

DISPUTE REVIEW BOARD RECOMMENDATION

January 15, 2006

E-Mailed January 15, 2006

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RE: SR 60 (E. of Tiger Lake Rd to E. of CR 630)
FIN No.: 197395-1-52-01
County: Polk

Issue – Multiple Utility Impacts

Dear Sirs:

The Owner, Florida Department of Transportation (Department) and Contractor, Cherry Hill Construction, Inc., (CHC) requested a hearing to determine **entitlement** of CHC to **additional compensation and contract time as requested in CHC's 29 June 2004 claim for payment for additional work and delays associated with Verizon's failure to both "locate" its underground phone line and its failure to properly relocate the line in advance of CHC's work** on the project. Should entitlement be established, the Dispute Review Board (Board) was not to decide the quantum of such entitlement at this time, as the parties would attempt to negotiate the value of entitlement.

Pertinent issues, correspondence and other information relating to the Department's and the Contractor's positions were forwarded to this Board for review and discussion at the hearing that was held on January 9th 2006.

CONTRACTOR'S POSITION:

CLAIM FOR ADDITIONAL WORK AND IMPACT OF DELAY DUE TO VERIZON UTILITY CONFLICTS

FULL POSITION PAPER

Cherry Hill Construction, Inc. ("CHC") submitted written notice to FDOT on 24 July 2003 that Verizon's failure to relocate its phone line in accordance with the Utility Work Schedule was impacting CHC's work. This notice was both preceded and succeeded by regular notice at weekly progress meetings and DRB Meetings. FDOT and CHC were unsuccessful in getting the Verizon representative to attend utility coordination meetings or respond to problems created by Verizon's locating service. Standard Specifications Section 7-11.6.1 states that "the Department will make necessary arrangements with utility owners for removal or adjustment of utilities..." Verizon's non-attendance at utility coordination meetings during the summer and fall of 2003, and winter and spring of 2004, is indicative of the Department's failure to make necessary arrangements. CHC acted patiently and flexibly during this period; however, disruptions and delays were mounting. CHC submitted a claim on 29 June 2004 for four separate events. These events represent just a few of the many Verizon disruptions that were known to FDOT and CHC alike.

Timeline Review:

19 June 2002 – CHC was apparent low bidder on the Project. Bid documents included a Utility Work Schedule for Verizon Florida, Inc. The schedule indicated that Verizon had 13 days of work scheduled during

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Project construction. Of 114 Verizon activities identified, only one, the relocation of fiber optic at Station 864+40 to Station 946+40 RT, is identified as contingent upon anything performed by CHC other than cutting of final grade. This area was dependent upon CHC's staking for the proposed drainage in the area. Everywhere else, CHC should have been able to cut and fill to final grades, without any disruption due to Verizon utility locations. Nevertheless, Verizon was performing relocation work well into the later, stages of 2003.

July 2004 - CHC began working on PHASE 2 eastbound (RT) roadway prior to the traffic shift from MOT Phase 1 to Phase 2. Disruptions due to Verizon utility conflicts began immediately. CHC was delayed shifting traffic from Phase 1 to Phase 2 due to severe and persistently wet weather conditions, so the eastbound work was not the next critical path activity at that time. The traffic shift was. Notice was made to FDOT on 24 July 2003. The wet conditions created an extended length of submerged right of way along the outside of the proposed eastbound roadway. Verizon's locator service refused to locate because the ground was submerged. After numerous unsuccessful attempts to have the utility located, CHC was forced to mitigate delay to the earthwork by placing numerous embankments within the existing ditchline to create dry areas where the locator would then agree to place a locate flag. The locator person said that she would not locate the utility any other way. In addition, CHC also backfilled a substantial amount of Verizon's trenching because they were not able to do so. This was known by the Department and if not by Verizon, certainly by its subcontractor, and Verizon would have known if they had attended the utility coordination meetings.

21 September 2005 - CHC shifted traffic from MOT Phase 1 to MOT Phase 2.

25 September 2005 - Milling operation was halted at CR630 shoulder due to discovery of previously non-located fiber optic line and pull box. This box was not identified in the Utility Work Schedule.

29 December 2003 through 14 January 2004 - Existing fiber optic line from Station 989+50 to 1017+00 in conflict with CHC's work. Fiber was relocated on 14 January 2005.

