

# DISPUTE REVIEW BOARD RECOMMENDATION

August 19, 2002

E-Mailed: August 19, 2002

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RE: FIN: 197529-1-52-01  
WPI: 1118421/16030-3563  
Contract No.: 20496  
County: Polk  
SR 555/US 17 from Ave. "C" to Ave. "G"  
Disputes Review Board

Subject: **Contract Time Issue**

Dear Sirs:

The Owner, Florida Department of Transportation (Department), requested a hearing to determine **the amount of time** due Golden Eagle Engr. Contr., Inc. (Golden Eagle) for additional alleged impacts on the project.

The Board hearing was originally scheduled for July 13, 2002. Golden Eagle requested and received a continuance. 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 August 07, 2002.

## **ISSUE:**

We (FDOT) are formally requesting a hearing to discuss "Contract Time Issue" outlined in Golden Eagle's letters dated April 23, 2002; April 25, 2002; and May 1, 2002.

The Contractor requested forty-nine (49) additional days for various reasons. Our review of the claims found no additional days were warranted as outlined in our letter dated May 10, 2002.

Although the Contractor has petitioned for a delinquency hearing to discuss the time issue, it is the Department's position these issues should be brought before the DRB Board first.

## **CONTRACTOR'S POSITION:**

*July 22, 2002*

*RE: FDOT#19752915201/SR-555*

*ITEM: Contract Time Calc's & Project Delay's*

*With respect to the above captioned project and items, please be advised that this project commenced on approx. 04/30/01 and by one month into the job we noticed that we were already running behind the schedule using a full crews and working six & seven day work weeks. On June 12, 2001, I made a written request to WIS for the opportunity to review the Departments Time Calculations prior to our scheduled meeting for June 19<sup>th</sup>. The information I received was incomplete and could not be utilized to replicate the time calculations for subject project. When I brought this fact to the Department it was indicated that I had been given all available data.*

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In July 2001, submittals went back and forth from our CPM subcontractor to WIS indicating that the cost curve was "non-sensical" and that the time allowed for all phasings on the project was "non-sensical from the onset" (ACT 07/24/01 Ltr). It was also indicated that the Critical Path was impractical and needed to be reviewed for "constructability" (WIS 07/12/01 Ltr), while the ACT 07/24/01 Ltr. indicated that due to the "lack of flow" that most "most predecessors and successors become critical or near critical". It was finally determined that no action would be taken at the time and that the irregularities would be accepted although they "may indicate down stream problems" and appeared to be illogical. **I maintain that the time calc's were too compressed for the multiple phasing of the project** and that was why the CPM could not be properly drawn to make sense and meet the time frame allocated by the Department, I have maintained this issue from the first month on the project.

In April of this year I met with the Department to pursue the faulty contract time calc's. and once again was given what was considered to be a complete package used in determining the project time calculations. Please see the correspondence in May 2002 wherein I made another formal request for complete copies of the Departments support data for calculating project time. (I have enclosed the copies of the complete package received from the FDOT, maybe the DRB can accomplish what I could not and confirm that these time calc's are not flawed, I have been unable to replicate the Departments results).

Since so much value is attached to the project time calculations, and so much money in penalties can be assessed against my firm I feel that I should be entitled to support data sufficient to replicate the results established by the Department. Under the circumstances that the project began to drop behind so quickly and that the CPM could not be prepared to meet the time calc's without serious flaws, I feel that my position is valid that **the excessively compressed time calculations failed to address the complex phasing of this project making it an impossibility of performance to meet the Departments time calculations.**

Adding to the **impossibility of performance** were other factors such as the **numerous utility impacts** that we were experiencing early on in the project (see GEEC 08/24/01 fax transmission to WIS) wherein we felt this **altered the scope of our work** because it **created additional critical path issues.**

During my meeting with the Department in April 2002, I specifically requested that we receive additional contract time and once again reiterated the time calc. issue. While I was again met with a denial on the time request because of my contention of flawed time calc's. I was advised that the Department would consider granting additional time for any specific issues that we could go back and document for which we felt that we should have been granted extra time (see my letter of 04/18/02), I submitted this information in my letters dated 04/23/02, 4/25/02 & 05/01/02, all requests were flatly denied on May 10" by WIS.

Of a very unusual nature we received a letter from FDOT Tallahassee dated **May 2, 2002**, just one week after the existing contract completion date at that time, indicating that the **Department was intending to declare us "delinquent"** since our contract time ended on April 25, 2002, just one week earlier, this seemed very unusual since at the time we had several requests before the project CEI for consideration for additional time, requests which we had previously been advised by the Department they would consider at the April 2002 meeting? In fact of the 49 days submitted on 04/23, 04/25 & 05/01/02 all 49 were flatly denied by WIS the project CEI, on May 10, 2002, eight (8) days after the FDOT issued their "intent", the FDOT action seems to have been hastily issued considering that at the time the time requests had not yet been denied, plus none of this takes into consideration the time calculation issue which we maintain is flawed. We feel this is supported by the inability to achieve an acceptable CPM and our inability to maintain satisfactory progress. **It is our position that we constantly staffed the project appropriately, worked long hours and even enhanced our equipment fleet with long term rentals.**

**Another delay beyond our control** in addition to the 49 day time request and the time calc. issue was our **request to work over the Memorial Day holiday period, which was denied and the contract time was not stopped.** In addition to these additional four (4) days we have been besieged with **unseasonably inclement weather** seriously impacting our progress and causing saturated ground conditions.

