

## **DRB Hearing**

### **GLF Construction Corporation vs. FDOT District Three**

**FIN: 424508-1-52-01**

**FAP No.: 4801054P**

**Contract: T3416**

**Project Description: SR 10 (US90) over Yellow River (Bridge No. 570004)**

**County: Okaloosa**

**"Delay Claim for Level 3 Utilities Impacts"**

**April 3, 2017**

#### **Members of the Dispute Review Board:**

**Rammy Cone, Member**

**David Van Leuven, Member**

**Bill Deyo, Chairman**

#### **Project Information:**

**Award Date: June 3, 2014 Type: Bid-Build**

**CONTRACTOR: GLF Construction Corp.**

**CEI: Volkert/Eisman&Russo**

**Scope of Work: Bridge Replacement**

**Location: SR 10 (US 90) over Yellow River**

#### **Contractor's Position as Submitted by GLF:**

The Florida Department of Transportation (the Department) awarded Contract T3416 to GLF Construction Corporation (GLF) on June 3, 2014 (Exhibit 1). The Contract Notice to Proceed was dated July 18, 2014 and the first chargeable contract day was August 3, 2014 (Exhibit 2). The Contract was in the amount of \$13,977,555.35 and included 555 Contract days to construct this traditional Bid Build Bridge/Roadway project (Exhibit 3). The Contract incorporated the 2014 Edition of the FDOT Standard Specifications and the 2014 Edition of the Design Standards, as amended by Contract Documents. Sub-article 8-7.1 (Exhibit 4) of the Edition of the FDOT Standard Specifications was expanded to include the following:

Contract Time for this project includes 90 calendar days for periods of reduced productivity by the Contractor's forces due to utility relocation/adjustment. These days of reduced productivity shall be reflected in the Contractor's work progress schedule.

No additional compensation will be made to the Contractor for periods of reduced productivity as defined above.

The improvements under this contract consisted of replacing the structurally deficient existing bridge over the Yellow River on US 90. Also included in this contract were: excavation, embankment, stabilization, base construction, approach slabs, bridge substructure (Drilled Shafts) and superstructure, MSE Wall construction, drainage improvements, asphalt placement, milling, resurfacing, guardrail, signing and pavement markings, and signalization.

### **ISSUE of ESCALATION**

*Is GLF entitled to additional contract time and compensation as a result of Level3 Communications failure to relocate their facilities in accordance with the Contract?*

*Does the Department have the authority to withhold liquidated damages from the final payment to a Contractor, when an issue involving time and monetary impacts exists at the time of project acceptance?*

### **GLF'S SCHEDULE BACKGROUND / SUMMARY DESCRIPTION OF CRITICAL NATURE OF THE UTILITY RELOCATION**

During the bidding process, GLF's recognized the requirements of the Special Provisions and incorporated Utility Relocations into our baseline CPM schedule (Exhibit 5). The baseline Schedule details the cumulative 90 calendar day impact to the project for all of the Utilities involved. GLF also recognized that the relocation of the utilities from the existing bridge to the new bridge would be critical to construction of the End Bent 20 slope protection and the construction of the proposed Storm Water Pond 2.

The existing utilities to be relocated from the existing bridge to the proposed structure consisted of an AT&T Fiber line within the existing bridge barrier wall, a CenturyLink Fiber within the existing bridge barrier wall, and a Level3 Communications duct hanging externally from the south side of the outside support beam beneath the existing bridge deck. As is readily apparent, **the relocation of the fiber lines were critical to the demolition of the existing bridge** and the demolition of the existing bridge could not proceed until these utilities were relocated.

GLF bid the demolition of the existing bridge utilizing a top down demolition method. Utilizing rubber tire cranes and hydraulic munching and hoe ram attachments to excavators. The deck would be removed in segments and the bridge beams would be removed individually in one pick. The substructure would be removed, using top down and grade level techniques, as a whole Bent cap and the piles would be pulled or cut off 2 feet below the mud line. This method would be employed for the entire structure with the exception of the substructure Tower Bent caps located at the transition of the 42'-0" beams and the 62'-6" beams. Due to the mass of these 4 Tower Bent caps, the caps would be required to be removed in sections rather than as a single pick.

As is detailed in the Timeline section of this Position Paper, GLF quickly realized that the relocation of the utilities would not be performed in an expedited manner and we would need to



take an aggressive approach to work with and around the utility relocation efforts to mitigate the impact to the project schedule.