21 January 2004 through 30 January 2004 - Verizon utility conflict at Station 798+00 delayed storm drain production.

12 April 2004 - DRB Meeting #11 – Minutes identified that CHC's intent to claim had already been issued to the Department. There was acknowledged by the Owner's representative at that time.

29 June 2004 - CHC submitted a claim for the costs associated with the extra work performed for the locator service, 35 days total time extension, and 25 days field overhead utilizing FDOT's Supplemental Specification Section 5-12.6.2.2. The claim was accompanied by a certification.

31 August 2004 - FDOT notified CHC by e-mail that Verizon requested an extension to its review, and that Verizon would be forwarding an official letter.

19 November 2004 - CHC received Offer of Final Payment from FDOT for the Project. CHC notified FDOT by e-mail that Verizon's extensions should be halted. CHC requested a response by 30 November 2004.

22 November 2004 – FDOT forwarded an e-mail it had received from Verizon regarding CHC's claim.

22 November 2004 – FDOT notified CHC by e-mail that a meeting with Verizon was set up for 29 November 2004.

29 November 2004 - Meeting with FDOT, CHC, and Verizon held. Verizon did not have its representative for the specific Project at the meeting. CHC responded to all concerns from Verizon. Verizon personnel indicated that problems appear to be with their locator service and not Verizon. Verizon left meeting with the statement that they would meet with their representative and respond to FDOT.

25 February 2005 – CHC notified FDOT by letter that no further information or decision had yet been received from either FDOT or Verizon. CHC stated that Verizon had failed to make restitution to CHC and it was now incumbent upon the Department to do so.

14 March 2005 – Meeting held with FDOT, CHC, and Verizon. FDOT concluded meeting with acknowledgement that CHC was entitled to some compensation. FDOT stated it would forward the claim package to its consultant for review.

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16 May 2005 - CHC received letter from FDOT stating its consultant's review was complete and that CHC was entitled to nothing due to its lack of proper notice.

3 June 2005 – CHC met with FDOT. FDOT representative stated that the Verizon delay claim was actually still under review. The previous letter could be ignored. CHC forwarded a letter to FDOT summarizing this discussion.

23 August 2005 – FDOT representative stated that the Verizon delay claim was still under review; however, no entitlement due to notice requirements was again being discussed. This discussion was summarized in letter from CHC to FDOT.

25 October 2005 – FDOT e-mail to CHC states the Department is rejecting the Verizon claim "due to the fact that there was no intent to claim filed for the issues."

CRC's claim submission was for just a fraction of the actual disruption caused by Verizon's failure to complete its relocation work properly or in a timely manner. The Department was ineffective in its efforts to coordinate the utility relocation. CHC submitted notice in a timely manner, and has been patient in resolving the matter.

Even though CHC completed the Project within the allowed Contract time, it should still be awarded with the claimed time extension. A time extension at this point would serve to reflect CHC's efforts to pursue the work in the final CPPR grade. Although the need for the claimed time extension was mitigated by CHC by the extensive use of overtime all the way up until the Project's completion, it was done at significant cost to CHC. Compensation for the indirect impacts of delay should still accompany the granted time extension in accordance with FDOT's Supplemental Specification Section 5-12.6.2.2. Otherwise, CHC should be entitled to the direct cost for an equal number of days for CHC's forces at its overtime rates.

DEPARTMENT'S POSITION:

Contractor's Claim

The Contractor, Cherry Hill Construction, Incorporated, has requested additional compensation and time on the SR 60 project constructed from a Point East of Tiger Lake Road to a Point East of CR 630. The Contractor's request dated June 29, 2004 requests additional compensation in the amount of \$46,504.66 and an additional 35 calendar days. The Contractor requests additional time and money for four (4) separate issues and has requested Jobsite and Extended Home Office Overhead (shown as Issue 5) as outlined in their request attached to this document. The Contractor's request is detailed below.

