

DRB Recommendation

August 16, 2018

Ranger Construction Industries, Inc. & FDOT District Four

For Project

I-75 Express Lanes Project Segment "C"

FPID: 421707-4-52-01, 421707-4-52-02

Federal Aid Project Number: 0754-175-1

Contract No. E-4N98

County: Broward

Issue Statement NOI-13

RCI requests that the DRB rule on entitlement only for the above referenced issue.

Ranger Construction Industries (RCI) and its subcontractor Cone and Graham, Inc. (C&G) are seeking entitlement for additional compensation for extra work associated with the restricted access to Pembroke Road Bridge Area - Broward County project no. 5255.

There is specific direction in several sections of the RFP for the Design Build Firm to "coordinate" our efforts, RCI understood at the time of bid the same expectation would be enforceable with the Broward County side of this construction effort and as such this portion of work was bid and scheduled accordingly.

Access to the bridge from the approaches is the normal and safest way to construct the bridge. C&G expected to have access to the east and west ends of the bridge for personnel, equipment and materials.

The lack of access caused C&G to expend additional manhour and equipment time to perform the superstructure work.

RCI requests that the DRB rule on Entitlement only for the above referenced issue.

Project Information

Type: Design Build **Contractor:** Ranger Construction Ind., Inc. (Ranger)

Original Duration: 1385 days **Original Contract amount:** \$85,270,000.00

Project Scope

This contract was for the design and construction of I-75 Express Lane improvements to be constructed within the existing 166-foot wide median which generally consists of a barrier wall, a divided 4-lane tolled roadway (two 12-foot travel lanes in each direction), 6-foot paved inside shoulders, and a 12-foot (10 feet paved) outside shoulders. The Segment C Project also includes construction of the Pembroke Road Overpass Bridge and reconstruction of the Miramar Parkway Interchange, including the Miramar Parkway Bridge over I-75. Other improvements include new I-75 Express Lanes over the C-4 Canal bridged with twin-96" concrete culverts; replacement of the existing SB and NB I-75 bridges over the C-4 Canal bridged with twin-96" concrete culverts; milling and resurfacing of the I-75 General Purpose Lanes adjacent to the proposed ingress/egress lanes connecting to the Express Lanes; temporary and permanent retaining walls; drainage; sound barrier walls; permanent traffic monitoring sites; two (2) tolling gantries and associated infrastructure including buildings; Intelligent Transportation System (ITS); signing and pavement markings; signalization; lighting; and landscaping.

Members of the Dispute Review Board

Robert Cedeno, Member

David Donofrio, Member

Ronnie Klein, Chairman

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1. Summary of the Parties Positions

The item of work relative to this dispute is the construction of the Pembroke Road Overpass Bridge (Pembroke Bridge). Pursuant to the RFP, the Design-Build Firm (DBF) is responsible for constructing the Pembroke Bridge and associated permanent retaining walls up to the wall termination stations specified in the RFP. Broward County is responsible for constructing the roadway approaches and the associated permanent retaining walls up to this specified tie-in point. Upon completion, the Pembroke Bridge is turned over to Broward County.

The DBF contends pursuant to the RFP, Broward County was to have the roadway approaches and permanent retaining walls up to the tie-in completed by June 1, 2015, and allow the DBF unimpeded access to the bridge approaches. Not allowing the DBF unimpeded worksite access resulted in additional time and costs to the DBF.

The Departments position is the June 1, 2015 date was not a guarantee for Broward County to turn over access to the bridge approaches to the DBF. It was a milestone date defined in the RFP that the construction of the retaining walls and slip joints could not commence until after June 1, 2015. Therefore the DBF should not have had an expectation they would be granted unimpeded access to the approaches by June 1, 2015. It was a RFP condition that the DBF was responsible to obtain a permit from Broward County to secure access outside the limited access right of way.

1.1 Summary of the Contractors position

The item of work relative to this dispute is the construction of the Pembroke Road Overpass Bridge (Pembroke Bridge). Pursuant to the RFP, the Design-Build Firm (DBF) is responsible for constructing the Pembroke Bridge and associated permanent retaining walls up to the wall termination stations specified in the RFP. Broward County is responsible for constructing the roadway approaches and the associated permanent retaining walls up to this specified tie-in point. Upon completion, the Pembroke Bridge is turned over to Broward County.

Pursuant to the RFP, Broward County was to have the roadway approaches and permanent retaining walls up to the tie-in completed by June 1, 2015. An excerpt from the RFP follows on the next page.

Pembroke Road Overpass Bridge

The Design-Build Firm shall complete the construction of the Pembroke Road Overpass Bridge as described in Section V.X and Section VI.G of this RFP. The construction of the retaining walls and slips joints shall not commence until after June 1, 2015, unless otherwise approved by the Department. This restriction is intended for Broward County to complete the construction of the Pembroke Road roadway approaches and permanent retaining walls proximate to the bridge termini.

Ranger Construction Industries (RCI) and its subcontractor Cone and Graham, Inc. (C&G) are seeking entitlement for additional compensation for extra work associated with the restricted access to the Pembroke Bridge (Broward County Project No. 5255).

There is specific direction in several sections of the RFP for the DBF to “coordinate” our efforts with the adjoining Broward County Pembroke Road improvements. RCI understood at the time of bid the same expectation would be enforceable with the Broward County side of this construction effort and as such this portion of work was bid and planned accordingly.

Access to the bridge from the approaches is the normal and safest way to construct the bridge. C&G expected to have access to the east and west ends of the bridge for personnel, equipment and materials as of the RFP specified June 1, 2015 date. However, the Broward County roadway project was not completed until February 24, 2016 (date of Substantial Completion by Broward County’s Contractor MCM) and access was not allowed until February 26, 2016, the work start date of the permit issued by Broward County (Attachment 1).

This lack of access caused C&G to expend additional man-hour and equipment time to perform the superstructure work.

