

DISPUTE REVIEW BOARD RECOMMENDATION

November 30, 2006

Mr. Michael Sandow
Senior Engineer
Gainesville Construction
Florida Department of Transportation
5301-A NE 39th Ave.
Gainesville, FL 32609

Mr. Tony Williams
Vice President
Anderson Columbia Co., Inc.
PO Box 1829
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RE: SR26 FPID 20769915201
SR26A FPID 20779015201

Subject: Hearing Dated November 16, 2006
Disputes Review Board Recommendation

Dear Sirs,

Anderson Columbia Co., Inc. and the Florida Department of Transportation (FDOT) requested a Dispute Review Board hearing of a dispute involving application of Supplemental Agreement #9. The hearing was held on November 16, 2006 at the FDOT Resident Construction office in Gainesville. The parties furnished the Board position papers for review prior to the hearing. The Disputes Review Board was requested only to consider the question of entitlement.

Issue: Contractor Compliance with the Schedule Completion Requirements Provided by SA#9

The project scope involved reconstruction, widening and rehabilitation of State Roads 26 and 26A. Also included were two retention ponds and a fountain system. The project was located immediately west of the University of Florida campus. State Roads 26 and 26A are major corridors for traffic generated by sporting events at the University.

Originally the project was divided into 12 distinct construction areas with a phased schedule for start and completion of areas. Prior to the beginning of the University's summer 2006 session, the FDOT and the Contractor negotiated a modification to the original work schedule. The objective of this agreement was to insure completion of critical work activities prior to the influx of returning students and the start of the 2006 football season. In general, this agreement allowed the contractor to close 2nd Avenue (SR26A) from NW 23rd Street to University Avenue. The agreement also involved compensation to the contractor for acceleration costs. The Contractor agreed to complete all required work activities within new critical timelines established by the agreement. The agreement specifically required that certain items of work be completed by a Critical End Date of September 1, 2006, and included a disincentive provision. The agreement provided a \$25,000. disincentive for each home football game for which the required work was not complete by 5:00 PM of the preceding Friday.

The disputed matter concerns whether or not the Contractor's work completion status on September 8, 2006, the second home football weekend, was in compliance with the Critical End Date provisions of SA#9.

FDOT Position

The following summary of the FDOT's position is based upon written materials submitted to the Board and upon the hearing presentation.

The FDOT agreed to pay acceleration cost only if the Contractor completed all designated construction activities by the Critical End Date of September 1, 2006. The "Work Activities and Critical Time Line Schedule" found on page 2 of the agreement, specifically list the completion requirements. The phrase used for items B through E is "Complete all work" or "Complete all remaining work". The only exception allowed is "minor signal work, friction course, and patterned textured pavement".

On Friday, September 8 at 5:00PM, the second home football game weekend, the Contractor had not completed the work required by SA#9. Specifically, the Contractor had not completed the following required items of work:

Loop and Signal Coordination

The three signals on SR26 did not have full actuation and signal coordination. Full actuation could have been achieved by completing mainline loops and installing infrared detectors on the side streets. The following plan note contained on sheet 335 is also referenced:

"Full Actuation shall be maintained at all times by use of infrared detection for temporary detection during each traffic control phase."

ADA Tiles

ADA tiles were not installed. The project area lies within a heavily used pedestrian corridor. The Department considers the ADA tiles to be a critical work activity, which was not completed by the September 8, 2006 deadline.

Given that the Contractor did not complete all required work items, the Department believes that it is entitled to access the disincentive provided by SA#9.

Contractor Position

The following summary of the Contractor's position is based upon written materials submitted to the Board and upon the hearing presentation

The Contractor's position is that the work completion status as of 5:00PM on September 8, 2006 was in compliance with the requirements of SA#9. The Contractor comments as follows on specific work items that the Department has cited as incomplete:

Loop and Signal Coordination

All mast arms and signals were installed and operational (on recall) by September 1, 2006. It is the Contractor's position that SA#9 provides an exception for "minor signal work". Traffic Signal Loops are minor signal work. Consequently, the fact that the traffic

signal loops were not complete does not qualify as non-compliance with the Critical Date completion requirements of SA#9.

ADA Tiles

It is standard practice for the Contractor to install the ADA tiles subsequent to the placement of friction course and subsequent to the acceptance of the ADA ramps in most cases during the 14 day paint curing time. Placement of the ADA tiles at this time prevents the possibility of having to remove the tiles due to cracks that may occur during the placement of the friction course. Since the friction course was excluded, then it is logical to believe that the ADA tiles would also be excluded.

It is the Contractor's position that both of the above items (Loop and Signal Coordination, and ADA Tiles) are excluded from the work required to be completed by SA#9. Therefore, the status of work completion was in compliance with SA#9 on September 8, 2006 and no disincentive should be assessed.

Disputes Review Board Findings

The Board has considered all of the materials submitted by both parties. We have been thorough in our efforts to examine all aspects of the dispute involving the application of SA#9.

Before addressing the matter at hand, it is appropriate to recognize both the Department and the Contractor for their success with this project. The Board notes that through the efforts of both the Department and the Contractor, SR26 and SR26A were open to traffic for the first home football game.

However, the issue before the Board is the interpretation of the "Work Activities and Critical Timeline Schedule" provisions of SA#9. A copy of Activities and Critical Timeline Schedule provisions of SA#9 is included with this recommendation.