Requested by Contractor:

<u>Issue</u>	<u>Compensation</u>	<u>Additional Time</u>
1. Delay by Verizon	\$10,823.66	13 Days
2. Delay by Verizon	0.00	1 Days
3. Delay by Verizon	0.00	12 Days
4. Delay by Verizon	0.00	9 Days
5. Jobsite and Extended Overhead for 25 Days	<u>\$35,681.00</u>	<u>0 Days</u>
TOTAL REQUESTED BY CONTRACTOR:	\$46,504.66	35 Days

Overview of Claim Analysis

The Contractor's basis of claim is alleged utility conflicts that caused delays and/or addition work to the project completion and the critical activities of the project. These issues include the relocation of Verizon facilities in the new ditch line, unmarked facilities in the shoulder construction area, and conflicts with new structures. The Contractor's request also includes jobsite and extended overhead for the requested days of the alleged delays.

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The original review of the Contractor's Claim package performed by the Department recommended no entitlement for any of the issues. However, in the spirit of partnering, the Department elected to have an Independent Claim Analysis performed on the Contractor's Claim package.

Both the Department's review and the Independent Claim Analysis concluded that there was no entitlement for these claims.

The following discussion is provided to highlight the Contractor's basis of claim for each issue and the Department's position:

Analysis of Contractor's Request

The Contractor has requested additional compensation and time extensions for four (4) alleged delays involving Verizon facilities.

Issue 1 – Delay by Verizon: *By letter dated July 24, 2003 the Contractor notified the Department as per Section 5-12.2.2 of possible delays associated with lowering the existing telephone cable in the ditch line along the eastbound lanes of SR 60. By letter dated June 29, 2004 the Contractor requested a thirteen (13) day time extension and additional compensation for labor and equipment costs associated with assisting Verizon in the relocation of their facilities. This alleged work included building berms in wet areas for Verizon locaters to mark their lines and backfilling the Verizon cables. The Contractor also alleges that the Utility Relocation Plan for the project called for the existing telephone cables to be relocated and lowered below new plan grade before the project began throughout the project limits.*

A review of the Utility Adjustment Sheets in the project plans depicts either fiber optic cable (FOC) and buried telephone cable (BT) owned by Verizon running along the right side of the roadway for the length of the project. The Utility Work Schedule (UWS) provided by Verizon depicts some new lines being placed as well as some existing lines being relocated prior to construction. However there are two (2) activities in the UWS shown to take place in MOT Phase I which call for adjustment at proposed drainage structures with this work being dependent on the staking of the proposed drainage structures. The UWS also depicts eighteen (18) activities shown to take place in MOT Phase II which are all shown to be dependent on the cutting of final grade. The total duration of Verizon work as shown in Schedule A of the UWS attached to the Supplemental Specification package depicts 13 calendar days for the relocation during project construction.

Therefore the Contractor's allegation that the work was to be completed prior to construction is false.

Based on the Contractor's updated CPM schedule submitted on June 23, 2003 the final grading along the right side of the roadway had an early start date ranging from November 21, 2003 to February 23, 2004 and a late finish date ranging from December 11, 2003 and March 19, 2004. The Contractor has stated the delay caused by Verizon took place between July 30, 2003 and September 13, 2003. Project diaries, weekly meeting minutes, and the Work Plan submitted by the Contractor show the transition from Phase I work to Phase II work occurring in the week of September, 21, 2003. The Weekly Meeting Minutes from July 23, 2003 and the Dispute Review Board meeting minutes dated August 11, 2003 identify the Contractor was working out of phase by performing Phase II earthwork during Phase I. Dispute Review Board meeting minutes dated October 6, 2003 depict the Contractor stating the utility relocation was not affecting the critical path work and that it had not yet delayed the project.

Section 8-7.3.2 states the Department will consider the affect of utility relocation and adjustment work on the job progress as the basis for granting a time extension only if all the following criteria is met:

- 1. Delays are the result of either utility work that was not detailed in the plans, or utility work that was detailed in the plans but was not accomplished in reasonably close accordance with the schedule included in the Contract Documents.*
- 2. Utility work actually affected the progress toward completion of controlling items of work.*
- 3. The Contractor took all reasonable measures to minimize the effect of utility work on job progress, including cooperative scheduling of the Contractor's operations with the scheduled utility work at the preconstruction conference and providing adequate advanced notice to the*

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utility companies as to the dates to coordinate their operations with the Contractor's operations to avoid delays.

A controlling item of work as defined in Section 1-3 are those work items that are directly interrelated such that each has a definite influence on progress of the overall schedule.

