

DISPUTE REVIEW BOARD RECOMMENDATION

May 19, 2005

Mr. Jim Martin, P.E.
Resident Engineer
FDOT Lake City Construction
710 N.W. Lake Jeffery Road
Lake City, Florida 32055

Mr. E. Tony Williams, Jr., P.E.
Vice President
Anderson Columbia, Co., Inc.
PO Box 1829
Lake City, FL 32056-1829

RE: I-75 from SR 90 to I-10
Fin No: 213084-2-52-01

Subject: Hearing Dated May 16, 2005
Regional Disputes Review Board Recommendation

Dear Sirs,

Anderson Columbia, Co., Inc. and the Florida Department of Transportation requested the District 2 Regional Dispute Review Board to hear a dispute involving the awarding of additional contract time as compensation for weather delays. The hearing was held May 16, 2005 in the FDOT Lake City Resident Construction Office. The parties furnished the board position papers for review prior to the hearing.

Issue: Calculation of Weather Delay Time Extension

The contract originally provided 200 calendar days for completion of the project. The project start date was February 3, 2004. Contract provisions initially did not permit lane closure work from 5pm on Friday until 6am on Monday. On June 18, 2004 a Supplemental Agreement was issued extending the work period to 9am Tuesday to Friday, lane closures for North bound I-75 were extended to include Sunday from 9pm to Monday 9am, and lane closures for South bound I-75 were extended to include Sunday from 10pm to Monday 9am. The contractor experienced a significant number of weather delay days during the project. Both the contractor and the FDOT agree with regard to the number of normal work days qualifying as weather delay days. The disputed issue involves the manner in which additional time is to be added to the contractor's contract time as compensation for weather delays.

Contractor Position

Contractor states that the FDOT's procedure of adding one calendar day to the contract performance time to compensate for one lost weather day fails to provide adequate time compensation because a portion of the calendar days added will be days on which because of the contract provisions work can not be performed.

From the contract start date on February 3, 2004 to actual start date of March 16, the contractor was unable to perform any work because of the weather. The contractor states that the FDOT included only work days in their calculation of additional contract days and awarded a total of 29 days as

compensation for the weather delays occurring during this period. The contractor requests an additional 12 days of time compensation for this period.

The contractor states that after work actually began on March 16, 2005, excluding work suspensions granted for hurricanes, 33 weather delay days occurred and 33 calendar days were added to the contract performance time. The contractor requests an additional 15 days of time compensation for this period.

FDOT Position

The FDOT states that weather day delay compensation was added to the contractor's contract time in accordance with the applicable contract provision (Section 8-7.3.2 of the 2000 Standard Specification for Roads and Bridges). Time added to the contractor's performance time did not include the weekend days because the contract provisions did not permit work during the weekends.

The FDOT further states that the Department had been generous in accommodating the contractor's requests for time extensions and that the time granted was ample to complete the project. Additionally, the FDOT states that the contractor did not work on some days when work could have been performed and used 21 days to rework failing asphalt.

Disputes Review Board Recommendation

The Disputes Review Board has been advised by the parties requesting the hearing that the applicable project specification is the FDOT 2000 Standard Specifications for Roads and Bridges. The relevant language from the referenced specification is as follows:

8-7.3.2 Contract Time Extensions:

“...The Department does not include an allowance for delays caused by the effects of inclement weather in establishing Contract Time.

The Department will handle time extensions for delays caused by the effects of inclement weather differently from those resulting from other types of delays. The Department will consider these time extensions only when rains or other inclement weather conditions or related adverse soil conditions prevent the Contractor from productively performing controlling items of work resulting in:

(1) The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items due to adverse weather conditions; or

(2) The Contractor must make major repairs to work damaged by weather, provided that the damage is not attributable to the Contractor's failure to perform or neglect; and provided that the Contractor was unable to work at least 50% of the normal workday on pre-determined controlling work items.

No additional compensation will be made for delays caused by the effects of inclement weather.

The Engineer will continually monitor the effects of weather and, when found justified, grant time extensions on either a bimonthly or monthly basis. The Engineer will not require the Contractor to submit a request for additional time due to the effects of weather....”

Given the above contract language concerning time extensions, it is reasonable to understand that weather delays meeting the above criteria will be considered excusable but non-compensable delays and that the contractor will be granted additional time to makeup for lost work days. The contractor has a reasonable expectation of being given the opportunity to work an additional day for each work day lost

to weather delays. Additional days of required performance were performed during the phase of the project when work was permitted on only five days a week.

Granting calendar days as replacement for lost work days on a one-for-one basis does not provide equitable compensation for the lost work days in a situation where work by contract restriction can only be performed five days a week. On average, two additional calendar days would be required for each five days of weather delay time.

The contractor's statement that no work could be performed from February 3, 2004 until the actual start date of March 16, 2004 because of weather delays is not disputed by the FDOT and is accepted as fact by the Disputes Review Board.

The contractor's statement that after the March 16, 2004 actual start date, 33 additional weather delays occurred is not disputed by the FDOT and is accepted as fact by the Disputes Review Board.

In accordance with the applicable specification contractor entitlement to weather delay time extensions is not conditioned upon the contractor's performance.

The Disputes Review Board Recommends based upon the following calculation that 25 additional days be added to the contractor's contract performance time as excusable but non-compensable compensation for weather delays.

Period from February 3, 2004 to March 16, 2004

Total Weather Delay Days	=	29
Equivalent Contract Days	=	1.4 x 29 = 41
Additional Days	=	41 - 29 = 12

Period After March 16, 2004

Total Weather Delay Days (other than hurricane suspensions)	=	33
Equivalent Contract Days	=	1.4 x 33 = 46
Additional Days	=	46 - 33 = 13

Total Additional Days = 12 + 13 = 25 days

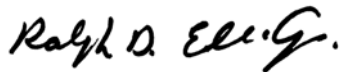
The Board appreciates the cooperation of all parties and the information presented for review in order to make this recommendation. Please remember that a Boards recommendation requires acceptance or rejection within 15 days. Failure to respond to the DRB and other parties within the time frame constitutes an acceptance by both parties.

I certify that I have participated in all meetings and discussions regarding the issues and concur with the findings and recommendation.

Respectfully submitted,
Regional Disputes Review Board

Ralph Ellis – Chairman
William O. Downs – Member
Jimmy Lairscey - Member

Signed for all with the concurrence of all members.



Ralph D. Ellis, Jr.
Chairman