**TIMELINE RELATED TO THE ISSUE**

- 06/03/14 - T3416 Award Letter (Exhibit 1)
- 7/29/14 – T3416 – Preconstruction Conference was held (Exhibit 6). Utility Representative from AT&T, CenturyLink, and Level3 Communications were present at the meeting. Utility relocation schedules were reviewed and discussed.
- 7/18/2014 – The Department issues the Notice to Proceed stating that time will begin 31 calendar days following NTP (08/03/14) or the date on which GLF begins work, whichever date is earlier. (Exhibit 2)
- 10/27/14 – GLF begins work on construction of the Haul Road for the proposed US 90 Yellow River Bridge. The existing US 90 Traffic is maintained on the existing bridge until completion of the new structure.
- 2/10/2016 – GLF submitted the Bridge Demolition Plan to the Department for review and comment. (Exhibit 7)
- 4/16/16 – GLF performs Phase III traffic switch and reroutes all motorist traffic to the New US 90 Bridge.
- 4/20/2016 – GLF conducts on-site meeting with AT&T, CenturyLink, and Level3 Communications. During the on-site meeting, coordination for the installation of the conduit sweeps around the new MSE walls was made. All utilities were informed that the sweeps would be installed by COB on April 26, 2017. The utilities would be “free and Clear” to begin their relocation from the existing bridge to the completed new structure as of April 27, 2016.
- 4/20/2016 – Brett Deslonde informed Bill Bredesen, verbally, at the on-site meeting that Level3 Communications had planned to have access to all 3 of the 4” conduits installed in the new bridge barrier wall. Level3 could not fit their existing lines within a 4” conduit. Mr. Bredesen informed Mr. Deslonde that the conduits installed we per the plans. Mr. Deslonde stated “Level3 would have to make alternate plans for their relocation.”
- 4/22/2016 – GLF provides written Email to affected utilities as a follow-up from the April 20<sup>th</sup> Meeting on-site. GLF provided details and dates for the installation of the conduit sweeps and also detailed that GLF would assist in trenching or other activities to assist the utilities. GLF requested a response from each of the Utilities of their planned work schedule. **GLF received no response from any of the utilities related to the work schedule request.** (Exhibit 8).
- 4/28/2016 – GLF receives requested analysis results from GLF Specialty Engineer, Construction Engineering Consultants, related to the partial removal of the existing bridge structure to mitigate the impacts to the “live” utilities on the existing bridge (Exhibit 9).
- 6/16/2016 – GLF submits letter to Volkert Engineering detailing efforts made to date to coordinate and mitigate utility impacts to the Project. Volkert Engineering was notified that GLF would be essentially “shut down” on demolition unless the utilities were relocated by 6/20/2016 (Exhibit 10).

Held mtg w/ 7 day Notice →

Theo. April 29<sup>th</sup> 2PM  
 start work 5 day week  
 2 April  
 22 May  
 June  
 23 July  
 19 Aug  
 20 Aug 29<sup>th</sup> all clear

266 days

July 14 day (5)  
 3 20  
 25  
 day



- 6/29/16 – CenturyLink provides notification that their facilities have been fully relocated to the new Yellow River Bridge (Exhibit 11)
- 7/12/16 – Weekly Progress Meeting 39/DRB Meeting 10 held this day. Level3 utilities discussed in detail. GLF letter of 6/16/16 discussed. CEI provided clarification of Special Provision for 90 calendar days of reduced productivity (Exhibit 12).

- Mr. Barton reminded GLF that Computation of Contract Time Section of Contract Special Provisions states this project includes 90 calendar days for periods of reduced productivity due to utility relocation / adjustment (as it relates to the "Utility Delays" Letter).