In addition to the above, we **strongly disagree with the Departments position that by submitting a bid that we agreed that the time was reasonable and the project constructible within the allowable time.** As you all are probably aware the Department has years to design and

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*put out for bid a project, whereas a contractors window for obtaining the bid documents inspecting the project and obtaining bids is very small in comparison, and yes we normally assume that the information used by the Department is accurate however we are not in agreement that this information provided is flawless or without error, to err is human.*

*In summary, it is our position that **not only should additional time have been granted based on the narrow time frame for such a heavily phased project**, for the many issues we have raised, but **also that the contract time calculations were flawed** which both Golden Eagle and its CPM Engineer felt in the beginning of the project and maintained throughout!*

*We have provided additional data to support our claims herein as well as the time request issues.*

*We look forward to addressing these items at the upcoming DRB hearing and hope for an amicable resolve satisfactory to all parties.*

The Contractor's Petition reads:

### REQUEST FOR FORMAL ADMINISTRATIVE HEARING AND REQUEST FOR MEDIATION

*THE PETITIONER hereby requests a Formal Administrative Hearing to determine whether or not the Petitioner is delinquent on Project No. 160303553 and would therefore state that:*

1. *The Petitioner is the prime contractor for FDOT Contract No. 21108/Financial Project ID 1975 29115201 in Polk County, Florida.*
2. *The Petitioner's name and address and phone number is:*

*Golden Eagle Engineering Contracting, Inc.  
307 S. Washington Ave.  
Titusville, FL 32796  
Phone: 321-385-0440*
3. *On or about May 2, 2002 the Petitioner received Notice from FDOT that it intended to declare the Petitioner delinquent on the above referenced project. See Exhibit "A" attached hereto.*
4. *A determination of delinquency would preclude Petitioner from bidding on FDOT projects or working on any FDOT project as either a prime contractor or subcontractor.*
5. *Further, because numerous other governmental entities require potential contractors to have an active certificate of qualification from FDOT in order to bid and work on their projects, a finding of delinquency against Petitioner would preclude it from bidding or working on those projects.*
6. *Petitioner routinely works on FDOT projects and other projects requiring an active certificate of qualification and is at present pre-qualified with F DOT.*
7. *The Petitioner is not delinquent on the above-referenced project as it is entitled to contract time extensions for the project.*
8. *These contract time extensions include but are not limited to;*
  - a) *The project was **not constructable as per the time allotted for performance** as a result of FDOT's incorrect time calculations which it performed.*
  - b) ***Unforeseeable utility** conflicts in the area of Avenue "G" and S. W. 5<sup>th</sup> Street required additional time for construction and additional contract time should be granted.*
  - c) ***Delays in the acquisition of materials** in the same area should have resulted in additional time being granted.*
  - d) ***Unforeseeable utility conflicts in the area of Avenue "E" and 5<sup>th</sup> Street** required working around telephone lines in order to install storm drainage structures and additional contract time should be granted.*

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- e.) *The plans failed to identify existing curb ramps on S. W. 6<sup>th</sup> Street causing construction efforts to be delayed for which additional contract time should be granted.*
  - f.) ***Water and sewer lines owned by the City of Winter Haven conflicted with** Petitioner's work effort and contract time should be granted as a result of these delays,*
  - g.) *There were **in-the-field conflicts from S-11 to S-12 and from S-36 to S-37** wherein additional contract time should be granted.*
  - h.) *At station 175+27 **planned drainage work conflicted with a power pole and telephone lines** requiring additional time for performance. Contract time should therefore be granted.*
  - i.) *At or near **station 220+81 a water-main and fire hydrant had to be relocated** so that planned work could be accomplished. Additional contract time should be granted for this work effort.*
  - j.) *On June 8, 2001 a **conflict between a 2" water-main and structure S-102 required relocation** and construction efforts were delayed. Contract time should be granted for this work effort.*
  - k.) *At **Avenue "G" and S. W. 3<sup>rd</sup> Street additional work was added to the contract** requiring additional time for construction. Additional contract time should be granted for this work effort,*
  - i.) *Work efforts relating to **retention pond relocation and washout repair** should have warranted additional Contract time being granted.*
  - m.) ***Numerous utility conflicts in phase III of the project** required additional time for construction to be accomplished and additional contract time should have been granted.*
9. *Because contract time has not been properly granted, FDOT has wrongly issued to Petitioner its Notice of Intent to declare Petitioner delinquent.*
10. *Petitioner should not be declared delinquent because it is entitled, by practice and contract, to additional time for the work it performed on the contract. Said entitlement should be granted under Section 8-7 of the contract.*

### **DEPARTMENT'S POSITION:**

*June 12, 2002*

*Response to Request for Additional Time: Dept. Case No. 02-051 01*

*The following outlines our response to the Contractor's Claim for additional time as noted in the "Request for Formal Administrative Hearing and Request for Mediation". It is important to note that the issues outlined in the Petition were never brought before the Project Disputes Review Board (DRB) which is their first avenue as noted in the Contract.*

*Also, at the end of each meeting, the Board asked the Contractor, Department and CEI of any outstanding issues regarding Project Time. Minutes of the DRB meetings show no objections or complaints by the Contractor regarding time issues until the March 15, 2002 (Contract day 320 of 351).*

*Golden Eagle's letter dated March 18, 2002 requested twenty-one (21) additional days for various conflicts and additional work they were claiming. We were also verbally advised Golden Eagle had other issues regarding time. This office advised Golden Eagle in our letter dated March 25, 2002, to address all time issues prior to March 25, 2002. On March 29, 2002, a second letter requesting an additional 14 days was received. Our initial review determined thirteen (13) additional days could be justified. Negotiations were held with Golden Eagle and an agreement adding fifteen (15) Contract Days was signed on April 10, 2002.*

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Although it was our understanding all time issues prior to March 25, 2002, had been resolved, we received a second request for fifty-one (51) additional days in three letters dated April 23, 2002, April 25, 2002 and May 1, 2002. Our review found no cause for any additional days. The Contractor's petition outlines several of these issues.