Section 7-11.6.3, Utility Adjustments, of the Supplemental Specifications states the utility work will be accomplished concurrently with the highway construction. Where utility work must be coordinated with highway construction operations, the portion of the anticipated relocation period covering such concurrent work may or may not begin on the day highway construction commences and may or may not be consecutive days. In review of contract documents we have found no correspondence by the Contractor requesting Verizon to facilitate early relocation of their facilities to allow the contractor to work out of Phase. The UWS clearly outlined eighteen (18) activities shown to take place in MOT Phase II which were all shown to be dependent on the cutting of final grade.

Based on our review it appears the Contractor's claim has no merit as he pursued the work in a different manner than shown in his schedule. The utility relocation by Verizon shown to be done in Phase II was all dependent on the cutting of final grade and as such the Contractor should have been working ahead of the Utility not behind them. The Contractor has failed to show that the utility impacted his controlling items of work as required by Section 8-7.3.2 of the contract documents. In addition, the Contractor failed to request a time extension within ten (10) days of the commencement of the alleged delay as required by Sections 5-12 and 8-7 of the contract documents.

Based on the above information we recommend no additional compensation or additional time be granted for this issue.

Issue 2 – Delay by Verizon: *By letter dated July 24, 2003 the Contractor notified the Department as per Section 5-12.2.2 of possible delays associated with lowering the existing telephone cable in the ditch line along the eastbound lanes of SR 60. By letter dated June 29, 2004 the Contractor requested a one (1) day time extension associated with an unmarked Verizon FOC and an unmarked pull box located within the shoulder construction area.*

Project documentation supports the FOC was found on September 25, 2003 and located by Verizon on September 26, 2003. The Utility Adjustment sheets clearly depict a buried telephone line on the south east corner of SR 60 and CR 630. However, this line is shown to remain in place and is detailed well outside the shoulder construction limits.

Based on our review it appears the Contractor's claim has no merit as he did not notify the Department of this delay as outlined in Section 5-12 of the contract documents. The letter dated July 24, 2003 does not outline this issue. The letter cannot be considered as a blanket for all issues involving the utility for the project. The Contractor has failed to show that the utility impacted his controlling items of work as required by Section 8-7.3.2 of the contract documents. Based on Project Documentation the Contractor acknowledged the utility had not impacted his schedule as late as October 6, 2003. In addition the Contractor failed to request a time extension within ten (10) days of the commencement of the alleged delay as required by Sections 5-12 and 8-7 of the contract documents.

Based on the above information we recommend no additional compensation or additional time be granted for this issue.

Issue 3 – Delay by Verizon: *By letter dated July 24, 2003 the Contractor notified the Department as per Section 5-12.2.2 of possible delays associated with lowering the existing telephone cable in the ditch line along the eastbound lanes of SR 60. By letter dated June 29, 2004 the Contractor requested a twelve (12) day time extension associated with a FOC conflict at stations 989+50 and 1017+00 which impacted planned pipe work and sod placement. The Contractor shows the delay occurring between December 29, 2003 and January 14, 2004.*

Plan Sheet 306 depicts two existing buried telephone lines crossing the line of Structure No. 51 at station 989+50 which was to be removed. The UWS identifies the same lines and an additional FOC at an unknown location. In addition, both documents show a proposed line that would replace the

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two which were to be removed. The UWS clearly identifies this work to be performed in Phase I after staking of the proposed drainage had taken place.

Plan Sheet 311 and the UWS depicts an existing pull box at station 1116+97 which was to be adjusted dependent on the cutting of final grade. No drainage structures appear to be in conflict with this pull box or the lines depicted coming into it.

Project Dailies indicate the sod subcontractor was on site 9 days during December 29, 2003 and January 14, 2004 placing sod, fertilizer, and water over 13,000 LF of the project in both the median and the right roadway. The dailies also show the Contractor was working stabilization and lime rock base for the right roadway and shoulder from Stations 1008+00 to 1020+00 from December 29, 2003 through January 13, 2004. As such this would have prevented the slope in this area being final graded and it would have prevented sod placement until January 14, 2004 at the earliest.

Based on our review it appears the Contractor's claim has no merit as he did not notify the Department of this delay as outlined in Section 5-12 of the contract documents. The letter dated July 24, 2003 does not outline this issue. The letter cannot be considered as a blanket for all issues involving the utility for the project. The Contractor has also failed to show that the utility impacted his controlling items of work as required by Section 8-7.3.2 of the contract documents. In addition the Contractor failed to request a time extension within ten (10) days of the commencement of the alleged delay as required by Sections 5-12 and 8-7 of the contract documents.