Basis For Entitlement and Supporting Contract Provisions:

RCI and C&G are seeking entitlement for the additional work based on the following contract provisions.

- Item 1. RFP Section V.D – Department Commitments

<p><u>Traffic and Transportation- Broward County (6)</u> FDOT will continue to coordinate with Broward County, City of Miramar, and City of Pembroke Pines, regarding the evaluation of the Pembroke Road overpass.</p>	<p>X</p>		<p><u>FDOT is responsible for this commitment. The portion of the Pembroke Road overpass project that spans the I-75 limited access right-of-way will be constructed by FDOT to avoid potential construction conflicts between the two projects.</u> Roadway construction for the overpass outside of the FDOT right of way is the responsibility of Broward County.</p>
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- Item 2. RFP Section V.X – Adjoining Construction Projects

The Department will establish within 60 days after NTP, bi-weekly Project/stakeholder coordination meetings to include Department personnel, the Segment B and D Design-Build Firms, and other adjacent project contractors for design and construction coordination. The Design-Build Firm shall participate in the bi-weekly Project/stakeholder coordination meetings. The meetings will be structured to discuss Project issues that affect stakeholders in the vicinity of the Project, and will include discussions regarding: maintenance of traffic; upcoming construction activities; design issues relative to adjacent FDOT projects, Broward County projects, City of Miramar and City of Pembroke Pines projects, and private contracts in the vicinity of the Project area; and stakeholder concerns. The Design-Build Firm shall attend the meetings and be prepared to answer questions and discuss their current maintenance of traffic requests, and identify any upcoming maintenance of traffic plans they intend to submit for the next three (3) week look ahead period. The Department will prepare the agenda and provide written progress reports after each meeting that describes the items of concern, work performed, any resolutions, and summary of decisions made at the meetings. The Design-Build Firm shall prepare a three (3) week look ahead schedule for these meetings with activities to be performed; critical interfacing milestones; maintenance of traffic lane closures required; permit coordination for design, construction and commissioning of ITS devices; and other agency coordination.

- Item 3. RFP Section V.X – Adjoining Construction Projects

Pembroke Road Grade Separation

The Design-Build Firm shall be responsible for coordinating design and construction activities of the proposed Pembroke Road Grade Separation with Broward County Highway Construction & Engineering Division Project No. 5255 (Pembroke Road) to ensure design, maintenance of traffic and construction phasing compatibility. Refer to Section VI.G.2 of this RFP for the Structural Plans design and construction criteria. It is expected that the Broward County contractor will be on site in advance of the Design-Build Firm. It is anticipated that the roadway approaches to the Pembroke Road overpass will be under construction concurrent with this contract.

All work associated with coordinating the design and construction, and related field work necessary to make suitable connections along Pembroke Road shall be included in the Bid Price Proposal. This includes all necessary temporary features including but not limited to: roadway and shoulder pavement, sidewalk, retaining wall, embankment, drainage, barrier wall, fencing, signing, pavement markings, lighting, and erosion control.

The Design-Build Firm shall be responsible for obtaining a permit from Broward County for any activities affecting the Pembroke Road improvements beyond the limited access right of way. The Design-Build Firm shall take into account the permit application review process and approval time when submitting for a permit. The Design-Build Firm shall not begin any activities requiring a permit from Broward County until an approved permit is issued. Additional information related to permits can be obtained at:

[http://webapps2.broward.org/bcengineering/forms/2008%20Permit%20Application%20\(103108\).pdf](http://webapps2.broward.org/bcengineering/forms/2008%20Permit%20Application%20(103108).pdf)

Issue Timeline:

RCI Coordination

Pursuant to the RFP, RCI fulfilled its contractual obligations to coordinate the design and construction of the improvements as required by Item 3 on Page 3 of this document. Following is a summary of

RCI's efforts, as provided by Greg Reilly of RCI, to coordinate with the Broward County (BC) contractor MCM for the concurrent work being performed on the Pembroke Bridge.

- *Coordination with MCM began in October and November of 2014, with efforts to construct the MSE walls at the bridge approaches. As you can see from the first couple of attached e-mails (Attachments 2 and 3) it took a month for us (RCI) to get nowhere on that issue. MCM was very difficult to contact via telephone and e-mails proved slow and unproductive.*
- *Over the course of construction from late 2014 to July of 2015, RCI observed MCM make progress on the approaches and as work was finishing up on Pembroke Road, RCI again reached out to MCM to coordinate, but phone calls to MCM were simply not returned.*
- *So on July 15th, 2015 a field meeting was held at the Pembroke Road Bridge with among others, the CEI Aurelio Matos, RCI Mark Webber and BC engineer Mike Hammond to discuss what could be done to facilitate coordination. I (Greg Reilly) unfortunately could not attend the meeting, but was informed by Mark that Mike Hammond seemed indifferent to our request and Aurelio himself said he did not know why BC was being uncooperative.*
- *From July 2015 thru October 2015 RCI repeatedly requested the Department (Paul Lampley, Tony Castro and others) to please make an effort to persuade Broward County to take some action to aid our access from Pembroke Road. This appeared to also go nowhere as over time the Department's position went from sympathetic to apathetic.*
- *On October 28th, 2015 RCI filed our NOI to claim and respectfully suggested within that notice that the Department's D4 District Secretary contact the Broward County Board of County Commissioners. We do not know if anything was done on behalf of the project because the Department became silent on the issue only to reiterate that their position on the filed notice was no entitlement.*
- *Out of sheer frustration RCI took it upon itself to contact the two Broward County Commissioners offices that the Pembroke Road overpass lies within. On 12/02/2015 I (Greg Reilly) spoke with a Mr. Leonardi with Commissioner Furr's office. He seemed sympathetic and understood our efforts to expedite construction of the bridge. From that conversation RCI sent e-mails to Commissioners Furr and Sharief. Neither commissioner nor anyone from their office contacted RCI back from the correspondence that was sent.*

FDOT Coordination

On October 20, 2017, C&G made a public records request (Attachment 11) from the FDOT for, "any and all project emails from any and all parties (e.g., FDOT, CEI, Broward County, et al.) related to:

1. Delays
2. Pembroke Road Bridge
3. Pembroke Road Project – Broward County Project 5255
4. Pembroke Road Bridge Delays
5. Pembroke Road Bridge Completion
6. Pembroke Road Bridge Opening
7. Pembroke Road Bridge Coordination
8. Broward County June 1, 2015 Pembroke Road Bridge Work Start".