The Board finds the language of Item C and of the Disincentive Provision to be clear and unambiguous.

"C. Construction Areas 9 & 11 – Complete all signal work at the intersection of University Avenue and NW 21 Terrace by August 21, 2006."

"If Anderson Columbia fails to fulfill any of the requirements listed in B, C, D, and E by the "Critical End Date" (other than due to a major plan revision to a critical path item or a declared state of emergency in Alachua County), the MOT Lump Sum Contract Amount of \$700,000 (pay item 0102 1) shall be reduced by \$25,000 for each home football game in which the work listed in B, C, D, and E is not completed by 5:00 PM of the preceding Friday."

The Board notes that Item C on the Activities and Critical Timeline Schedule specifically requires that all signal work at the intersection of University Avenue and NW 21st Terrace be completed by August 21, 2006, and provides no exception for minor signal work. Furthermore, the provisions of SA#9 provide no relief for the Contractor for partial completion. Failure to comply with any of the B, C, D and E items, would qualify as non-compliance.

Both the Department and the Contractor have agreed that the following items of work were not complete by 5:00PM on September 8, 2006.

- Traffic Signal Loops and Full Signal Actuation
- ADA Tiles

Signal loop installation and full actuation of the signals was not complete at the intersection of University Avenue and NW 21st Terrace by 5:00PM on September 8, 2006. All signal work was not complete as required by Item C. Therefore the project work completion status as of 5:00PM on September 8, 2006 did not meet the requirements of the Activities and Critical Timeline Schedule contained in SA#9.

Disputes Review Board Recommendation

The Disputes Review Board finds that the Department is entitled to access the disincentive for the second home football weekend, in accordance with the provisions of SA#9. However, this finding of entitlement is not a recommendation that the disincentive be accessed or be not accessed. The decision on whether or not to access the disincentive is at the Department's discretion.

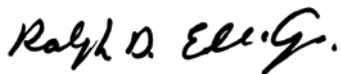
The Board appreciates the cooperation of all parties and the information presented for review in order to make this recommendation. Please remember that a Boards recommendation requires acceptance or rejection within 15 days. Failure to respond to the DRB and other parties within the time frame constitutes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

Ralph Ellis Jr. – Chairman
Thomas P. Shafer – Member
Keith Richardson - Member

Signed for all with the concurrence of all members.



Ralph D. Ellis, Jr.
Chairman

Work Activities and Critical Timeline Schedule from SA#9

Work Activities and Critical Timeline Schedule

- A. Construction Area 8 - Complete all work (except for new sidewalk) from SW 23rd Street to just beyond the first south side driveway (at station 1229+50) on 2nd Avenue by May 28, 2006.
- B. Construction Areas 8 & 9 - Complete all remaining work (except for minor signal work, friction course, patterned/textured pavement, and the placement of trees) and open all lanes to traffic on 2nd Avenue by August 21, 2006.
- C. Construction Areas 9 & 11- Complete all signal work at the intersection of University Avenue and NW 21st Terrace by August 21, 2006.
- D. Construction Areas 10, 11, & 12 - Complete all work (except for minor signal work, friction course, and patterned/textured pavement) on the south side of University Avenue by August 21, 2006.
- E. Construction Areas 10, 11, & 12 - Complete all remaining work (except for minor signal work, friction course, and patterned/textured pavement) on University Avenue by September 1, 2006.
- F. Construction Areas 2, 4, 5, & 6b - Complete all work (except for minor signal work, traffic separators, friction course, minor curb work, patterned/textured pavement, and pond A incidentals) from Pond B on 2nd Avenue to the western convergence at University Avenue by September 1, 2006.
- G. Construction Areas 2, 4, & 5 - Maintain two-way traffic at all times west on 2nd Avenue from SW 34th Street to the western convergence at University Avenue after September 1, 2006
- H. Construction Areas 9 & 11 - Complete the placement of all trees at east end of project by September 30, 2006.

If Anderson Columbia fails to fulfill any of the requirements listed in B, C, D, and E by the "Critical End Date" (other than due to a major plan revision to a critical path item or a declared state of emergency in Alachua County), the MOT Lump Sum Contract Amount of \$700,000 (pay item 0102 1) shall be reduced by \$25,000 for each home football game in which the work listed in B, C, D, and E is not completed by 5:00 PM of the preceding Friday. If a dispute arises in determining if a contract change rises to the level of a major plan revision to a critical path item, the matter shall be presented to the DRB for resolution. Both parties anticipate that delays may be caused by or arise from any number of events (including weather) during the completion of the work. Such delays or events and their potential impacts on performance by Anderson Columbia are specifically contemplated and acknowledged by the parties in entering into this agreement, and shall not extend the "Critical End Date" set forth above. Further, any and all costs or impacts whatsoever incurred by Anderson Columbia in accelerating the work to overcome or absorb such delays or events in an effort to meet the "Critical End Date", regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of Anderson Columbia in every instance.

After the "Critical End Date", all remaining work referenced in this agreement shall be subject to the following requirements during the suspension periods on the Friday, Saturday, and Sunday of home football games and the day of home basketball games. Anderson Columbia shall perform any and all work, temporary or otherwise, necessary to