

DISPUTES REVIEW BOARD RECOMMENDATION

2 April, 2011

Ramon Arosemena
Senior Project Engineer
American Engineering Group
7780 S.W. 66th St.
Miami, Fl. 33143

Alandro Uribe
Project Manager
Ranger Construction Ind.
101 Sansbury Way
West Palm, Fl. 33411

Ref: SR. 25 (US27) from Henry County Line to E. M.P. 12.553 N. of SR 80. Financial Project ID: 413842-1-52-01/414061-1-52-01: Federal Aid Project No.: 908=48073C: Contract No.: T4196: Palm Beach County: Disputes Review Board hearing regarding entitlement for payment for Third Party Damages to project.

Dear Madam/Sir:

The Florida Department of Transportation and Ranger Construction Industries, Inc. requested a hearing concerning the above referenced issue.

CONTRACTOR'S POSITION

We will state the Contractors position by referencing, copying and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Contractor.

The Contractors position paper has the following statements and references to document their claim for entitlement.

As per article 8-3.7.4 of the contract Special Provisions Ranger Construction is presenting this official position paper related to previous presented claim for additional compensation for third party damages.

Ranger Construction presented official claim No. 1 dated 8/30/10 after having received a negative response on our notice of Intent to Claim No. 7 dated 4/22/10 for third party damages. This claim includes change orders No. 35, CO No. 47, and CO No. 52, which are explained below and constitute Ranger Construction's position:

CO No. 35 — This change order was related to the repeated damages to sidewalk, stamped concrete, and curb and gutter caused by insufficient turning radii and lack of concern from heavy truck drivers that drove over the traffic separators at stations STA 671+20, 674+28 and 677+00. The remainder of the damages was at STA 636+22 where heavy tractor trailers will crossover from the Marathon gas station or would make a U-turn to the southbound lanes, with a total disregard for the newly placed concrete. Ranger Construction following the EOR's recommendation placed 6" of concrete at the bull nose in lieu of the proposed 4" stamped concrete but even with that concrete thickness the trucks would still break it. The FOR tried to address this issues with 2 separate plan revisions, with the final one creating a whole new U-turn design including widening of Corkscrew Blvd. This change order was revised 2 times and the last version was partially accepted on 3/10/10, with only 40 LF of curb pending EOR's approval for a total of 66 LF. This curb addressed design drainage issues on the NB left turn lane caused by insufficient information in the plans since no grades were provided forcing Ranger to follow existing asphalt grades. The change order was finally approved by American Engineering Group acting as project CEI.

CO No. 47 — This change order included all cost for damages to guardrail on three different dates 7/28/09, 8/14/09, and 1/14/10. These damages were caused by a third party. Ranger Construction through its subcontractor Alford Construction repaired the damages to ensure public safety after we were notified by the field personnel. This change order was accepted by American Engineering Group on 3/12/11. In general this type of claims has been paid in the pass without much trouble.

CO No. 52 — Following acceptance to Ranger's proposals and based on FDOT's interpretation of articles 7-14 and 7-11.4 Mr. Ramon Arosemena with American Engineering Group denied payment on both change orders 35 and 47. Subsequent to this denial of payment American Engineering directed Ranger Construction to submit change order No. 52 for \$488.40 for damage to a light pole banner arm STA 675+80 RT caused by an unknown tractor trailer. The repair was expeditiously performed by our subcontractor Signal Group. Payment for this work was later denied based on the same interpretation of the specifications.

In conclusion the Department's and American Engineering Group's interpretation and grounds for denial is inaccurate since these damages were caused by a third party as defined in section 711.4. *If the Department determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or*

guardrail is caused by a **third party(ies)**, and is not otherwise due to any fault or activities of the Contractor, **the Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs**'. Furthermore section 7-14 states that: 'The Department may, at its discretion, reimburse the Contractor for the repair of such damage due to **unforeseeable causes beyond the control and without the fault or negligence of the Contractor**', which in this case is clear that the damage was caused by factors beyond Ranger's control.

It is evident that none of these damages were caused by Ranger Construction's and/or its subcontractors fault, negligence, lack of protection, execution or non-execution of the work. Therefore, Ranger Construction will expect full compensation for the direct cost related with this claim.

CONTRACTOR'S REBUTTAL

We were never required to submit any prove (Police reports, accident reports and/or pictures, etc) since it was mutually agreed between Ranger and American Engineering that we were going to compensated as it has been our experience in the past for this type of claims.