The following is our response to the petition questions in Paragraph 8:

Item a.) Original Project Time: The original contract time for the project was established within the existing Departmental guidelines. Normal production rates and a five (5) day work week were utilized and utility relocation schedules were incorporated into the contract time. **The Contractor demonstrated that the time was reasonable by submitting a bid for the project. After the contract was executed, the Contractor submitted a proposed work schedule that further demonstrated that the contract work could be completed within the allowable time.** This schedule became the baseline for measuring work progress on the project.

The Department has continuously monitored the Contractor's work progress utilizing the approved schedule and has continuously documented the **Contractor's failure to apply the necessary resources to complete the work activities within the time frames included in his own schedule.** In fact, the Contractor admitted to the fact that they were having difficulty finding skilled workers on numerous occasions.

In summary, the Contractor's attack on the original time calculations is an attempt to shift the focus away from where the true problems occurred, that is, in the actual prosecution of the contract work.

Item b.) Avenue "G" & SW 5th Street: Work Order Number 5 included all costs for the acquisition of materials and the utility conflict between Structures S-30 and S-31 outlined in Golden Eagle's letter dated July 26, 2001. **Eight (8) additional contract days were added in the Work Order**, which Golden Eagle signed on July 27, 2001. The Daily Reports of Construction show no additional delays occurred when work was restarted to complete the work at the intersection on structure S-30. Golden Eagle's request for additional contract time is not warranted. Further, during the delay, other productive drainage work from S-14 to S-19 was completed by Golden Eagle.

Item c.) Avenue "G" & SW 5<sup>th</sup> Street Acquisition of Materials: As noted in Item b.), **additional Contract Time was granted by Work Order** for the acquisition of all material for the conflict in question.

Item d.) 5<sup>th</sup> Street Utility Conflicts: The original contract plans show the 5th Street drainage run on the right roadway. **At Golden Eagle's request, the main drainage line was relocated to the left roadway to avoid utility and building conflicts.** This change was completed prior to work starting and did not cause any delays. The telephone lines in question are noted in the contract plans. **The Daily Reports of Construction show no delays occurred due to the telephone lines during this period.** Therefore, no additional time is justified.

Daily Reports of Construction do show **Golden Eagle damaging a 2" water line during excavation. The 2" water line was shown in the Contract Plans and located by the City of Winter Haven prior to work in the area.** The City of Winter Haven, at no additional cost to the Contractor, completed repairs.

Item e.) ADA Ramps on 6<sup>th</sup> Street: Golden Eagle's statement that the **ADA Ramps are not shown in the Contract Plans is not correct.** Plan Sheets 20 and 28 show the ADA Ramps in question. They are also shown on the final pavement marking plans, Plan Sheets S-8 and S-16. To date, this work has not been completed. We therefore question how additional time can be claimed. Golden Eagle's request is not justified and no additional time should be granted for work shown in the Contract Plans.

Item f.) City of Winter Haven water line: **Our records show all water lines were located as noted on the Contract Plans.** The Contractor's request for locations were completed by the City of Winter Haven in a timely manner and no delays resulted. Further, the

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Daily Reports show on several occasions Golden Eagle damaged or broke several of the located water lines due to their failure to physically locate the water line before excavation started. The City of Winter Haven completed several unnecessary repairs due to Golden Eagle's negligence at no cost to the Contractor or the Department. No additional time is warranted.

- Item g.) Conflict between S-11 and S-12: **Work Order Number 2** included all costs for the acquisition of materials and the construction of a conflict structure between Structures S-11 and S-12. The cost for the conflict structure is outlined in Golden Eagle's letter date May 15, 2001. The Contractor requested three (3) additional contract days. Negotiations with Golden Eagle resulted in one (1) additional contract day being added and the **Work Order was signed by Golden Eagle on May 18, 2001.**

The Daily Reports of Construction show the Contractor was not impacted initially, as crews were working in other areas. Additionally, **no delays occurred when work was restarted to complete the conflict structure.** Further, the records show Golden Eagle's backfilling operations were hindered due to equipment problems. The compaction equipment from the rental company was not on site and a garden water hose from the Water Truck was being used which impacted and slowed the backfill operation. No additional time is justified.

Included in Work Order Number 2 is the additional conflict structure between structures S-36 and S-37. The Department and Golden Eagle also negotiated and agreed to add one (1) additional contract day to construct a conflict structure. For the same reasons outlined above, Golden Eagle's claim for additional time is not warranted.

- Item h.) Power Pole Conflict at Station 175+17: Golden Eagle was aware of the power pole conflict between S-36 & S-37 and **failed to coordinated the work with TECO prior to the work being started.** Our records show work began on the morning of 5/17/01 at 7:00 A.M. TECO was notified at 9:00 A.M. and arrived at 11:00 A.M. **TECO held the power pole in place while Golden Eagle crews completed the work at 3:00 P.M.** the same day. Golden Eagle's claim for additional time is not warranted.

- Item i.) Water main conflict at Station 220+81: Our records show Golden Eagle notified the Department at 11:45 A.M. on Thursday, May 24, 2001, regarding the **conflict with an existing water main and the new Reinforced Concrete Pipe (RCP)** for the storm drainage run from S-100 to S-101. A meeting with the City of Winter Haven was held at noon that day. The City of Winter Haven advised they could not shut down the line, as there were no valves.

