

DISPUTE REVIEW BOARD RECOMMENDATION

September 25, 2002

Mr. Dave Sadler
FDOT District 2
P.O. Box 6669
Jacksonville, FL 32236-6669

Stephen M. Legget
The Milestone Company of Jacksonville, Inc.
14165 N. Main Street
Jacksonville, FL 32218

RE: SR 139 (State and Union Streets)
Fin No: 209261-1-52-01
Contract No: 20697

Subject: Unresolved Claim Issues

Dear Sirs,

The Department of Transportation along with the Milestone Company of Jacksonville, Inc. requested the Regional Dispute Review Board to hear a dispute involving MOT, Home Office Overhead, Asphalt Paving Inefficiencies and Additional Field Cost. The hearing was held September 3, 2002 in the Jacksonville Department of Transportation Urban Office. The parties furnished the board position papers for review prior to the hearing.

MAINTENANCE OF TRAFFIC

Contractors Position:

M.O.T. – Request \$273,179.48 The request is based on the percentage overrun over the entire Contract of the individual MOT pay items, $460,485.6 / 121,962.25 = 378\%$. Lump Sum MOT bid price \$98,206.00.

Departments Position:

The Department considers there is no entitlement to the issue.

HOME OFFICE OVERHEAD

Contractors Position:

The Department and Contractor previously agreed to \$788.22 per day for Home Office Overhead. The Contractor requested 269 compensable days at the rate of \$788.22, a total of \$212,031.18.

Departments Position:

Original Offer \$81,874.88
Revised Offer \$85,374.62

ASPHALT PAVING INEFFICIENCY

Contractors Position:

As a result of multiple delays, unforeseen conditions and design errors, Milestone suffered a drastically reduced production rate. Request \$67,579.49 for additional cost for milling and paving. (Per FDOT chart this was revised to \$109,327.19)

Departments Position:

There is no entitlement. \$0.00

ADDITIONAL FIELD COST

Contractors Position:

Requested compensation for an additional 269 days. The cost is general cost charged directly to the job for the extended time. Total request \$264,026.19. (According to FDOT Chart, this has been revised to \$202,191.06.)

Departments Position:

The Departments position is that additional field costs are contained in the Home Office Overhead already agreed to at \$788.22 per day.

DISPUTE REVIEW BOARD RECOMMENDATION

The Board has reviewed the position papers submitted by the parties and heard oral presentations from the parties. We have thoroughly studied all relevant data and controlling contract documents for the project. Our findings are expressed in the same order as we have shown in the Contractors and Departments position.

MAINTENANCE OF TRAFFIC

The contract was extended an additional 299 days, from 300 days to 599 days. The Contractor asked for an increase of \$273,179.48. The Board recommends compensation at the rate of \$327.55 for 163 days, the same time period the board considered for home office overhead, **a total of \$53,390.65.**

HOME OFFICE OVERHEAD

A total of 134 additional days of performance time were added to the project by 15 Time Extension agreements agreed to by the contractor and the FDOT. Eleven of the Time Extension agreements contained terms and conditions which precluded the contractor from seeking additional financial compensation relating to the delay. Four of the Time Extension agreements, totaling 84 days, did not contain terms and conditions precluding the contractor from seeking additional financial compensation relating to the delay. Accordingly, the Home Office Overhead rate was applied to those time extensions without language precluding additional compensation.

Time Extensions containing terms and conditions precluding the contractor from pursuing further monetary compensation relating to the time delay.

“By your acceptance of this time extension as indicated below, you agree to pursue no further claim, financial or otherwise, in connection with the above request.”

Date	Days Granted
4/19/00	1
8/26/00	1
9/13/00	1
10/4/00	1
10/21/00	1
11/2-5/00	4
2/2-6/01	5
2/20/01	20
4/12/01	14
5/21/01	1
7/3/01	1

Time Extensions not containing terms and conditions precluding the contractor from pursuing further monetary compensation relating to the time delay.

“The contractor will be compensated by writing a work order for this additional work at a later time.”

Date	Days Granted
8/15/01	11
9/6/01	19
9/11/01	1
10/5/01	35
11/12/01	18
Total	84

Supplemental Agreements

Supplemental Agreement No. 4 was a unilateral modification that added 79 days of time to the contract performance time. Since the contractor had not agreed to not pursue additional compensation relating to the delay, the Home Office Overhead rate was applied to the days granted for this supplemental agreement.

Combining time extensions not containing conditions precluding the Contractor from seeking additional compensation with Supplemental Agreement No. 4, $84 + 79 = 163$ days. The Board recommends compensating the Contractor at the rate of \$788.22 for a **total of \$128,479.86**.

ASPHALT PAVING INEFFICIENCIES

The Board considered 347 MT as norm for asphalt production. The dates listed for inefficiency were examined individually and only three qualified for consideration. The dates are 12/11/200, 12/14/2000 and 3/26/2001. These dates had inefficiency factors of 2.4459, 1.4600 and 0.9269 resulting in an accumulated inefficiency of \$3,930.75. All of the other listed dates were paid by Supplemental Agreement or no problem found. (See Attachment A) The Board recommends compensation in the amount of \$3,930.75.

FIELD OVERHEAD

The Board finds that the formula in the latest FDOT Specifications provides for all eligible overhead costs.

In Summary:

M.O.T.	53,390.65
Home Office Overhead	128,479.86
Asphalt Inefficiencies	3,930.75
Field Overhead	0.00
Total	185,801.26

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

Robert D. Buser – Chairman
William O. Downs – Member
Dr. Ralph Ellis - Member

Signed for all with the concurrence of all members.

R. D. Buser
Chairman