A total of 12 PDF files were provided in response to the records request. Of note, no written progress reports from any meetings were furnished as required of the Department by the RFP

C&G Work Timeline

A timeline summary of the C&G's scheduled bridge construction illustrating the additional equipment and delays follows.

- Expected completion of Broward County project, per RFP, June 1, 2015.
- Mobilize cranes and aerial lifts for beam setting on September 30, 2015.
- Receive / set beams beginning September 30, 2015 and ending October 29, 2015.
- Expected to demobilize cranes and aerial lifts October 30, 2015 and complete superstructure work from approaches.
 - Access to approaches denied therefore a 275-ton crane had to be kept on-site to lift (handle) materials and equipment given the reach to the deck, and aerial lifts also had to remain as these provided the only access to the bridge deck.
- SIP form installation was scheduled to occur from October 26, 2015 through November 25, 2015.
- Installation of reinforcing steel was scheduled to occur from November 16, 2015 through December 17, 2015.
- Deck (superstructure) concrete placement was scheduled to be complete by December 22, 2015.
- Remove Bidwell by December 31, 2015.
- Demobilize crane by December 31, 2015.

Based on this original schedule, the crane and additional aerial lifts would have been required, due to the access constraint, from November 1, 2015 through December 31, 2015, or 2 months.

However, due to the access limitations and reduced efficiencies the work required additional time for completion. This “push” to the original schedule then affected the availability of manpower. As a result, the superstructure (deck) concrete was not be completed until April 7, 2016 resulting in additional equipment costs to C&G, not to mention additional labor.

Conclusion:

The RFP provides a date certain of June 1, 2015 “for Broward County to complete the construction of the Pembroke Road roadway approaches and permanent retaining walls proximate to the bridge termini.” By the FDOT providing this date certain along with the prescribed coordination efforts (i.e., “avoid potential construction conflicts between the two projects”), it was reasonable for the DBF to understand that access to both ends of the Pembroke Bridge would be available on June 1, 2015. The DBF could then adjust its means, methods and schedules around this date to best suit its efforts. The limitation of access on this date prevented the DBF from being able to best use its resources.

It is recognized that the RFP requires coordination efforts for the Pembroke Bridge by both the FDOT and the DBF. As shown in RCI's timeline summary, RCI clearly did all that it could to coordinate as required by the RFP. However, as the “Contractor”, RCI's leverage was limited and neither Broward County nor their Contractor, MCM, were willing to cooperate, therefore making RCI's efforts futile.

In recognizing that, RCI reached out to the FDOT, but again did not find a cooperative partner.

Regarding the FDOT's RFP requirements, they clearly had an obligation to facilitate the coordination of the work, but we were unable to find records of those efforts. As noted in RFP Section V.D. - Department Commitments, the FDOT is "responsible" to coordinate with Broward County to avoid potential construction conflicts. The FDOT failed to meet this commitment.

The FDOT's failure resulted in an eight (8) month delay for C&G to gain the access that it was entitled pursuant to the RFP, that is access by June 1, 2015. Access was not allowed until February 26, 2016.

The inability to access the ends of the Pembroke Bridge through the County's roadway clearly delayed C&G's work and instead of standing down and waiting for access, C&G kept the work progressing through the use of a larger crane over an extended period of time. Reference to the other bridges completed by C&G on the Segments C&D projects shows that these bridges are easily serviced through deck construction using a small, RT crane (i.e., Tadano 100-ton hydro crane), with deck pours taking place within about 30 to 45 days of beam setting. By contrast, the Pembroke deck construction was pushed out months past its scheduled completion due to the access issue.

In conclusion, the FDOT's failure to provide the June 1, 2015 access as stated by the RFP resulted in additional costs to C&G for which we believe that entitlement is due.

1.2 Summary of the Departments Position

ISSUE IN DISPUTE

The DBF submitted Notice of Intent to Claim #13, dated October 28, 2015, requesting entitlement for additional costs incurred due to having restricted access to the Pembroke Road Bridge work area. The DBF contends that its plan was to construct the bridge superstructure using access through the Pembroke Road roadway approaches.

POSITION & ACTION REQUESTED

The RFP is clear that the Pembroke Road roadway approaches to the Pembroke Road Bridge to be constructed by Broward County were going to be constructed concurrently with the Pembroke Road Bridge. Despite assertions to the contrary, the DBF was on notice of the concurrent construction and it was not to assume that the roadway approaches would be completed by June 1, 2015.

Below please find the relevant contract requirements and supportive position statements.

Contract Requirement #1

RFP Part V Project Requirements and Provisions of Work, Article X – Adjoining Construction Projects - Pembroke Road Grade Separation – Page 41 and 42 of 94 states the following:

The Design-Build Firm shall be responsible for coordinating design and construction activities of the proposed Pembroke Road Grade Separation with Broward County Highway Construction & Engineering Division Project No. 5255 (Pembroke Road) to ensure design, maintenance of traffic and construction phasing compatibility. Refer to Section VI.G.2 of this RFP for the Structural Plans design and construction criteria. It is expected that the Broward County contractor will be on site in advance of the Design-Build Firm. It is anticipated that the roadway approaches to the Pembroke Road overpass will be under construction concurrent with this contract.

All work associated with coordinating the design and construction, and related field work necessary to make suitable connections along Pembroke Road shall be included in the Bid Price Proposal. This includes all necessary temporary features including but not limited to: roadway and shoulder pavement, sidewalk, retaining wall, embankment, drainage, barrier wall, fencing, signing, pavement markings, lighting, and erosion control.