**Because of the conflict, Golden Eagle's work crew stopped placing RCP at 12:30 P.M. on Thursday, May 24, 2001.** Crews started the backfill on S-100, continued with the constructing of the two conflict structures and the backfilling of RCP between S-11 & S-12, and S-36 & S-37. It is important to note that the excavation and backfilling crew is one and the same. It was Golden Eagle's practice to excavate and install RCP for two or three days, then stop the installation and complete the backfilling for the next two or three days. Backfilling operations continued the following day, Friday, May 25, 2001, until 3:30 P.M. The Contractor stopped all work for the Memorial Day Holiday as outlined in Section 8-6.4 of the Standard Specifications for Construction. **The Memorial Day Holiday is a "no work" holiday and was calculated as such in the original calculation of Contract Time.**

On the morning of Tuesday, May 29, 2001, the City of Winter Haven completed the wet taps and notified Golden Eagle they could return to the area in question.

Golden Eagle's claim for additional contract time is not warranted. The fact they could not place RCP between S-48 and S-13 on the 24<sup>h</sup>, 25<sup>"</sup> & 29<sup>th</sup> does not justify additional time. During this period, Golden Eagle did complete drainage pipe backfill on RCP previously placed before May 24<sup>th</sup>. Our letter to Golden Eagle dated May 25, 2001 notes the backfilling is Phase work. No additional days should be considered for

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*the Memorial Day Holiday from May 26<sup>th</sup> to May 28<sup>th</sup>, as it was a scheduled "no work" Holiday outlined in Section 8-6.4. Based on the fact other contract work was being completed, no additional time should be considered.*

- Item j.) S-102 conflict: *Our records show the **City of Winter Haven relocating the 2" water line in question on Friday, June 8, 2001.** On June 8<sup>th</sup>, Golden Eagle's work forces were completing backfill operation between structures S-13 and S-48. The installation of RCP between of S-102 and S-103 was started on Saturday, June 9, 2001. **Therefore, the conflict was corrected prior and no addition time is warranted.***
- Item k.) Additional Work at Avenue "G" & 3<sup>rd</sup> Street: *On 4/24/02, Golden Eagle was directed to remove the existing curb & gutter on the SE corner of Avenue "G" and 3<sup>rd</sup> Street, and reconstruct a new ADA ramp and curb & gutter. The existing curb & gutter was removed by Golden Eagle's crews on 4/24/02, which took approximately two (2) hours. The new curb & gutter was formed and poured on the morning of 4/25/02, concurrent with the crosswalk. Additionally, the ADA ramp is yet to be constructed. **During this period, the controlling item of work was the Limerock Base in Phase 3D.** Due to a payment issue with their supplier, this work was delayed from 4/18/02 to 4/25/02. The addition of the curb and gutter did not affect Golden Eagle's schedule, as base construction on Phase 3D was the Controlling Item of Work. Golden Eagle's request for additional time is not warranted.*
- Item l.) Retention Pond: *The request for additional time for work on Pond #1 is unclear. **No additional work was requested or completed by Golden Eagle.** Any erosion during the construction of the Pond was due to Golden Eagle's failure to protect its work. On several occasions, Golden Eagle was advised to add silt fence and hay bales to avoid the problems that occurred. No attempt was made by Golden Eagle to protect its work before forecasted rains occurred. **The Department did grant additional weather days for recovery work in the pond due to these heavy rains.** No additional time is warranted.*
- Item m.) Numerous Conflicts: ***We are unaware of the numerous conflicts the Contractor is requesting additional time for.** All utility conflicts were noted in the Daily Reports of Construction and addressed previously if time was warranted. The reports also note damages to utilities as a result of Golden Eagle's failure to use correct procedures (pothole) when excavating around utilities that were located by the Utility Representatives.*

*This office has continuously worked with Golden Eagle to assist them with their time issues. An example is Golden Eagle's request to complete Phase 3A work concurrent with Phase 2 work. Pursuant to Silvia Roth's statement that a second crew was being added, the Department concurred with Golden Eagle's request to allow Phase 3A to be completed concurrent with Phase 2 work. Our letter dated August 27, 2001 notes the scope of work had not changed or that any utility conflicts impacted this request.*

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## BOARD FINDINGS:

The following table summarizes the relative positions of the parties:

	Golden Eagle	FDOT
a.)	<i>The project was not constructable as per the time allotted for performance as a result of FDOT's incorrect time calculations which it performed.</i>	<i>The original contract time for the project was established within the existing Departmental guidelines. Normal production rates and a five (5) day work week were utilized and utility relocation schedules were incorporated into the contract time. The Contractor demonstrated that the time was reasonable by submitting a bid for the project. After the contract was executed, the Contractor submitted a proposed work schedule that further demonstrated that the contract work could be completed within the allowable time. This schedule became the baseline for measuring work progress on the project.</i>
b.)	<i>Unforeseeable utility conflicts in the area of Avenue "G" and S. W. 5<sup>th</sup> Street required additional time for construction and additional contract time should be granted.</i>	<i>The Department has continuously monitored the Contractor's work progress utilizing the approved schedule and has continuously documented the Contractor's failure to apply the necessary resources to complete the work activities within the time frames included in his own schedule</i>
c.)	<i>Delays in the acquisition of materials in the same area should have resulted in additional time being granted.</i>	<i>As noted in Item b.), additional Contract Time was granted by Work Order for the acquisition of all material for the conflict in question</i>
d.)	<i>Unforeseeable utility conflicts in the area of Avenue "E" and 5<sup>th</sup> Street required working around telephone lines in order to install storm drainage structures and additional contract time should be granted.</i>	<i>At Golden Eagle's request, the main drainage line was relocated to the left roadway to avoid utility and building conflicts. This change was completed prior to work starting and did not cause any delays. The telephone lines in question are noted in the contract plans. The Daily Reports of Construction show no delays occurred due to the telephone lines during this period. Therefore, no additional time is justified.</i>
e.)	<i>The plans failed to identify existing curb ramps on S. W. 6<sup>th</sup> Street causing construction efforts to be delayed for which additional contract time should be granted.</i>	<i>Golden Eagle's statement that the ADA Ramps are not shown in the Contract Plans is not correct. Plan Sheets 20 and 28 show the ADA Ramps in question</i>
f.)	<i>Water and sewer lines owned by the City of Winter Haven conflicted with Petitioner's work effort and contract time should be granted as a result of these delays.</i>	<i>Our records show all water lines were located as noted on the Contract Plans.</i>
g.)	<i>There were in-the-field conflicts from S-11 to S-12 and from S-36 to S-37 wherein additional contract time should be granted.</i>	<i>Work Order Number 2 included all costs for the acquisition of materials and the construction of a conflict structure between Structures S-11 and S-12. The cost for the conflict structure is outlined in Golden Eagle's letter date May 15, 2001. The Contractor requested three (3) additional contract days. Negotiations with Golden Eagle resulted in one (1) additional contract day being added and the Work Order was signed by Golden Eagle on May 18, 2001.</i>
h.)	<i>At station 175+27 planned drainage work conflicted with a power pole and telephone lines requiring additional time for performance. Contract time should therefore be granted.</i>	<i>Golden Eagle was aware of the power pole conflict between S-36 &amp; S-37 and failed to coordinated the work with TECO prior to the work being started. Our records show work began on the morning of 5/17/01 at 7:00 A.M. TECO was notified at 9:00 A.M. and arrived at 11:00 A.M. TECO held the power pole in place while Golden Eagle crews completed the work at 3:00 P.M. the same day. Golden Eagle's claim for additional time is not warranted.</i>
i.)	<i>At or near station 220+81 a water-main and fire hydrant had to be relocated so that planned work could be accomplished. Additional contract time should be granted for this work effort.</i>	<i>Our records show Golden Eagle notified the Department at 11:45 A.M. on Thursday, May 24, 2001, regarding the conflict with an existing water main and the new Reinforced Concrete Pipe (RCP) for the storm drainage run from S-100 to S-101. A meeting with the City of Winter Haven was held at noon that day. The City of Winter Haven advised they could not shut down the line, as there were no valves. Because of the conflict, Golden Eagle's work crew stopped placing RCP at 12:30 P.M. on Thursday, May 24, 2001</i>
j.)	<i>On June 8, 2001 a conflict between a 2" water-main and structure S-102 required relocation and construction efforts were delayed. Contract time should be granted for this work effort.</i>	<i>Our records show the City of Winter Haven relocating the 2" water line in question on Friday, June 8, 2001. On June 8th, Golden Eagle's work forces were completing backfill operation between structures S-13 and S-48. The installation of RCP between of S-102 and S-103 was started on Saturday, June 9, 2001. Therefore, the conflict was corrected prior and no addition time is warranted.</i>
k.)	<i>At Avenue "G" and S. W. 3<sup>rd</sup> Street additional work was added to the contract requiring additional time for construction. Additional contract time should be granted for this work effort,</i>	<i>On 4/24/02, Golden Eagle was directed to remove the existing curb &amp; gutter on the SE corner of Avenue "G" and 3rd Street, and reconstruct a new ADA ramp and curb &amp; gutter. The existing curb &amp; gutter was removed by Golden Eagle's crews on 4/24/02, which took approximately two (2) hours. The new curb &amp; gutter was formed and poured on the morning of 4/25/02, concurrent with the crosswalk. Additionally, the ADA ramp is yet to be constructed. During this period, the controlling item of work was the Limerock Base in Phase 3D. Due to a payment issue with their supplier, this work was delayed from 4/18/02 to 4/25/02. The addition of the curb and gutter did not affect Golden Eagle's schedule, as base construction on Phase 3D was the Controlling Item of Work.</i>
l.)	<i>Work efforts relating to retention pond relocation and washout repair should have warranted additional Contract time being granted.</i>	<i>No additional work was requested or completed by Golden Eagle. Any erosion during the construction of the Pond was due to Golden Eagle's failure to protect its work. On several occasions, Golden Eagle was advised to add silt fence and hay bales to avoid the problems that occurred. No attempt was made by Golden Eagle to protect its work before forecasted rains occurred. The Department did grant additional weather days for recovery work in the pond due to these heavy rains.</i>
m.)	<i>Numerous utility conflicts in phase III of the project required additional time for construction to be accomplished and additional contract time should have been granted.</i>	<i>We are unaware of the numerous conflicts the Contractor is requesting additional time for. All utility conflicts were noted in the Daily Reports of Construction and addressed previously if time was warranted. The reports also note damages to utilities as a result of Golden Eagle's failure to use correct procedures (pothole) when excavating around utilities that were located by the Utility Representatives.</i>

### Issue (a):

The Contractor alleges that the project was **not constructable as per the time allotted for performance** as a result of FDOT's incorrect time calculations.

Time Requested by Contractor:

Not specified.



