

RDRB DETERMINATION  
Jones Benitez Corp. & FDOT District Four  
For Project  
Contract T4437 Indiantown Overlay, Palm Beach Co.  
FDOT Financial Project ID NO. 435102-1-52-01  
May 2, 2017

**Overview:**

The Board has been requested by the Parties to assist in the resolution of the relevant disputes and claims by considering the Contract provisions and the facts and conditions surrounding each dispute and claim by determining advisory recommendations:

**Facts:**

This is a Safety project issued under the Business Development Initiative (BDI) program. The contract has a 48 day original duration, and includes milling and resurfacing, High Friction Epoxy Overlay over bridge decks and a Remote Weather Information System (RWIS). The contract called for the Vaisala DCS-211 ITS (Vaisala is a non small business enterprise) as a "sole source" for the RWIS.

NOI #1 was presented because Vaisala was non responsive at bid time. In an effort to meet the small business requirement JBC solicited an "as equal". They received a quote from HSE. The Department declined to review the HSE System and directed the use of the Vaisala System.

NOI #2 was brought because there was no small business enterprise contractor in the area willing or capable of performing the scope of work of asphalt placement. An unreasonable delay was experienced in obtaining approval of Weekley Asphalt Paving, creating the need to cancel the originally scheduled placement.

NOI #3 became necessary when it was discovered that the system operated on 120/240 volts and the only available power source was 480 volts creating the need for a stepdown transformer which did not avail itself to immediate procurement and installation.

**Contractor's Position:**

NOI #1 a) Vaisala should not have been "sole sourced" when Vaisala, a subcontractor, could not meet the SBE SP8-1 and would not provide a quote to JBC

b) The RWIS scope was subcontract work which should have been let to an SBE by SP 8-1

NOI #2 FDOT failed to approve sublet of Weekley Asphalt Paving in a timely manner.

NOI #3 Due to an error in the plans, additional expense was recognized but not time to install the equipment and make it functional.

**Department's Position:**

NOI #1 Vaisala was not a subcontractor, therefore Special Provision 8-1 doesn't apply.

NOI #2 JBC failed to meet Specification 5-12, 8-3.2.6 and 8-7.3.2

BDI Guidelines require that a subcontractor submit a notarized Small Business Affidavit Form and be prequalified with the Department in the category of asphalt.

NOI #3 Contractor amended claim after initial submission.

**DRB Issue:**

NOI #1 – Vaisala RWIS as “Sole Source”

The Department chose to let this contract as a Business Development Initiative (BDI) project, with the knowledge that the High Friction Epoxy could not be done by a small business enterprise. In addition, the RWIS System from Vaisala was not a small business enterprise and finally, with these facts in mind, and the fact that Vaisala had been non-responsive prior to bid time, JBC decided to use the quote for an “as-equal” RWIS system from HSE, which was received in a timely fashion. HSE's quote was for the supply and installation of the system, ie., a subcontractor. The fact that a sole source system was called out in the plans and that Special Provision 8-1 requiring work to be subcontracted to small business overrides the Plans, and one of just four bidders could not get a quote from them leaves the contractor with little choice short of deciding not to bid. The RWIS was approximately 5% of the contract amount. It is not reasonable to assume that a concrete bridge and bridge repair contractor would be capable of installing an ITS system.

**Therefore, the Board has determined that JBC is entitled to additional compensation for the cost difference between the Vaisala and the HSE systems plus the applicable mark-up.**

NOI #2: Asphalt Subcontractor

District 4 had been waiving Weekley Asphalt on other BDI contracts, however this contract had the High Friction Epoxy Overlay on the bridge decks, which required a waiver because there was no small business enterprise capable of this work. After the waiver was given for the epoxy overlay, the Department warned that no other waivers would be approved. In order to get a waiver for Weekley, JBC was required to reach out to all of the asphalt contractors on a list provided by the Department of some 14 contractors, most of whom were either not interested or not capable of performing this work and request written statements along with Small Business Affidavits from each, keep telephone logs of conversations with each and report back to Palm Beach Operations. This contributed to a delay in receipt of approval of Weekley **from June 23<sup>rd</sup>** (JBC submitted sublet)(less the typical sublet approval time of approximately one week) to the approval on August 17<sup>th</sup>. They had been scheduled to begin on August 14<sup>th</sup> but had to be rescheduled. This **delay ended on September 17<sup>th</sup>** when asphalt operations began.

**Therefore, the Board has determined that JBC is entitled to compensable time.**

### NOI #3: Step-down Transformer

The Department has acknowledged entitlement for the additional costs associated with the omission of a stepdown transformer to supply 240 volt service to the RWIS from the 480 volt service pole. The issue here is the delay time for this correction. This delay began on September 28<sup>th</sup> and lasted through installation SDT (10/25), FPL Service Point tie-in (10/28), and concluded with the troubleshooting of the system and its operation on November 4<sup>th</sup>. **Therefore, the Board has determined that JBC is entitled to compensable time**

### Compensable Delays:

The Parties requested the RDRB to review NOI 3 as a stand-alone issue without regard to NOI 2 and visa-versa.

There is no overlap in real time between NOI #2 and NOI #3. An analysis of the schedule to determine the exact days and how they affected the totality of delay days would require more information than was distributed to the Board.

In order to check if there is concurrency with any delay days, NOI #2 would need to be fragneted into the schedule baseline narrative 1 July 2016 (See JCB exhibit 8B). The baseline shows Weekley's work was to begin on July 21<sup>st</sup>. It appears as though if a fragnet were inserted into that schedule, the first 3 weeks or so would be consumed by the float and then the asphalt and follow-on activities would be pushed out accordingly.

### Recommendation:

The Board recommends an analysis from the 113 days of delay, less the Standard specification of the first 10 days non-compensable, less some number of weather days and Holidays.

### Members of the Dispute Review Board:

Rick McNew, Chairman

Joe Capeletti, Member

Jim Guyer, Member