- 7/15/16 – GLF submits request to the Area Utility Coordinator, via Email, to contact Level3 and try to get a scheduled date for the fiber transfer off of the existing Yellow River Bridge. Level3 indicated no date had been established (Exhibit 13).
- 7/25/16 – GLF submits request for time and money for impacts to the project due to Level3 failing to relocate their facilities in accordance with the contract. (Exhibit 14).
- 7/28/16 – GLF receives response from Volkert Engineering recognizing the Claim filed by GLF on 7/25/2016 due to delays by Level3 Communications (Exhibit 15).
- 8/2/16 – Text Message between GLF and the Area Utility Coordinator regarding the effort GLF is expending working around the delay caused by Level3. Also discussed the continued rescheduling of the fiber transfer to accommodate the Level3 client base at the cost of GLF. (Exhibit 16).
- 8/18/16 – Text Message between GLF and the Area Utility Coordinator regarding the effort GLF is expending working around the delay caused by Level3. Area Utility Coordinator was visit the site to witness the efforts of GLF to work around the delay caused by Level3 (Exhibit 17)
- 8/24/16 – Text Message between GLF and the Area Utility Coordinator regarding the transfer of their facilities. Scheduled for Midnight this night. Requested the Area Utility Coordinator contact Level3 and ask if Level3 planned to remove the temporary devices installed by GLF to protect the fiber from water and debris damage or would GLF need to include this cost in our claim package (Exhibit 18).
- 8/24/16 – Email from Area Utility Coordinator detailing that Level3 was scheduled to make their transfer at Midnight. *Specific interest in this Email is the attached Email dated July 21, 2016 between Volkert Engineering and Level3 Communications. Volkert Engineering specifically details "Can you please confirm when Level 3 will be "free and clear" from the existing structure? Our records indicate that Sunday 7/24/16 will be the last of the 90 Days of Reduced Productivity due to Utility Relocations/Adjustments."* (Exhibit 19).
- 9/12/16 – Progress Meeting 42. GLF provides clarification that Level3 was "free and clear" of the proposed construction as of 8/29/2016. The Meeting Minutes document the efforts of GLF to continue to work with the utility during the delay period. (Exhibit 20).
- 9/20/16 – GLF submits cost impacts to Volkert Engineering as a "Request for Equitable Adjustment" rather than as a "Claim" payment request. Full justifications for the Specification requirements were included in this letter (Exhibit 21).

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- 10/19/16 – Volkert Engineering provides a response to GLF denying the Request for Equitable Adjustment citing that the 90 calendar days of reduced productivity were not met. This response conflicts directly with the Email from Volkert Engineering to Level3 Communications (Exhibit 19) stating “that Sunday 7/24/16 will be the last of the 90 Days of Reduced Productivity due to Utility Relocations/Adjustments.” (Exhibit 22).
- 10/19/2016 – Volkert Engineering forward notice to Level3 Communications of the GLF claim for additional time and money due to failure of Level3 to relocate their facilities. Level3 was directed to contact GLF to meet and resolve this issue within 15 days of the date of the letter (Exhibit 23).
- 11/29/16 – GLF contacted the Area Utility Coordinator to determine if Level 3 was going to respond to the direction from Volkert Engineering. As of 11/29/2016, 41 days had elapsed of the 15 allowed and GLF had not been contacted by Level3. The Area Utility Coordinator indicated he had discussed the issue with Level3 several weeks ago and had advised the CEI that Level3 was reviewing the issue at the corporate level (Exhibit 24).
- 12/15/16 – GLF and Level3 meet at the GLF Office in East Milton to discuss the Level3 Utility Claim. No acceptable negotiation or settlement offer was made by Level3 to GLF. Level3 plans to review further with their Corporate Office (Exhibit 25).
- 1/13/17 – GLF contacted the Area Utility Coordinator to provide notification that Level 3 was requesting a joint meeting with GLF and the FDOT to discuss the Utility delay claim. Department and CEI personnel were copied on the invite for the Meeting (Exhibit 26).
- 1/19/17 – The second negotiation meeting was conducted between GLF and Level3. On the date of the meeting, no attendees from the Department or the CEI were present. No acceptable negotiation or settlement offer was made by Level3 to GLF (Exhibit 27).
- 1/26/17 – GLF send letter to DRB Chairman requesting hearing by the DRB Board for the Level3 Communication Delay Claim (Exhibit 28).

### **ADDITIONAL FACTORS SUPPORTING THE POSITION OF GLF**

The Merriam-Webster Dictionary defines “Coordination” as: “the process of organizing people or groups so that they work together properly and well”. GLF has detailed, exhaustively within this position paper, the efforts we have expended to coordinate with all of the utilities on the SR 10 (US90) over Yellow River Bridge Project to ensure we provided the information, support, mitigation, and assistance so the utilities could relocate their facilities within the parameters of the approved utility work schedules.