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### Narrative:

Golden Eagle did not present evidence or documentation to support the allegation that the FDOT's project time for the subject project was flawed. Golden Eagle provided no notice to the FDOT of its intent to claim for this issue, nor did they formally request additional time due to this issue prior to the expiration of time on the project. Further, this issue was never raised at any of the previous DRB meetings. Even if the Department's contract time establishment was to be found to be flawed, the **Contractor provided no contractual or legal basis for the time to be adjusted.**

### Supporting Documentation:

Sufficient documentation to substantiate this claim has not been provided.

### Recommendation:

Due to lack of supporting documentation or previous precedence, the Board finds **no entitlement for additional time.**

### Issue (b):

The Contractor alleges that **unforeseeable utility conflicts** in the area of Avenue "G" and S.W. 5<sup>th</sup> Street required additional time for construction and additional contract time should be granted.

### Time Requested by Contractor:

Golden Eagle **requested** at the DRB hearing **12 days** for the work covered under **items b and c.**

### Narrative:

**Eight days** were **granted by work orders**, which were agreed to and **signed by Golden Eagle with no exception taken.** The FDOT's daily report of construction shows that the conflict was discovered on July 18, 2001 and that the work was completed on July 28. The time frame from the discovery to the completion of the work is 11 calendar days. The daily reports indicate that Golden Eagle was working on the 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup> and 24<sup>th</sup> on other work and began work on the conflict structure S-30 on the 24<sup>th</sup>. Golden Eagle's own Daily Reports agree with those prepared by Washington as to the time frame of the impact. Golden Eagle signed off on the work order and subsequently never filed a notice of delay or request for additional time until just prior to the DRB claim hearing on August 7, 2002. In addition, this issue was never brought to the attention of the Board during its many meetings on the project.

### Supporting Documentation:

Golden Eagle has **not presented new documentation or evidence of their entitlement** to the additional time.

### Recommendation:

Based on the documentation submitted to the Board, the time granted by FDOT appears reasonable. The Board finds **no entitlement for additional time.**

## DISPUTE REVIEW BOARD RECOMMENDATION

### Issue (c):

The Contractor alleges that **delays in the acquisition of materials** in the same area should have resulted in additional time being granted.

#### Recommendation:

See (b) above.

### Issue (d):

The Contractor alleges that **unforeseeable utility conflicts in the area of Avenue "E" and 5<sup>th</sup> Street** required working around telephone lines in order to install storm drainage structures and additional contract time should be granted.

#### Time Requested by Contractor:

Five days.

#### Narrative:

The drainage line was relocated at the request of Golden Eagle. Golden Eagle signed Washington's letter of May 23, 2001 without any reservation of right to request additional time. Other than the statement that "the work in this area took longer than anticipated", Golden Eagle did not present any evidence or documentation to support their request for additional time for unforeseeable utility conflicts.

#### Supporting Documentation:

Sufficient documentation to substantiate this claim has not been provided.

#### Recommendation:

The Board finds **no entitlement for additional time.**

### Issue (e):

The Contractor alleges that the **plans failed to identify existing curb ramps on S.W. 6<sup>th</sup> Street** causing construction efforts to be delayed for which additional contract time should be granted.

#### Time Requested by Contractor:

Three days.

#### Narrative:

Golden Eagle did not present evidence or documentation to support the allegation that the curb ramps were not shown on the plans for the project. The ramps are shown on the "as bid" contract plans. At the DRB hearing Golden Eagle dropped this claim.

#### Supporting Documentation:

Sufficient documentation to substantiate this claim has not been provided.

#### Recommendation:

The Board finds **no entitlement for additional time.**

## DISPUTE REVIEW BOARD RECOMMENDATION

### Issue (f):

The Contractor alleges that **water and sewer lines owned by the City of Winter Haven conflicted with their work effort** and contract time should be granted as a result of these delays.

### Time Requested by Contractor:

Four days.

### Narrative:

Golden Eagle did not present evidence or documentation to support the request for additional project time for the alleged conflicts. Documentation provided by Washington includes:

The Daily Report of Construction of August 1, 2001 states: *“Golden Eagle cut water line (running East to West at Station 49+25/5<sup>th</sup> St.”*. The Daily Report of Construction of August 11, 2001 notes *“while mixing contractor hit 2” water line. The City of Winter Haven was called and replaced water line”*. The “Engineer’s Weekly Summary” for week ending August 12, 2001, notes *“(A) City of Winter Haven – 1.) Installing new water main on 5<sup>th</sup> Street; 2) Several water line repairs were required. Lines were not located by the City and were broken by the Contractor”*. The Daily Report of Construction of August 17<sup>th</sup> states: *“At 2:45 pm Crew were call over to “f” Ave. to repair 2” water line hit by Contractor with loader. This was second time line was hit.”* The Engineer’s Weekly Summary, week ending August 19, 2001, notes *“(2.) Several water line repairs were required. Although the locations of the water lines are now known, the Contractor continues to damage them”*.

The above noted documentation is unclear as to whether Golden Eagle requested utility locations for the water lines that were damaged. In addition, Golden Eagle never requested additional time due to this delay nor did they provide their own documentation of the impact of the damage and whether they were responsible or, if the City of Winter Haven had failed to respond to their request for locations. This issue was never raised at any of the previous DRB meetings as a delay.

### Supporting Documentation:

Sufficient documentation to substantiate this claim has not been provided.

### Recommendation:

The Board finds **no entitlement for additional time.**

### Issue (g):

The Contractor alleges that there were **in-the-field conflicts from S-11 to S-12 and from S-36 to S-37**, wherein, additional contract time should be granted.

### Time Requested by Contractor:

Six additional days per Washington’s letter to file of 05/18/02. Eight days requested at the Hearing.