The Design-Build Firm shall be responsible for obtaining a permit from Broward County for any activities affecting the Pembroke Road improvements beyond the limited access right of way. The Design-Build Firm shall take into account the permit application review process and approval time when submitting for a permit. The Design-Build Firm shall not begin any activities requiring a permit from Broward County until an approved permit is issued. (Excerpt from Exhibit 2)

Supportive Position Statement #1

The RFP is very clear that construction of the Pembroke Road roadway approaches by Broward County and the Pembroke Road Bridge by the DBF would be under construction concurrently. The Pembroke Road Bridge was being constructed within the SR-93/I-75 limited access right of way. For the DBF to have access from the roadway approaches, it was required to obtain a permit from Broward County. The Broward County right of way permit was issued on February 25, 2016, and it was at such time the DBF started to use the roadway approaches for access to the bridge.

Contract Requirement #2

RFP Part VI Design and Construction Criteria, Article J – Sequence of Construction - Pembroke Road Overpass Bridge – Page 67 of 94 states the following:

The Design-Build Firm shall complete the construction of the Pembroke Road Overpass Bridge as described in Section V.X and Section VI.G of this RFP. The construction of the retaining walls and slips joints shall not commence until after June 1, 2015, unless otherwise approved by the Department. This restriction is intended for Broward County to complete the construction of the Pembroke Road

roadway approaches and permanent retaining walls proximate to the bridge termini. (Excerpt from Exhibit 3)

Supportive Position Statement #2

The RFP has a restriction that construction of the retaining walls and slip joints shall not commence until after June 1, 2015 in order for Broward County to complete the Pembroke Road roadway approaches and permanent retaining walls in the *proximity to the bridge termini* and not the complete approaches as asserted by the DBF.

Contract Requirement #3

RFP Part VI Design and Construction Criteria, Article G – Structure Plans, Section 2 – Criteria, Subsection h – Page 61 of 94 states the following:

For the Pembroke Road Overpass Bridge, the bridge runoff will convey into barrier wall inlets to be constructed on the roadway approaches, which will discharge into dry detention ponds located within Broward County right of way. **If the approaches and drainage are not in place at the time of bridge construction completion**, then the Design-Build Firm shall provide for temporary drainage measures that collect and convey the bridge runoff into the proposed I-75 swales. (Excerpt from Exhibit 4, emphasis supplied)

Supportive Position Statement #3

The RFP addresses the scenario that the Pembroke Road roadway approaches may not be constructed when the bridge is finished, requiring the DBF to provide temporary drainage measures. Thus, this RFP requirement clearly contemplates that the roadway approaches were not going to be completed by June 1, 2015 as asserted by the DBF.

Contract Requirement #4

The Technical Proposal submitted by the Design-Build Firm, Drainage Construction - Page 12 of 15 states the following:

Temporary inlets with vertical drainage will be provided to ensure controlled collection and discharge of runoff from the Pembroke Rd Bridge, until the approach roadway is completed. (Excerpt from Exhibit 5)

Supportive Position Statement #4

The DBF was well aware that the Pembroke Road roadway approaches were not going to be constructed until the bridge was completed and thus provided temporary drainage provisions in their technical proposal.

Contract Requirement #5

Pembroke Road Bridge approved project baseline work schedule Rev03. (Exhibit 6)

Supportive Position Statement #5

The original approved project baseline work schedule (dated 07/24/15) depicts constructing the middle span (Span #2) by May 22, 2015, before the other two spans and prior to the date of June 1, 2015 (date by when the Pembroke Road roadway approaches proximate to the bridge termini where to be complete by Broward County). This confirms the DBF's understanding of the RFP requirements and approach to constructing the superstructure from within the FDOT limited access right of way.

Action Requested

Based upon the contract requirements and supportive position statements shown above, the Department respectfully requests the DRB to find no entitlement for additional compensation for any costs incurred by the DBF for having to perform some of the bridge superstructure work from below as this cost should have been anticipated in its bid proposal.

V. CONCLUSION

DBF is not entitled to any compensation.

Nor any portion thereof, based on the following summation of facts:

1. RFP states *"It is expected that the Broward County contractor will be on site in advance of the Design-Build Firm. It is anticipated that the roadway approaches to the Pembroke Road overpass will be under construction concurrent with this contract."*
2. RFP states *"The Design-Build Firm shall be responsible for obtaining a permit from Broward County for any activities affecting the Pembroke Road improvements beyond the limited access right of way. The Design-Build Firm shall take into account the permit application review process and approval time when submitting for a permit. The Design-Build Firm shall not begin any activities requiring a permit from Broward County until an approved permit is issued."* The Broward County right of way permit was issued on February 25, 2016.
3. RFP states *"The construction of the retaining walls and slips joints shall not commence until after June 1, 2015, unless otherwise approved by the Department. This restriction is intended for Broward County to complete the construction of the Pembroke Road roadway approaches and permanent retaining walls proximate to the bridge termini."*
4. The DBF knew very well that the Pembroke Road roadway approaches would not be complete prior to the bridge construction and made provisions for temporary drainage in their technical proposal as required by the RFP.
5. The DBF's approved project baseline work schedule depicts performing bridge superstructure work from within the FDOT limited access right of way and not the Pembroke Road roadway approaches as they contend.

1.3 Summary of the Contractors Rebuttal

Cone and Graham, Inc. and Ranger Construction Industries, Inc. (DBF) are in receipt of the Department's *Position Paper* and offer the following in rebuttal to the Department's position regarding the **Restricted Access to Pembroke Road Bridge Work Area (NOI 13)**.

Contract Requirement and Supportive Position #1:

The DBF met the contract requirements from the quoted RFP section(s) and obtained the required Permit within two (2) days of substantial completion of the Broward County roadway project.