The Merriam-Webster Dictionary defines “enforce” as: “to make sure that people do what is required by (a law, rule, etc.)”. GLF has demonstrated repeatedly within this position paper our attempts to reach out to the CEI, The Area Utility Coordinator, and the Department to enforce the requirements of the approved utility work schedules. GLF has no contractual or legal relationship with the utilities on the project. The relocation schedules are developed during the design phase of the project and are negotiated and executed by the Utility and the Department



prior to actual construction. GLF has no ability to “enforce” the obligations of a utility work schedule on an individual utility. Our only recourse is to coordinate and seek assistance from the Department if the utility is not proceeding with relocation, is affecting the project critical items, or is delaying the progress of the work.

Sadly, on this contract, the Department and the CEI elected to take a hands-off approach to Utility Relocation on the SR 10 (US90) Yellow River Bridge Project. As evidenced by the Exhibits 11, 19, 24 Emails, there was numerous communications between the Utility and the CEI where GLF was not even provided a courtesy copy of the correspondence? The Department has also taken a 180° change in direction during the course of this struggle to have the utilities relocated on the project. When initially notified by GLF that the Level3 and CenturyLink facilities were causing delays to GLF’s operations, there was no contest or issue raised related to the assessment of 90 calendar days. The direction provided was to maintain close coordination with the Utilities and to be aware that Special Provision 8-7.1 allows for 90 calendar days of reduced productivity to allow for utility relocation. The Department’s position is clearly supported by the internal Email between Volkert Engineering and Level3 whereby Volkert clarifies for the utility that their records indicate the 90 calendar days will expire on Sunday July 24, 2016 (Exhibit 19). However, on October 19, 2016, Volkert Engineering has apparently analyzed “new” records and arrived at the conclusion that the 90 days stipulated in the contract were not met (Exhibit 22)? We question this reversal of approach and we are disappointed that after the herculean effort on the part of GLF to coordinate, engineer, mitigate, and assist the utilities, (both during the cumulative 90 calendar Utility days allowed by the contract and during the protracted period beyond the allowed 90 Utility impact days) we are told we have failed to meet the contract thresholds based on a “new” review of the project records and therefore our Claim was denied.

After denial of the claim by Volkert Engineering on October 19, 2016, Volkert directed Level3 to negotiate directly with GLF to arrive at a resolution of the claim. GLF met with Level3 on 2 different occasions, December 15, 2016 and January 19, 2017. The Area Utility Coordinator, CEI, and Department employees elected to not participate in these mandated meetings. The second meeting of January 19, 2017 was requested by Level3 Communications specifically to discuss pre-construction design issues and the Area Utility Coordinator, CEI, and Department were notified that GLF was in no position to answer any of the issues being raised by Level3 (Exhibit 26).

Having taken no part in the mandated negotiations meeting, the Department assessed Liquidated Damages against GLF for late completion of the project in the amount of \$83,232. Level3 Communications finished their relocation beyond the cumulative 90 calendar Utility days allowed by the contract. Even though the CEI recognized the end date for the 90 Utility impacts days on July 21, 2016, Liquidated Damages were assessed after project completion on December 9, 2016.



## SUMMARY

GLF's position is that the Department denial of GLF's Request for Equitable adjustment/Utility Delay Claim was not warranted due to the numerous factors listed previously in this DRB Position Paper:

1. GLF coordinated, engineered, mitigated, and assisted the utilities, (both during the cumulative 90 calendar Utility days allowed by the contract for all utilities and during the prolonged period beyond the allowed 90 Utility impact days) in order to get the utilities "free and clear" of our operations.

2. The Contract Documents at the time of bid were clear that Contract Time for this project includes **90 calendar days** for periods of reduced productivity, for all utilities on the project, by the Contractor's forces due to utility relocation/adjustment. These days of reduced productivity shall be reflected in the Contractor's work progress schedule. GLF incorporated these schedules into our Baseline schedule for the project and actively coordinated with the utilities. Once recognizing the utilities would possibly delay GLF's operations, the CEI was notified and GLF requested assistance in enforcing the requirements of the Utility Relocation Schedules (Exhibit 10).