Ranger emphasizes the intent of section 7-11.4 that clearly states 'If the Department determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a **third party(ies)**, and is not otherwise due to any fault or activities of the Contractor, **the Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs**'. Furthermore section 7-14 states that: 'The Department may, at its discretion, reimburse the Contractor for the repair of such damage due to **unforeseeable causes beyond the control and without the fault or negligence of the Contractor**', which in this case damages were caused by factors beyond Ranger's control.

DEPARTMENT'S POSITION

We will state the Department's position by referencing, copying and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Department.

The Department's position paper has the following statements and references to document their claim for no entitlement to Ranger.

DISPUTE: The Contractor submitted a certified claim on August 30, 2010 and is requesting compensation in amount of \$19,556.94 for 3rd party damages. There are three different 3rd party damages.

Issue no. 1

Various concrete repairs and engineer changes (Request for Compensation No. 35) in South Bay for amount of \$14,470.37.

The Project Manager for the Prime Contractor (Ranger Construction Industries, Inc), Mr. Alejandro Uribe, emailed the Department of his request (Request for Compensation REV Change Order No. 35) dated March 30, 2010 for full compensation based on concrete repairs and changes in South Bay, FL that included work performed by the Contractor itself as well as by one of his sub-contractors (WM.D Adeimy Jr, Inc, Vila & Son, and DJ. Luke). This change order included tree removal and replacement, Type F curb & gutter, Type B curb, Type D curb, stamped concrete, removal of damaged concrete, asphalt traffic level D, FC-5, and MOT. All of this work was required due to damages caused by unknown third parties traveling through the South Bay area except the Type F curb & gutter. This curb & gutter was required to correct an existing drainage problem was completed prior to Request for Compensation No. 35 was provide to the Department.

Issue no. 2

Various guardrail repairs on three different dates (Request for Compensation No. 47) for \$ 4,598.17.

On March 9, 2010, the Project Manager for the prime Contractor (Ranger Construction Industries, Inc), Mr. Alejandro Uribe, emailed the Department a request (Request for Compensation Change Order No. 47) dated March 9, 2010 for full compensation based on guardrail repairs at various locations along US27 that included work performed by one of his sub-contractors (Alford Construction, Inc). This change order included a parallel anchor repair performed at southbound shoulder Sta. 50+37 on July 28, 2009; guardrail repairs performed at southbound shoulder at Sta.'s 50+85, 51+10, and 74+00 on August 14, 2009; and guardrail repairs performed at southbound shoulder at Sta.'s 275+50, 299+60, 383+80, 417+00 as well as northbound shoulder at Sta. 196+00 on January 14, 2010. All this extra work was required due to damages to new guardrail caused by unknown third parties traveling through the area.

Issue no. 3

Light pole arm damage (Request for Compensation No. 52) for \$ 488.40.

On April 26, 2010, the Project Manager for the prime Contractor (Ranger Construction Industries, Inc), Mr. Alejandro Uribe, emailed the Department a request (Request for Compensation Change Order No. 52) dated April 26, 2010 for full compensation based on a repair performed to damaged light pole in South Bay, FL that included work performed by one of his sub-contractors (Signal Group, Inc). This change order included the replacement of a light pole banner arm performed on April 23, 2010,

With the exception of the curb and gutter in Issue 1., all of the above requests for payment were denied by the Department April 21, 2010 based on the following 2007 Specifications applicable to this contract:

~ 5-5 Authority of the Engineer.

Perform all work to the satisfaction of the Engineer.

The Director, Office of Construction will decide all questions, difficulties, and disputes, of whatever nature, that may arise relative to the interpretation of the plans, construction, prosecution, and fulfillment of the Contract, and as to the character, quality, amount, and value of any work done, and materials furnished, under or by reason of the Contract.

~ 5-10 Final Inspection.

5-10.1 Maintenance until Acceptance: Maintain all Work until the Engineer has given final acceptance in accordance with 5-11.

~ 7-14 Contractor's Responsibility for Work.

Until the Department's acceptance of the work, take charge and custody of the work, and take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the nonexecution of the work. **Rebuild, repair, restore, and make good, without additional expense to the Department,** all injury or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance, except that in case of extensive or catastrophic damages **the Department may, at its discretion, reimburse** the Contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the contractor, including but not restricted to Acts of God, of the public enemy, or of governmental authorities. **(Boldface type for emphasis)**

~ 7-11.4 Traffic Signs, Signal Equipment, Highway Lighting and Guardrail:

Protect all existing roadside signs, signal equipment, **highway lighting and guardrail, for which permanent removal is not indicated, against damage or displacement.** Whenever such signs, signal equipment, highway lighting or guardrail lie within the limits of construction, or wherever so directed by the Engineer due to urgency of construction operations, take up and properly store the existing roadside signs, signal equipment, highway lighting and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the Engineer.