The Department's contention of concurrent work, for the Broward County (BC) roadway approaches and Pembroke Road Bridge, is false. It is critical to differentiate that the RFP clearly states that the **"...roadway approaches to the Pembroke Road overpass will be under construction concurrent with this contract."** The key word here is **"contract"** and I-75 Segment C had one contract (E4N98) and two FPN's (421707-4-52-01 and 421707-4-52-02 (Pembroke Road Bridge)). The RFP does not state the BC roadway approaches will be under construction concurrent with the Pembroke Road overpass bridge.

The Department's *Position Paper* states that "it (the DBF) was not to assume that the roadway approaches would be completed by June 1, 2015." Nowhere does the RFP make this statement. What the RFP clearly states on **Page 67 of 94** is:

Pembroke Road Overpass Bridge

The Design-Build Firm shall complete the construction of the Pembroke Road Overpass Bridge as described in Section V.X and Section VI.G of this RFP. The construction of the retaining walls and slips joints shall not commence until after June 1, 2015, unless otherwise approved by the Department. **This restriction is intended for Broward County to complete the construction of the Pembroke Road roadway approaches and permanent retaining walls proximate to the bridge termini.**

As expected, the BC work (approach roadway and retaining walls) were in fact complete by June of 2015 as evidenced in the aerial photograph dated June 10th, 2015 (Attachment 1). Concurrent work by (BC) and the DBF took place as expected. The DBF was not issued a permit from BC for two-hundred and sixty-nine (269) days, nearly nine months, after June 1st, 2015. In addition as it relates to the Department, the FDOT did nothing to assist with the coordination between the two projects, even though the DBF repeatedly asked for help.

Furthermore, within this section of the Department's paper (stated on Page 41 of 94 of the RFP), it is noted that **All work associated with coordinating the design and construction.....shall be included in the Bid Price Proposal.** This requirement in and of itself dispels the Department's position, that being that the RFP was "very clear" that the roadway construction would be concurrent and no access

would be allowed until the Permit was issued. If this was so “very clear”, then why did the RFP have a requirement for the DBF to allocate resources and monies to coordinate something that wasn’t going to happen? Clearly, the intent of the RFP, as stated on **Page 67 of 94**, was for the DBF to have access on June 1, 2015.

Pembroke Road Overpass Bridge

The Design-Build Firm shall complete the construction of the Pembroke Road Overpass Bridge as described in Section V.X and Section VI.G of this RFP. The construction of the retaining walls and slips joints shall not commence until after June 1, 2015, unless otherwise approved by the Department. **This restriction is intended for Broward County to complete the construction of the Pembroke Road roadway approaches and permanent retaining walls proximate to the bridge termini.**

Contract Requirement and Supportive Position #2:

The DBF met the contract requirements from the quoted RFP section(s).

The RFP states ***“This restriction (June 1st, 2015 added for clarity) is intended for BC to complete the construction of the Pembroke Road roadway approaches and permanent retaining walls proximate to the bridge termini.”***

There are two parts of work BC was to complete by June 1st, 2015, the first part was to complete the Pembroke Road roadway approaches. The second part added that BC would complete the permanent retaining walls proximate to the bridge termini. As it turned out, the BC work was completed exactly as the RFP intended and as the DBF had expected at the time of the bid which is evident in the June 10th, 2015 aerial photograph.

The RFP restriction was intended for BC to complete the roadway approaches and retaining walls up to the tie-ins (slip joints) to the bridge MSE walls. **The RFP did not state the restriction was to permit final acceptance of the BC project.**

Based on photographic evidence from June 2015, October 2015 (Attachment 2) and February 2016 (Attachment 3), the BC project had met the RFP requirement exactly as the DBF had expected. Photographs show the embankment approaches including asphalt on the east side and permanent retaining walls complete as early as June 2015.

BC by their own prerogative waited until February 26, 2016 to issue the permit and the Department failed to meet their end of the RFP coordination requirements with BC to assist the DBF to gain access from the roadway approaches.

The RFP clearly contemplated access from the approaches to build the bridge. This is evident in all of “coordination” requirements and given that the DBF was informed that a BC permit was required and established a specific time for roadway approach completion on June 1st, 2015.

Contract Requirement and Supportive Position #3:

The DBF met the contract requirements from the quoted RFP section(s).

The Department’s position that the DBF knew drainage features may be required and thus proved the approaches would not be completed by June 1st, 2015 is false. The DBF understood Article G *Structure Plans* (RFP Page 58 of 94) more so as it pertained to the short section of roadway that the DBF was responsible for constructing on each side of the bridge. The logical understanding of the RFP expected some storm water control or limited treatment would be necessary.

RFP Article G. 2. j (RFP Page 61 of 94) clearly conveyed that the BC work would come first and be completed for the DBF to construct its retaining walls, slip joints and subsequently the bridge tie in locations. The DBF acknowledges this understanding on Page 12 of their Technical Proposal where it is stated: ***The Ranger Team has incorporated the limits specified in the RFP for the Pembroke Rd MSE walls. The construction of which must tie into the MSE wall segments constructed by Broward County and has a schedule constraint of June 1, 2015.***

Contract Requirement and Supportive Position #4:

The DBF wrote the Technical Proposal (TP) and was aware of the requirement from the RFP to control drainage runoff.

The Department’s claim that the DBF was well aware the roadway approaches would not be complete because our TP contained drainage provisions is false. The DBF anticipated the roadway approaches would be completed proximate to the bridge termini because the RFP stated so and in fact were constructed by June 2015.

Pembroke Road Overpass Bridge

The Design-Build Firm shall complete the construction of the Pembroke Road Overpass Bridge as described in Section V.X and Section VI.G of this RFP. The construction of the retaining walls and slips joints shall not commence until after June 1, 2015, unless otherwise approved by the Department. **This restriction is intended for Broward County to complete the construction of the Pembroke Road roadway approaches and permanent retaining walls proximate to the bridge termini.**

The DBF understood that the roadway approaches would be complete as specified in the RFP and that there may be a need for some limited drainage runoff from the bridge to be controlled, treated and allowed to flow into the FDOT ROW.