## DISPUTE REVIEW BOARD RECOMMENDATION

### Narrative:

Golden Eagle signed Washington's letter of 05/18/02 acknowledging the forthcoming issuance of the Work Order to construct two conflict structures. The total cost for the work was \$9,615.00 with two (2) additional days added to the contract time. Golden Eagle also signed the Work Order for Unforeseen Work. Golden Eagle did not include a reservation of rights clause in either document to preserve their rights for additional contract time. This issue was never raised at any of the previous DRB meetings as a delay.

### Supporting Documentation:

Sufficient documentation to substantiate this claim has not been provided.

### Recommendation:

The Board finds **no entitlement for additional time.**

### **Issue (h):**

The Contractor alleges that **at station 175+27 planned drainage work conflicted with a power pole and telephone lines** requiring additional time for performance. Contract time should therefore be granted.

### Time Requested by Contractor:

Two days.

### Narrative:

Golden Eagle alleges that it lost time installing planned drainage work, which conflicted with a power pole, requiring TECO to mobilize a crew to hold the pole. The Daily Report of Construction provided by Washington for 5/17/01 indicates that TECO held pole from 11:00 am to 3:00 pm. It is unclear whether Golden Eagle timely notified the utility of the need to "hold the pole". The amount of time Golden Eagle was impacted was minimal. In addition Golden Eagle never requested additional time for this delay. Further, this issue was never raised at any of the previous DRB meetings.

### Supporting Documentation:

Sufficient documentation to substantiate this claim has not been provided.

### Recommendation:

The Board finds **no entitlement for additional time.**

### **Issue (i):**

The Contractor alleges that **at or near station 220+81 a water-main and fire hydrant had to be relocated** so that planned work could be accomplished. Additional contract time should be granted for this work effort.

### Time Requested by Contractor:

Ten days.

## DISPUTE REVIEW BOARD RECOMMENDATION

### Narrative:

Golden Eagle has not provided any documentation for this claim for delay due to conflicts with water main and fire hydrant. Washington has provided Daily Reports of Construction for the period in question. On 5/24/01, the Project Utility Conflict Damage Report has the following statement under the portion that describes delays and lost of productivity. **“Contractor has no where to go due to conflict of water line and fire hydrant until line has been done”**. Again on the 25<sup>th</sup>, the Contractor is unable to work. The days of 5/26/01, 5/27/01, and 5/28/01 were all non-work days due to the Memorial Day Holiday. The contractor was able to work on the 29<sup>th</sup>, but the conflict was not cleared until 1:30 pm based on the General Comments in the Daily Report of Construction. Golden Eagle was not able to pursue this work from the 24<sup>th</sup> until the 30<sup>th</sup>. Although Golden Eagle did not send in a formal request for additional time, in Washington’s letter to file dated May 24, 2001, last paragraph of the letter states: *“Sylvia Ross stated this delay would affect the schedule and their production for the next two days”, she then stated “if the City doesn’t complete the work on the water main by Tuesday morning, May 29, 2001, Golden Eagle would be further delayed”*. Washington’s letter to file dated May 30, 2001, states: *“On May 29, 2001, the City installed shut off valves. Work was completed at 1:00 P.M. that day. The Contractor chose to start Clearing and Grubbing phase on (sic) II to keep his crews busy. This was out of phase work and was not a controlling of (sic) item work. Further, the Contractor chose to continue the Clearing and Grubbing after the completion of the Cities work completed at 1:00 P.M. His reasoning was that **it was to (sic) late in the day to change the work activity”***

### Supporting Documentation:

Daily Reports of Construction and Utility Conflict Damage Reports.

### Recommendation:

**It would appear from the documentation which has been provided at the hearing that there is entitlement for this delay.** The days of delay were May 24<sup>th</sup>, 25<sup>th</sup>, and 29<sup>th</sup>.

It is **recommended that 3 additional calendar days be granted.**

### Issue (i):

The Contractor alleges that on June 8, 2001, a **conflict between a 2” water-main and structure S-102 required relocation**, and construction efforts were delayed. Contract time should be granted for this work effort.

### Time Requested by Contractor:

Two days.

### Narrative:

Golden Eagle presented documentation in the form of Contractor’s Time Extension Request dated 06/08/01 support the allegation that a conflict between a 2” water main and structure S-102 required relocation and that construction operations were delayed on June 8, 2001. The only other documentation available, the Daily Report of Construction dated 6/08/2001, provided by Washington, describes *“the City of Winter Haven working at the S.E. corner of 6<sup>th</sup> Street and Avenue “E” moving water service*

## DISPUTE REVIEW BOARD RECOMMENDATION

*so structure 102 could be installed*". The Daily Report of Construction does not notate any delay to the construction activity that day. Golden Eagle did provide notice to the FDOT of its intent to claim for additional time due to this issue on June 8, 2001 on FDOT Form 700-010-56. Although the Department's position on this claim is that GEEC was working on backfill operations on the 8<sup>th</sup> and, therefore, was not delayed; that as soon as the conflict was cleared they went back to work on the 9<sup>th</sup>. It is not hard to recognize the potential impact to the schedule when such limited work areas are available due to the small size of a project split into multiple phases and work areas.

No documents were provided by either side to document impact to drainage activities prior to the 8<sup>th</sup>. The installation of S-102 began on June 9<sup>th</sup>. Documentation was provided to substantiate only "mob & demob" delay. Neither party provided any documentation as to whether this activity was on the critical path of the project.

### Supporting Documentation:

Sufficient documentation to substantiate this claim has not been provided.