If the Department determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, the Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Repair damage caused vandalism at no expense to the Department.

Payment for repairs will be in accordance with 4-3.4. **(Boldface type for emphasis)**

Conclusion:

The 2007 Design Standard Specifications for Road and Bridge Construction clearly states that until Final Acceptance of the project, the Contractor shall **rebuild, repair, restore, and make good at no additional cost to the Department** all injury or damaged to any portion of the project; and it is Department's position that as per specification these repairs shall be completed at no cost to the Department.

The Department requests that the Dispute Review Board supports the position not to reimburse the Contractor for the damages listed above due to the fact that the project was not final accepted; and it is the Contractor's responsibility **to maintain all work until Final Acceptance** of the project is granted

The Department concurs that compensation is due for 66 If of curb and gutter listed in Request for compensation CO No. 35 above.

DEPARTMENT'S REBUTTAL

Issue no. 1

Various concrete repairs and engineer changes (Request for Compensation No. 35) in South Bay for amount of \$14,470.37.

The Department will compensate Ranger for the Request for Compensation No.35, except for damages at Station 674+28. Supplemental Agreement no. 30 and Work Order No. 999-25-010 were executed to redesign the existing median openings to allow for safe truck turning movements. The original design did not provide enough space for the trucks to make wide turns without damaging traffic medians.

Issue no. 2

Various guardrail repairs on three different dates (Request for Compensation No.47)for\$ 4,598.17.

The Department mistakenly paid under Work Order 999921 (08) to repair guardrail panels damaged by a third party. Subsequent to this Work Order, in February of 2010, the Department gave direction to the CEI not to pay for third party damages to items installed as part of the contract as per Spec. 7-11.4.

Both Requests for Compensation 47 and 52, were submitted for reasons that the damage was caused by third party damages. However, no Police report, accident reports, or pictures were submitted to the Department for the Department to determine if the damage was caused by third party. In addition, the Contractor controls his means and method of when the guardrail or light poles are installed. The longer the guardrail or light poles are installed on the project the longer the items are subjected to damage and therefore the contractor controls his risk of the item being damaged.

FINDINGS OF FACT

The Board's decisions are governed by the plans, specifications (standard, supplemental, technical, special), and the contract. Therefore our recommendation is based on the following referenced documents and the following facts.

Testimony provided by the Department at the hearing stated that (Request for Compensation No. 35) was to be paid as extra work due to redesign.

(Request for Compensation No. 52) Relates to a damaged light pole arm located at Sta. 675+80 Rt. This light pole is located immediately adjacent to a driveway entrance and a banner support bracket that was hanging below the light pole arm was apparently hit by a truck leaving the area.

The Department states in its rebuttal in relation to (Request for Compensation No's 47 and 52) that no accident reports, witness statements or pictures were submitted. It should be noted this project location is in a very small rural community in Western Palm Beach County which is quite sparsely populated. It would not be unreasonable for a party to damage these facilities and leave with out it being witnessed or noticed.

The damaged Guardrail as outlined by the Contractors (Request for Compensation No. 47) has three locations scattered throughout the project the Department had previously compensated the contractor for other repairs of damaged guardrail by a third party. The Contractor had a reasonable basis for following the CEI's written direction and an expectation for compensation for making repairs to the Third Party Damages. The Standard Specifications Section 7-11.4 states very clearly the Department WILL, with the exception of any damage resulting from vandalism compensate the Contractor for costs associated with the repairs.

RECOMMENDATION

The Board finds that the Contractor is entitled to additional compensation.

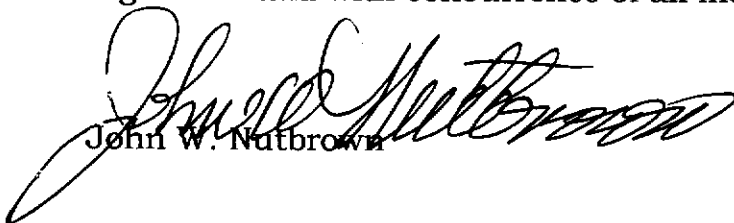
The Board sincerely appreciates the cooperation of all parties and the information presented for our review in making this recommendation.

The Board unanimously reached the recommendation and reminds the parties that it is only a recommendation. If the Board has not heard from either party within 15 days of receiving this recommendation, the recommendation will be considered accepted by both parties.

Submitted by the Disputes Review Board

John W. Nutbrown, Chairman Don Henderson, PE, Member
Ron S. Klein, Member

Signed for and with concurrence of all members


John W. Nutbrown