Contract Requirement and Supportive Position #5:

The DBF developed the CPM design and construction schedule as required by the contract documents.

This position by the Department is irrelevant to the dispute. In fact, by the Department postulating that the schedule has bearing only lends to the DBF argument that we were impacted and the Department is trying to position that the impact was minimal. That is not the argument before the DRB.

Nevertheless, the Department's claim that the approved project baseline schedule accounted for constructing span #2 by May 22nd, 2015, prior to the other two spans and before June 1st, 2015 is accurate; however, the baseline schedule is just that, a baseline. The Contractor has the right to alter their means and methods throughout the project to meet an end schedule. The issue at hand is that the access constraints at Pembroke prevented the DBF from being able to build the project in the manner that they chose.

The DBF baseline schedule was developed specifically with the construction phasing along mainline I-75 in mind which was the principal contract scope of work. Span #2 lay directly in the median of I-75 and is the primary reason the phase

Of work was depicted as such in the baseline schedule. This was a baseline schedule that the DBF knew could be adjusted as needed to meet the overall project schedule as the Pembroke Bridge was not on the critical path. The contract documents do not require the contractor to strictly adhere to the approved baseline. In fact the CPM schedule is the contractor's schedule which can be modified at the contractor's discretion, reviewed and accepted by the owner.

Again, this position by the Department has no bearing on whether or not the DBF should have expected access to construct the Pembroke Bridge on June 1, 2015 as specified in the RFP.

In conclusion, the Department's arguments do not support their position. The RFP provides a date certain of June 1, 2015 for **...Broward County to complete the construction of the Pembroke Road roadway approaches and permanent retaining wall proximate to the bridge termini.**" This clearly means that the road is to be built up to the tie-in with the bridge. The RFP provides specific language with June 1, 2015 being the date at which the bridge retaining wall and slip joint construction may start. To construct the slip joints, the adjoining wall must be in-place.

The RFP clearly contemplated access from the approaches to build the bridge. This is evident in all of "coordination" requirements and given that the DBF was informed that a BC permit was required and established a specific time for **roadway approach completion** on June 1st, 2015. As expected, the BC approaches and retaining walls were in fact complete by June of 2015.

The DBF has met all of the contract requirements as related to this dispute; however, the FDOT's failure to coordinate and provide the June 1, 2015 access as stated by the RFP resulted in additional costs to the DBF for which we believe that entitlement is due.

1.4 Summary of the Departments Rebuttal

"DBF's POSITION PAPER REBUTTAL BY FDOT IN RED"

Contractor's Written Position Paper / Request for Entitlement:
RESTRICTED ACCESS TO PEMBROKE ROAD BRIDGE WORK AREA
(NOI 13)

Project Scope:

The project involves the design and construction of Segment C of the I-75 Express Lanes Project. The project is approximately 3.6 miles in length extending from south of Miramar Parkway to south of Sheridan Street in Broward County, Florida. The Segment C project also includes reconstruction of the Miramar Parkway Bridge and construction of a new Pembroke Road Overpass Bridge.

The item of work relative to this dispute is the construction of the Pembroke Road Overpass Bridge (Pembroke Bridge). Pursuant to the RFP, the Design-Build Firm (DBF) is responsible for constructing the Pembroke Bridge and associated permanent retaining walls up to the wall termination stations specified in the RFP. Broward County is responsible for constructing the roadway

approaches and the associated permanent retaining walls up to this specified tie-in point. Upon completion, the Pembroke Bridge is turned over to Broward County.

Pursuant to the RFP, Broward County was to have the roadway approaches and permanent retaining walls up to the tie-in completed by June 1, 2015. An excerpt from the RFP follows on the next page.

The RFP (Part VI Design and Construction Criteria, Article J – Sequence of Construction – Pembroke Road Overpass Bridge – Page 67 of 94) is very clear that the only activities to be completed by Broward County by June 1, 2015 were the Pembroke Road roadway approaches and permanent retaining walls *proximate the bridge termini*. Common roadway construction industry practice is to construct enough of the roadway approaches in order to start construction of the end bents. This does not guarantee that the approaches would be available for access by the DBF.

Pembroke Road Overpass Bridge

The Design-Build Firm shall complete the construction of the Pembroke Road Overpass Bridge as described in Section V.X and Section VI.G of this RFP. The construction of the retaining walls and slips joints shall not commence until after June 1, 2015, unless otherwise approved by the Department. This restriction is intended for Broward County to complete the construction of the Pembroke Road roadway approaches and permanent retaining walls proximate to the bridge termini.

Statement of Issue:

Ranger Construction Industries (RCI) and its subcontractor Cone and Graham, Inc. (C&G) are seeking entitlement for additional compensation for extra work associated with the restricted access to the Pembroke Bridge (Broward County Project No. 5255).

There is specific direction in several sections of the RFP for the DBF to “**coordinate**” our efforts with the adjoining Broward County Pembroke Road improvements. RCI understood at the time of bid the same expectation would be enforceable with the Broward County side of this construction effort and as such this portion of work was bid and planned accordingly.

Access to the bridge from the approaches is the normal and safest way to construct the bridge. C&G expected to have access to the east and west ends of the bridge for personnel, equipment and materials as of the RFP specified June 1, 2015 date. However, the Broward County roadway project was not completed until February 24, 2016 (date of Substantial Completion by Broward County’s Contractor MCM) and access was not allowed until February 26, 2016, the work start date of the permit issued by Broward County.

The DBF could not have assumed that they would have access from both approaches by June 1, 2015 when the RFP is very clear that the Broward County contractor would be working on the roadway approaches at the same time that the DBF would be working on the Pembroke Road Bridge within the FDOT right of way.

This lack of access caused C&G to expend additional man-hour and equipment time to perform the

superstructure work.