*only Those day Above 90 would even Be eligible*

3. During the course of coordination with the Level3 Communications, GLF repeatedly reached out to the CEI for assistance in getting this utility moved relocated from the existing bridge to the completed new structure in order to prevent delays and impacts to GLF's operations. The CEI notified Level3 via Email on July 21, 2016, that by their records the end date for the 90 calendar days of reduced productivity was 7/24/16. GLF was met with a general approach of indifference on the part of the Department in enforcing the requirements of the Utility relocation schedule on Level3 Communications.

4. The Department refused to engage and become an active stakeholder in the mandated negotiations between GLF and Level3 Communications. GLF was forced to engage with a Utility Representative who believed the fault of the delay was the responsibility of the Department and had no interest in resolving the issue. GLF was forced to meet with Utility Representative on two (2) separate occasions before escalating this issue to the DRB Board in order to follow the Department mandates of the CPAM. This has placed a financial burden on GLF as we have been forced to finance the funds lost due to the inability of the utilities to relocate their facilities in accordance with the contract documents.

GLF's position remains that full entitlement is due resulting from the failure of Level3 Communications to relocate their facilities in accordance with the contract documents. The Department's Denial of GLF's Request for Equitable Adjustment/Utility Delay Claim was not based on the contract documents, was not warranted, and was without substantiated merit.

## **DESIRED RULING**

GLF Construction Corporation respectfully requests that the Board find full entitlement to all damages caused by the failure of the Utilities to relocate their facilities in accordance with the contract documents.

GLF Construction Corporation respectfully requests that the Board find full entitlement to GLF's request for a contract time extension by the failure of the Utilities to relocate their facilities in accordance with the contract documents.

GLF Construction Corporation also respectfully requests that the Board find full entitlement for the incorrect assessment of Liquidated Damages charged, due to the late completion of the project caused by the failure of the Utilities to relocate their facilities in accordance with the contract documents. The Department, in their notification to Level3 on July 21, 2016, recognized the end date for the 90 calendar days of reduced productivity was 7/24/16 (Exhibit 19). Utilizing this date and the actual date Level3 completed their work, August 29, 2016, validates that additional time is due to GLF and the Liquidated Damages should not have been assessed. We request that full entitlement also include interest charges for the unpaid liquidated damages.



**FDOT Position as Submitted by Volkert:**

**SUBJECT: FDOT Position Paper - GLF Submitted Claim (Utility Relocation Impacts)**

As requested by the project Dispute Review Board (DRB) in response to GLF Construction Corporation's (GLF) request for a DRB Hearing in consideration of Utility Relocation Impacts dated February 01, 2017, the Department offers the following position paper disputing entitlement to additional time and / or compensation. It should be noted, GLF has failed to certify this Claim by an officer or director with the authority to bind the Contractor as required per **Specification 5-12.9** of the Contract documents.

GLF claims in correspondence dated September 20, 2016 (pages 4 to 8) a delay of 35 calendar days and damages of \$188,064.48 associated with utility relocation from the existing structure to have impacted GLF's demolition efforts. GLF asserts impacts to their scheduled demolition efforts during the period of April 26, 2016 until August 28, 2016 at which time Level 3 Communications became clear of the existing structure, or a period of 125 calendar days. GLF believes and claims the 125 calendar day period to have exceeded the allowable 90 calendar days for periods of reduced productivity due to utility relocation / adjustment provided per **Special Provision 8-7.1** of the Contract documents (page 9).

Volkert has attempted to clarify via correspondence dated October 19, 2016 (pages 10 to 11) the interpretation of Special Provision 8-7.1 and to show the allowable 90 calendar days for periods of reduced productivity to not have been exceeded. GLF's submitted April 25, 2016 CPM schedule (pages 12 to 13) shows scheduled bridge demolition to begin May 17, 2016, and although beginning bridge demolition efforts on May 9, 2016 in conjunction with reduced productivity days due to inclement weather and temporary suspension of Contractor operations due to holidays the possible total calendar days of potential utility impacts is deficient of the 90 days allowable. A listing of the days to be considered can be found on pages 14 to 16 and are summarized as follows:

*unless work sat's sun*

<b>Summary of Potential Utility Impact Days for Period of April 26 to August 28, 2016</b>	
Total Calendar Days in Period	125
Period prior to Demo Work (4/26/16 to 5/8/16)	-13
Weather Impact Days	-26
Holiday Time Suspensions	-6
Scheduled Non-work Days	-14
<b>Total Potential Calendar for Utility Impacts</b>	<b>66</b>

*These days should be removed from impact*

The total days of reduced productivity due to utility relocation / adjustment has been determined by the Department to be thirty-nine (39) calendar days. The utility owner in conjunction with



GLF relocated their utility on two different occasions from the existing structure in advance of the Contractor's demolition efforts as stipulated by the Contractor (pages 17 to 22). These relocation efforts can be seen in the project photo documentation (pages 23 to 27). These relocation efforts allowed the Contractor's scheduled work to proceed without hindrance or conflict thus accounting for the difference between the thirty-nine (39) calendar days of actual impacts and the sixty-six (66) calendar days of potential impacts.