Based on the above information we recommend no additional compensation or additional time be granted for this issue.

Issue 4 – Delay by Verizon: By letter dated July 24, 2003 the Contractor notified the Department as per Section 5-12.2.2 of possible delays associated with lowering the existing telephone cable in the ditch line along the eastbound lanes of SR 60. By letter dated June 29, 2004 the Contractor requested a nine (9) day time extension associated with a cable conflict at station 798+00 which impacted planned pipe work and sod placement. The Contractor shows the delay occurring between January 21, 2004 and January 30, 2004.

Plan Sheets 274 & 275 depict existing buried telephone lines crossing the line of Structure No. 11 at station 798+00 which were to be adjusted. The UWS identifies the same lines and identify them as being adjusted prior to construction.

Project Dailies identify the drainage subcontractor working elsewhere on the project during the requested timeframe with the exception of January 24, 25, and 28, 2004. On January 24 & 25, 2004 there was no work performed on the Project. January 28, 2004 there was no work performed by the subcontractor but Verizon was on site adjusting the telephone line in the vicinity of Structure No. 11.

Project Dailies identify the sod subcontractor working on the project January 26, 27, 28, and 30, 2004.

Dispute Review Board meeting minutes dated February 9, 2004 identify the Contractor as stating Verizon had not impacted the Critical Path for the project.

Based on our review it appears the Contractor's claim has no merit as he did not notify the Department of this delay as outlined in Section 5-12 of the contract documents. The letter dated July 24, 2003 does not outline this issue. The letter cannot be considered as a blanket for all issues involving the utility for the project. The Contractor has also failed to show that the utility impacted his controlling items of work as required by Section 8-7.3.2 of the contract documents. In addition the Contractor failed to request a time extension within ten (10) days of the commencement of the alleged delay as required by Sections 5-12 and 8-7 of the contract documents.

Based on the above information we recommend no additional compensation or additional time be granted for this issue.

Issue 5 – Jobsite and Extended Overhead for 25 Days : By letter dated July 24, 2003 the Contractor notified the Department as per Section 5-12.2.2 of possible delays associated with lowering the existing telephone cable in the ditch line along the eastbound lanes of SR 60. By letter dated June 29, 2004 the Contractor requested Jobsite and Extended Overhead for twenty five (25) days totaling \$35,681.00.

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Based on our review of Issues 1-4, we have recommended no additional time be granted for the alleged delays. Thus, we recommend no additional compensation be granted for jobsite and extended overhead.

Consequently, based on all of the above, it is the Department's position that the Dispute Review Board should rule that there is no entitlement for these claims and should uphold the Department's original denial of each.

BOARD FINDINGS:

As to Issue # 1, the Contractor expended effort to the benefit of and in behalf of the utility with the expectation of reimbursement – proper notice was given. Without this effort, the utility may well have delayed the completion of the project.

The delays experienced by the Contractor by any or all impacts did not delay the completion of the project nor was there documentation provided that these impacts delayed the early completion of the project.

BOARD RECOMMENDATION:

Based on the materials supplied to the Board and presentations to the Board at the DRB hearing, the Board recommends:

<u>Issue</u>	<u>Compensation</u>	<u>Additional Time</u>
1. <i>Delay by Verizon</i>	<u>Entitlement</u>	<i>0 Days</i>
2. <i>Delay by Verizon</i>	<i>0.00</i>	<i>0 Days</i>
3. <i>Delay by Verizon</i>	<i>0.00</i>	<i>0 Days</i>
4. <i>Delay by Verizon</i>	<i>0.00</i>	<i>0 Days</i>
5. <i>Jobsite and Extended Overhead for 25 Days</i>	<u>No Entitlement</u>	<u>0 Days</u>

This Board sincerely appreciates the cooperation of all parties and the information presented for its review in making this recommendation.

Please remember that a response to the DRB and the other party of your acceptance or rejection of this 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 of the meetings of this DRB regarding this issue and concur with the findings and recommendations.

Respectfully Submitted
Disputes Review Board

John H. Duke Sr., DRB Chairman
Keith Richardson; DRB Member
Rammy Cone; DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



John H. Duke, Sr.
DRB Chairman