Basis For Entitlement and Supporting Contract Provisions:

RCI and C&G are seeking entitlement for the additional work based on the following contract provisions.

• **Item 1. RFP Section V.D – Department Commitments**

<p><u>Traffic and Transportation- Broward County (6)</u> FDOT will continue to coordinate with Broward County, City of Miramar, and City of Pembroke Pines, regarding the evaluation of the Pembroke Road overpass.</p>	<p>X</p>		<p><u>FDOT is responsible for this commitment. The portion of the Pembroke Road overpass project that spans the I-75 limited access right-of-way will be constructed by FDOT to avoid potential construction conflicts between the two projects.</u> Roadway construction for the overpass outside of the FDOT right of way is the responsibility of Broward County.</p>
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The RFP Part V – Project Requirements and Provisions for Work, Section D – Department Commitments – Pages 22 thru 28 of 94, Commitment #6 being referred by the DBF in their position paper does not refer to coordination during construction. The beginning of this section refers one to the Design Change/Construction Advertisement Reevaluation included in Attachment F (copy of this Attachment has been included within this rebuttal paper as reference for the DRB Members - FDOT Rebuttal Exhibit 1). This commitment refers to coordination during the design phase to make sure the commitments with the Reevaluation are adhered to. Commitment #5 just above this one in the commitment table clearly spells out “during design and construction”.

• **Item 2. RFP Section V.X – Adjoining Construction Projects**

The Department will establish within 60 days after NTP, bi-weekly Project/stakeholder coordination meetings to include Department personnel, the Segment B and D Design-Build Firms, and other adjacent project contractors for design and construction coordination. The Design-Build Firm shall participate in the bi-weekly Project/stakeholder coordination meetings. The meetings will be structured to discuss Project issues that affect stakeholders in the vicinity of the Project, and will include discussions regarding: maintenance of traffic; upcoming construction activities; design issues relative to adjacent FDOT projects, Broward County projects, City of Miramar and City of Pembroke Pines projects, and private contracts in the vicinity of the Project area; and stakeholder concerns. The Design-Build Firm shall attend the meetings and be prepared to answer questions and discuss their current maintenance of traffic requests, and identify any upcoming maintenance of traffic plans they intend to submit for the next three (3) week look ahead period. The Department will prepare the agenda and provide written progress reports after each meeting that describes the items of concern, work performed, any resolutions, and summary of decisions made at the meetings. The Design-Build Firm shall prepare a three (3) week look ahead schedule for these meetings with activities to be performed; critical interfacing milestones; maintenance of traffic lane closures required; permit coordination for design, construction and commissioning of ITS devices; and other agency coordination.

The project CEI started holding bi-weekly project coordination meetings as of April 30, 2014. Coordination with Broward County was an agenda item (item #12) that was discuss at each meeting since April 30, 2014. We are including copies of this agenda item for each meeting held between April 30, 2014 and March 1, 2016 (FDOT Rebuttal Exhibit 2). Mr. Greg Reilly was present at the majority of these meetings and this agenda item was always discussed.

Additionally, several meetings were held on the project site during the month of July 2015 with RCI representatives to discuss the job progress.

- Item 3. RFP Section V.X – Adjoining Construction Projects

Pembroke Road Grade Separation

The Design-Build Firm shall be responsible for coordinating design and construction activities of the proposed Pembroke Road Grade Separation with Broward County Highway Construction & Engineering Division Project No. 5255 (Pembroke Road) to ensure design, maintenance of traffic and construction phasing compatibility. Refer to Section VI.G.2 of this RFP for the Structural Plans design and construction criteria. It is expected that the Broward County contractor will be on site in advance of the Design-Build Firm. It is anticipated that the roadway approaches to the Pembroke Road overpass will be under construction concurrent with this contract.

All work associated with coordinating the design and construction, and related field work necessary to make suitable connections along Pembroke Road shall be included in the Bid Price Proposal. This

includes all necessary temporary features including but not limited to: roadway and shoulder pavement, sidewalk, retaining wall, embankment, drainage, barrier wall, fencing, signing, pavement markings, lighting, and erosion control.

The Design-Build Firm shall be responsible for obtaining a permit from Broward County for any activities affecting the Pembroke Road improvements beyond the limited access right of way. The Design-Build Firm shall take into account the permit application review process and approval time when submitting for a permit. The Design-Build Firm shall not begin any activities requiring a permit from Broward County until an approved permit is issued. Additional information related to permits can be obtained at:

[http://webapps2.broward.org/bcengineering/forms/2008%20Permit%20Application%20\(103108\).pdf](http://webapps2.broward.org/bcengineering/forms/2008%20Permit%20Application%20(103108).pdf)

RFP Section V.X. - Adjoining Construction Projects, Pembroke Road Grade Separation, states the following:

“The Design-Build Firm shall be responsible for coordinating design and construction activities of the proposed Pembroke Road Grade Separation with Broward County Highway Construction & Engineering Division Project No. 5255 (Pembroke Road) to ensure design, maintenance of traffic and construction phasing compatibility. Refer to Section VI.G.2 of this RFP for the Structural Plans design and construction criteria. It is expected that the Broward County contractor will be on site in advance of the Design-Build Firm. It is anticipated that the roadway approaches to the Pembroke Road overpass will be under construction concurrent with this contract.

All work associated with coordinating the design and construction, and related field work necessary to make suitable connections along Pembroke Road shall be included in the Bid Price Proposal. This includes all necessary temporary features including but not limited to: roadway and shoulder pavement, sidewalk, retaining wall, embankment, drainage, barrier wall, fencing, signing, pavement markings, lighting, and erosion control.