As confirmed by both the Contractor's submitted September 8, 2016 CPM schedule (pages 28 to 29) and in correspondence dated September 20, 2016 (pages 4 to 8), bridge demolition efforts required eighty-seven (87) calendar days to complete. Although this time exceeded the forty (40) days scheduled for this work, it remains less than the ninety (90) impact days allowed per Contract Special Provision.

Beyond consideration of total days of utility impacts, Volkert reviewed the Contractor's submittal for compensation. In the Contractor's correspondence dated September 20, 2016 (pages 4 to 8), GLF has requested compensation for extra work performed in conjunction with the utility owner to relocate the utility owner's facilities. **Standard Specification 5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profits thereon, of or from Delay**, states for any delay claim, the Contractor shall be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1 (d). GLF failed to provide written notification to the Engineer for any extra work as required per **Standard Specification 5-12.2.1**, nor was written authorization to perform such extra work given by the Engineer. GLF's submitted request for compensation does show idle equipment on the dates of August 1<sup>st</sup> and 2<sup>nd</sup>, 2016, however the project records indicate inclement weather impacts on both of these dates and it is reasonable to assume any idle equipment to be attributable to inclement weather conditions.

**Standard Specification 4-3.2.1 (a)** notes cost of direct labor will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling item. A review of the Contractor's submitted CPM schedule (pages 12 to 13 & 28 to 29) shows that bridge demolition fails to meet the Contract Documents definition for a Controlling Work Item as being "the activity or work item on the critical path having the least amount of total float". Therefore the Contractor's compensation request for Project Management and Supervision should not be considered.

The SR 10 (US 90) over Yellow River (Br.570172) was final accepted by the Department on December 9, 2016 resulting in eighteen (18) days of liquidated damages. Of these eighteen (18) days, five (5) days were suspended for the Thanksgiving Holiday period and five (5) days were considered inclement weather impact days. The duration of time beyond allowable contract time again shows the thirty-five (35) calendar days of delay claimed by GLF is not substantiated by the contract records.



In conclusion, the Department contends the ninety (90) days allowed per **Special Provision 8-7.1** for reduced productivity due to utility relocation / adjustment to have not been met nor exceeded, nor does the requested compensation claimed by GLF beyond idle equipment and / or labor meet the requirements of the Contract documents. The Department request the DRB find no entitlement to the Contractor's Delay Claim associated with Utility Relocation Impacts.



## **DRB Hearing April 3, 2017**

**DRB Responsibility:** As agreed to by the Contractor and the FDOT, the DRB convened a hearing to determine entitlement for impacts due to utilities on the existing bridge.

### **Sequence of Events:**

1. The project was bid on June 3, 2014.
2. GLF began the project August 3, 2014.
3. GLF scheduled bridge demolition to begin April 26, 2016 and notified utilities of this date.
4. Actual demolition began May 9, 2016 per FDOT.
5. Level 3 completed removal of fiber from bridge and pond area on August 28, 2016.
6. GLF submits request for equitable adjustment due to Level 3 delay on September 20, 2016.
7. On October 19, 2016, the FDOT denied the claim and directed Level 3 to meet with GLF to resolve the claim.
8. From October 19, 2016, to January 13, 2017, GLF attempted to get Level 3 to agree to a resolution of impacts to GLF's operations.
9. Final acceptance of the project was made on December 9, 2016, with 18 days liquidated damages- reduced 5 days for Thanksgiving holidays and 5 days inclement weather-net 8 days.
10. GLF exhausted efforts to resolve the claim directly with Level 3 on January 13, 2017.
11. On January 26, 2017, the DRB was charged with hearing the disputed claim.

