

DISPUTES REVIEW BOARD RECOMMENDATION

August 25, 2014

Deborah Ihsan, P. E.
Assistant District Construction Engineer
FDOT District IV
3400 West Commercial Blvd.
Fort Lauderdale, FL 33309

Stephanie N. Grindell, P.E.
Associate Vice President
TransCore ITS, LLC
3901 Commerce Parkway
Miramar, FL 33025

RE: Financial Project No. 404827-1-52-01; I-95 Palm Beach County ITS Project
Contract No. E4J90, County: Palm Beach

Dear Ms. Ihsan and Grindell:

TransCore ITS, LLC (TransCore) requested a Dispute Review Board hearing for two issues:

- 1.) Entitlement for additional time due to delays in obtaining a CSX Railroad permit for work within the right-of-way at Mercer Avenue and for delays by the railroad in providing a flagger. These delays caused extra work and hindered, impeded and extended the time of performance of controlling items of work. As a direct result, TransCore missed the 850 day Phase A milestone and suffered the entire \$1,000,000 contract disincentive.
- 2.) Entitlement for additional time and compensation due to unusable and missing conduit in the ITS backbone infrastructure installed or to have been installed during previous I-95 projects for approximately 21 miles from Gateway Boulevard to PGA Boulevard, for which 3.2 miles were within the Hubbard Construction project and could not be released to TransCore until final completion by Hubbard.

TransCore contends that the conduit was only 75% usable and was beyond their control for verification. Obtaining the CSX railroad permit and scheduling the flagger was well beyond their control. TransCore further maintains that the delays at Mercer Avenue were concurrent with any delays TransCore may be responsible for elsewhere on the Project and, thus, TransCore is justified in claiming relief for the permit and flagger delays.

The position and rebuttal statements for both parties are detailed and voluminous. The Board will not attempt herein to paraphrase or consolidate the many arguments. The reader is referred to the written position and rebuttal documents produced by each party.

DRB Findings:

Issue No. 1

TransCore had a contractual responsibility per the RFP for "verification of existing conditions, including research of all existing Department records and other information". The RFP further states that the D/B Firm "is contracting and being compensated for performing adequate investigation of existing site conditions to support the design".

The Board finds that conduit on the Mercer Avenue Bridge is shown as "existing" on documents readily available to TransCore such as the RS&H plans for the Hubbard Project. Said conduit

was clearly to have been installed by a contractor prior to Hubbard. TransCore had the responsibility and the ability to investigate and determine that the bridge conduit was not “existing”. They would then have had the opportunity to advise the Engineer and start the CSX permitting process very early in the Project. The alleged CSX delay could and should have been avoided.

The Board finds that, although TransCore may have verified 75% of the existing conduit prior to bidding, this does not relieve them of the contract responsibility for verifying all of the existing conduit.

Initial Phase A HAR testing was not accepted due to grouping problems with TransCore’s wireless system. Successfully completing the 30-day testing of the HAR system is a requirement for meeting the Phase A milestone. The Board finds that by not completing the Phase A HAR test until the end of Phase B, TransCore extended the completion date for Phase A beyond both the milestone date and the disincentive period.

Issue No. 2

There are twenty “change orders” for which TransCore is seeking delays for all twenty and compensation for seventeen. The Board finds that in the large majority of these claims the Contractor failed to investigate existing conduits ahead of construction and thereby avoid delays. Where conduit was to be installed by Hubbard, although physical verification was not possible while Hubbard was working, TransCore failed to employ other means of monitoring installation such as attending progress meetings or requesting meetings with Hubbard and its subs.

The Board further finds that many of the alleged change order delays were concurrent with other delays caused by TransCore or its subs. These other delays caused the Phase A milestone to be missed and include concrete poles, damaged fiber, the drilled shaft delay and the CSX permit and flagger delay.

The Board finds that TransCore failed to provide the Engineer with written notice of claim in accordance with 5-12.2. The Contractor failed to keep daily records of all costs incurred in accordance with 5-12.7. Both of these failures deprived the CEI of the ability to monitor the extra work in detail and adequately address the claims. By contract, the Engineer is justified in denying the claims on the basis of 5-12.

DRB Recommendation:

Based on the above, the Board finds that no entitlement is due the Contractor for any of the issues presented.

The Board’s recommendation is constrained by the provisions of the contract and acknowledges that it is fully aware of the Design-Build Division I Specifications.

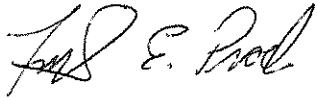
The Disputes Review Board’s Recommendation should not prevent, or preclude, the parties from negotiating an equitable solution (should it be appropriate) to any issue pursuant to their Partnering agreement.

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 non-responding party.

I certify that I participated in the Hearings of the DRB regarding the Disputes indicated above and concur with the findings and recommendations.

Respectfully submitted,

Disputes Review Board

A handwritten signature in black ink, appearing to read "Frank E. Proch". The signature is written in a cursive style with a large initial "F".

Frank E. Proch, Dispute Review Board Chairman
Mike Bone, P. E., Dispute Review Board Member
Joe Capeletti, Dispute Review Board Member