated Crew Man-Hour Rate of approximately \$55/hour for a 9-11 man-crew was based on a Contractor Overhead rate of 175%, vs. the approximately 63.5% actual OH Rate submitted by Gimrock, which did not include the Jones Act Insurance general premium of approximately 110% of payroll expense, normally attributed to marine construction, as required by Federal Law, and as assumed by Berger in initial estimates. Therefore, the actual Crew Hour Rate has calculated to be \$20.27/crew man-hour. Based on this OH rate for 633 crew man-hours, and 55.5 equipment hours of 55.5 for an equipment set.

Therefore, additional Labor + Mark-up Cost \$20.27/c-hr. x 1.635% OH x 633 c-hr x

1.50 OT premium x 1.25 mark-up = \$39,335.

Additional Equipment costs of \$14,485 x 1.075% OH \$15,571.

Total additional labor and equipment cost \$54,908 + G.C. profit and Bond \$60, 855. All mark-ups include all indirect costs such as increased Home Office Overhead, and mark-ups do not apply to Delay Claims, per Special Provisions Subarticle 4-3.2.3, pages 8 and 9. Gimrock's revised cost estimate requesting an additional \$31,328 includes several discrepancies:

- A. Crew Hourly rate of \$55.75 is incorrect. Actual Rate is \$33.14, a decrease of 41%
- B. Contractor states that 30 crew-hours were lost on 12/23/98 when obstruction was hit at a cost of \$2,510. This is incorrect since this is not a delay claim.
- C. Contractor states that 4.5 crew hours were lost on 1/8/99 when obstruction (same waterline) was hit with Pile #9 at E.B.5. Not a delay claim. Not compensable as additional work.
- D. Contractor, states that 40 crew hours were lost on 1/12/99 by exposing the waterline at E.B. #5. Berger included 44 man-hours for this additional work on 1/12/99, so it should not be included again.
- E. Contractor states that 40.5 crew hours were lost on 1/14/99 to drill a hole in the pipe and determine which utility it belonged to. Berger included 40.5 hours for this work. Gimrock's crew spent 40.5 hours cutting off pile tops and installing temporary sheetpile at the Creek Bridge. Basically a 9-man crew split a 9-hour day on two areas of work.
- F. Contractor states that at 85.5 crew hours were required on 1/15/99 for removing the water line at E.B. 5. Berger included 86 crew hours in the total of 633 crew hours compensated, and it should not be included again.
- G. Contractor states that 13.5 crew hours were required to remove the waterline at E.B. #1 on 1/ 18/99. Berger included 60 crew hours for waterline removal and remobilization to drive Pile #9, at E.B. 1, and it should not be included again.
- H. Contractor claims 49 hours of equipment time for an I.C.E. vibratory hammer when it was only used for 12 hours on 1/5/99 @ \$37.58/hr. X 1.075% = \$485.00. Add Air compressor for 12 hours @ \$6.04/hr x 1.075% = \$78.00. Add Work Float @ \$41.65. Other equipment requested was not utilized or the Contractor states that it was delayed. Add Total Additional Equipment = \$605.00

Total Revised Cost Estimate = \$61,460

DRB Findings

The Board has examined all submittals from both ACI/GCI and FDOT in their entirety. FDOT Daily Reports and photographs (not included herein) were relied on for the Board to check equipment, manpower, etc.

The Board agrees with both parties that there is entitlement to quantum in this case as the presence of the FWS waterline was a complete unknown within the contract.

DRB Recommendation

The Board recommends that the Department compensate the Contractor as follows:

Payment to Contractor (ACI)	\$70,863.38
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The Board appreciates the cooperation by all parties involved and the information provided to make this recommendation. Please remember that failure to respond to the DRB and the other party concerning your acceptance or rejection of the DRB recommendation within 15 days will be considered acceptance of the recommendation.

I certify that I participated in all of the meetings of the DRB regarding the Dispute indicated above and concur with the findings and recommendations.

Respectfully Submitted,

Disputes Review Board

Rammy Cone, DRB Chairman
John Duke, DRB Member
Charles Sylvester, DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



Rammy Cone, DRB Chairman

CC: Mr. Steve Torcise, Atlantic Civil, Inc.