### **DRB Findings:**

The contract special provisions allow 90 calendar days for all utility impacts causing decreased productivity periods for the contractor. All agreed that "Decreased Productivity Period" is undefined in contract documents but is generally accepted as any day while contractor has to slow a controlling work operation while awaiting assistance or adjustment from a utility.

The 90 calendar days were included for all utility impacts. Therefore, notwithstanding the lack of a definition for decreased productivity delay impacts, the Board determines from information provided that there were sufficient impacts throughout the life of the contract to cause decreased productivity.

GLF demonstrated that sufficient attention was provided to coordinating with utilities (especially Level 3) to alleviate conflicts while demolishing the existing US 90 bridge over Yellow River. Level 3 UWS indicated 25 days for bridge fiber cable relocation operations and 5 days for cut over at the new bridge.

FDOT maintains that bridge demolition impacts did not begin until the actual removal operation began on May 9, 2016. GLF insists that the impact began when Level 3 was notified ( preconstruction meeting, during construction of new bridge, before demolition of bridge) that demolition would begin on April 26, 2016. All clear was given by Level 3 on August 28, 2016.



GLF demonstrated that extra attention was given to the bridge demolition during the preconstruction timeframe through development of a detailed bridge removal plan. Extra engineering time and costs and coordination with Level 3 was evident with the partial bridge removal which created a decreased productivity period, and finally with driving of H-pile to temporarily support the Level 3 fiber to allow final demolition to proceed. The FDOT chose a hands off approach and instructed GLF and Level 3 to negotiate a settlement for impacts to GLF's operation in accord with CPAM 7.5.10(?) and did not attend meetings established by these two parties to try to resolve differences.

Overall time impacts were experienced by GLF from project utilities as follows:

MCI- 3/29/15 to 5/6/15, 34 days (allows for weather days)

AT&T- 4/26/16 to 6/13/16, 48 days (allows for 3 weather, 3 holidays)

Century Link- 4/26/16 to 6/29/16, 16 days (allows time beyond concurrent impact time by AT&T)

Level 3- 4/26/16 to 8/28/16 84 days Calculated: 125 CD; less 13 CD 4/26 to 5/9; less 23 weather days; less 5 holidays. (30 CD for Level 3 relocation from the bridge were allowed per approved UWS)

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 60

The total maximum impact due to utilities is 182 calendar days. But, considering only the Level 3 impacts as requested, the Board determined that 84 days less the 30 per the UWS results in an impact of 54 days.

<b>Summary of Level 3 Utility Impact Days for Period of April 26 to August 28, 2016</b>	
Total Calendar Days in Period	125
Period prior to Demo Work (4/26/16 to 5/8/16)	-13
Weather Impact Days	-23
Holiday Time Suspensions	-5
Approved UWS schedule for bridge fiber	-30
<b>Total Level 3 Calendar for Utility Impacts</b>	<b>54</b>

FDOT revealed to the Board at the Hearing that an offer to settle the issue was made to GLF prior to directing GLF to negotiate directly with Level 3. Specifically, elimination of the 8 days liquidated damages was offered to GLF if GLF would withdraw the delay claim. GLF declined this offer.

**DRB Conclusion:**

The DRB has reviewed all submittals and determined that there is sufficient evidence to determine a "period of decreased productivity" was created due to the presence of the utility Level 3 on the existing bridge over Yellow River that was to be demolished by this contract. The lack of cooperation of Level 3 in timely removing the fiber cable from the existing bridge did cause GLF some delays in completing the contract in accord with the project schedule.

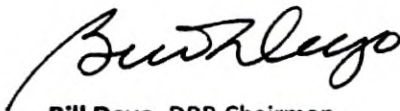


**DRB RECOMMENDATION:**

After thorough consideration of the submittals and contract provisions, the DRB agrees with the Contractor's position that GLF has entitlement due to the lack of utility relocation in accord with the Level 3 UWS. The Board recommends the FDOT and GLF revisit the timeline of impacts to determine an equitable resolution.

With respect to the issue of whether the Department has the authority to withhold liquidated damages from the final payment to a Contractor, when an issue involving time and monetary impacts exists at the time of project acceptance, the Board finds that FDOT has the right to do so.

Submitted with concurrence of all DRB members,

A handwritten signature in black ink, appearing to read "Bill Deyo", written in a cursive style.

**Bill Deyo, DRB Chairman**