### Recommendation:

Therefore, the Board finds **no entitlement for additional time.**

### Issue (k):

The Contractor alleges that **at Avenue "G" and S.W. 3<sup>rd</sup> Street additional work was added** to the contract requiring additional time for construction. Additional contract time should be granted for this work effort.

### Time Requested by Contractor:

Two additional days.

### Narrative:

Golden Eagle did not present evidence or documentation to support the allegation that additional work of removing the existing curb and gutter on the S.E. corner of Avenue "G" and 3<sup>rd</sup> street delayed the critical path of the project. Washington refuted this claim and stated that the ADA ramp has yet to be poured. The Daily Report of Construction provided by Washington does not describe any delay to the construction due to this work. The reports do document that the Contractor was waiting on limerock to be delivered; *"Road crew not being productive due to no limerock. Crew has been delayed on this issue for several days. Limerock was supposed to be delivered."* Golden Eagle provided no notice to the FDOT of its intent to claim for this issue, nor did they formally request additional time due to this issue prior to the expiration of time on the project. Further, this issue was never raised at any of the previous DRB meetings.

### Supporting Documentation:

Sufficient documentation to substantiate this claim has not been provided.

### Recommendation:

Therefore, the Board finds **no entitlement for additional time.**

## DISPUTE REVIEW BOARD RECOMMENDATION

### Issue (l):

The Contractor alleges that **work efforts relating to retention pond relocation and washout repair should have warranted additional** Contract time being granted.

#### Time Requested by Contractor:

Seven days per Golden Eagle's "Contractor's Time Extension Request" dated 04/25/02. Thirteen days requested at the Hearing.

#### Narrative:

In his letter of March 18, 2002 to the FDOT, provided by Washington, the Project Engineer wrote on the subject of weather delays; from February 19, 2002 to March 17, 2002. Paragraph 5 reads as follows: "**Additional weather days for "recovery" to repair pond #1 will be required.** The damage is a result of the heavy rains Friday February 22, 2002. These additional recovery days will need to be determined and will be based on a contract with actual time to complete the work." On April 10, 2002, the Project Engineer wrote to Golden Eagle regarding time extension, work started or completed prior to 3/25/02. The letter granted a "*no-cost time extension of fifteen (15) calendar days as full and final compensation for the issues presented in your time extension request letters dated March 19, 2002 and March 29, 2002. This time extension is inclusive of all work started and/or completed prior to March 25, 21002 (sic)*". On April 12<sup>th</sup> **Golden Eagle signed this letter.** On 4/25/02, Golden Eagle filed a Contractor's Time Extension Request on the FDOT form 700-010-56 requesting seven additional contract days for problems regarding the recovery efforts at pond #1. The DRB on its numerous field trips observed the impact that heavy rains had on the pond. On a small project such as this US 17 Winter Haven job, it is not difficult to see how a large erosion problem to a pond could have a day for day impact on the project if project personnel assigned to other activities are called upon to do erosion control and to participate in the remedial tasks of repairing the damaged work. Were this a project with multiple crews of a much larger nature, the impact would be insignificant. But on a small project with perhaps 1-2 crews, an impact to the pond would be an impact to the project. Golden Eagle did not provide documentation to allow a quantification of the 7 additional days requested.

#### Supporting Documentation:

Sufficient documentation to substantiate this claim has not been provided.

#### Recommendation:

Therefore, the Board finds **no entitlement for additional time.**

### Issue (m):

The Contractor alleges that **numerous utility conflicts in phase III of the project required additional time** for construction to be accomplished and additional contract time should have been granted.

#### Time Requested by Contractor:

No time specified

## DISPUTE REVIEW BOARD RECOMMENDATION

### Narrative:

No specific issues were put forth at the DRB hearing. This issue is a summary restatement of previously stated claims based on utility delays and conflicts.

### Supporting Documentation:

Sufficient documentation to substantiate this claim has not been provided.

### Recommendations:

Due to lack of supporting documentation, the Board finds **no entitlement for additional time.**

### **BOARD RECOMMENDATION:**

**Based on the observations of the Board during the life of the project, on the materials supplied to the Board and presentations to the Board at the DRB hearing, the Board recommends that the Contractor be granted three (3) additional days contract time.**

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 that 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  
Timothy M. Smith; DRB Member  
John B. Coxwell; DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



John H. Duke, Sr.; DRB Chairman





Winter Haven Field Office

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Winter Haven, FL 33880-2930

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August 22, 2002

Mr. John Duke  
DRB Chairman  
P.O. Box 680597  
Orlando, FL 32868-0597

**Subject: DRB Recommendation – Contract Time Issues**  
**Financial Project ID:** 197529 1 52 01  
**WPI/State Job No:** 16030-3563  
**Federal Project ID:** 3532 031 P  
**Contract No:** 21108  
**County/Section No:** Polk  
**SR 555 (US 17) Avenue "C" to Avenue "G"**

Dear Mr. Duke;

The Department has reviewed the recommendation outline in the DRB Boards letter dated August 19, 2002, and concurs with the findings. A Time Extension for three (3) additional Contract Days will be forwarded to Golden Eagle Engineering Contractors bonding agent, CNA Surety, for a signature.

Sincerely,

A handwritten signature in blue ink, appearing to read 'George D. McClintock', is written over a series of horizontal lines.

George D. McClintock  
Project Engineer

p.c. Dan Foss, DCE, FDOT  
Sharon Hedrick, FDOT  
Sharon McCall, FDOT Resident Engineer  
Sam Joseph, FDOT Project Manager  
Gary Jones, Washington  
file