The Design-Build Firm shall be responsible for obtaining a permit from Broward County for any activities affecting the Pembroke Road improvements beyond the limited access right of way. The Design-Build Firm shall take into account the permit application review process and approval time when submitting for a permit. The Design-Build Firm shall not begin any activities requiring a permit from Broward County until an approved permit is issued.” (Excerpt from FDOT Position Paper, Exhibit 2)

The RFP is very clear that construction of the Pembroke Road roadway approaches by Broward County and the Pembroke Road Bridge by the DBF would be under construction concurrently. The Pembroke Road Bridge was being constructed within the SR-93/I-75 limited access right of way. For the DBF to have access from the roadway approaches, it was required to obtain a permit from Broward County. The Broward County right of way permit was issued on February 25, 2016, and it was at such time the DBF started to use the roadway approaches for access to the bridge.

Issue Timeline:

RCI Coordination

Pursuant to the RFP, RCI fulfilled its contractual obligations to coordinate the design and construction of the improvements as required by Item 3 on Page 3 of this document. Following is a summary of RCI's efforts, as provided by Greg Reilly of RCI, to coordinate with the Broward County (BC) contractor MCM for the concurrent work being performed on the Pembroke Bridge.

- *Coordination with MCM began in October and November of 2014, with efforts to construct the MSE walls at the bridge approaches. As you can see from the first couple of attached e-mails (Attachments 2 and 3) it took a month for us (RCI) to get nowhere on that issue. MCM was very difficult to contact via telephone and e-mails proved slow and unproductive.*
- *Over the course of construction from late 2014 to July of 2015, RCI observed MCM make progress on the approaches and as work was finishing up on Pembroke Road, RCI again reached out to MCM to coordinate, but phone calls to MCM were simply not returned.*
- *So on July 15th, 2015 a field meeting was held at the Pembroke Road Bridge with among others, the CEI Aurelio Matos, RCI Mark Webber and BC engineer Mike Hammond to discuss what could be done to facilitate coordination. I (Greg Reilly) unfortunately could not attend the meeting, but was informed by Mark that Mike Hammond seemed indifferent to our request and Aurelio himself said he did not know why BC was being uncooperative.*
- *From July 2015 thru October 2015 RCI repeatedly requested the Department (Paul Lampley, Tony Castro and others) to please make an effort to persuade Broward County to take some action to aid our access from Pembroke Road. This appeared to also go nowhere as over time the Department's position went from sympathetic to apathetic.*
- *On October 28th, 2015 RCI filed our NOI to claim and respectfully suggested within that notice that the Department's D4 District Secretary contact the Broward County Board of County Commissioners. We do not know if anything was done on behalf of the project because the Department became silent on the issue only to reiterate that their position on the filed notice was no entitlement.*

- *Out of sheer frustration RCI took it upon itself to contact the two Broward County Commissioners offices that the Pembroke Road overpass lies within. On 12/02/2015 I (Greg Reilly) spoke with a Mr. Leonardi with Commissioner Furr's office. He seemed sympathetic and understood our efforts to expedite construction of the bridge. From that conversation RCI sent e-mails to Commissioners Furr and Sharief. Neither commissioner nor anyone from their office contacted RCI back from the correspondence that was sent.*

RCI correspondence documents are included as Attachments 2 through 10.

FDOT Coordination

On October 20, 2017, C&G made a public records request (Attachment 11) from the FDOT for, "any and all project emails from any and all parties (e.g., FDOT, CEI, Broward County, et al.) related to:

1. Delays
2. Pembroke Road Bridge
3. Pembroke Road Project – Broward County Project 5255
4. Pembroke Road Bridge Delays
5. Pembroke Road Bridge Completion
6. Pembroke Road Bridge Opening
7. Pembroke Road Bridge Coordination
8. Broward County June 1, 2015 Pembroke Road Bridge Work Start".

A total of 12 PDF files (Attachments 12 through 38) were provided in response to the records request. Of note, no written progress reports from any meetings were furnished as required of the Department by the RFP (see previous Item 2 on Page 2 of this document).

The Public Records Request did not list any progress meeting minutes. Please refer to response for Item #2 on Page 3.

C&G Work Timeline

A timeline summary of the C&G's scheduled bridge construction illustrating the additional equipment and delays follows.

- Expected completion of Broward County project, per RFP, June 1, 2015.
- Mobilize cranes and aerial lifts for beam setting on September 30, 2015.
- Receive / set beams beginning September 30, 2015 and ending October 29, 2015.
- Expected to demobilize cranes and aerial lifts October 30, 2015 and complete superstructure work from approaches.
 - Access to approaches denied therefore a 275-ton crane had to be kept on-site to lift (handle) materials and equipment given the reach to the deck, and aerial lifts also had to remain as these provided the only access to the bridge deck.
- SIP form installation was scheduled to occur from October 26, 2015 through November 25, 2015.
- Installation of reinforcing steel was scheduled to occur from November 16, 2015 through December 17, 2015.
- Deck (superstructure) concrete placement was scheduled to be complete by December 22, 2015.

- Remove Bidwell by December 31, 2015.
- Demobilize crane by December 31, 2015.

Based on this original schedule, the crane and additional aerial lifts would have been required, due to the access constraint, from November 1, 2015 through December 31, 2015, or 2 months.

However, due to the access limitations and reduced efficiencies the work required additional time for completion. This “push” to the original schedule then affected the availability of manpower. As a result, the superstructure (deck) concrete was not be completed until April 7, 2016 resulting in additional equipment costs to C&G, not to mention additional labor.

The schedule presented above by the DBF is not the schedule in the approved project baseline schedule, which follows below. Please refer to Exhibit 6 in the FDOT’s Position Papers for a copy of the Pembroke Road Bridge approved baseline schedule.

Span 2:

Set beams/ Place Deck Forms/Place Deck Reinforcement/Pour Deck & Cure –
February 20, 2015 through May 22, 2015. (Prior to the June 1, 2015, date.)

Span 3:

Set beams/ Place Deck Forms/Place Deck Reinforcement/Pour Deck & Cure/Approach Slab End Bent 4 –
September 24, 2015 through January 14, 2016.

Span 1:

Set beams/ Place Deck Forms/Place Deck Reinforcement/Pour Deck & Cure/Approach Slab End Bent 1 –
May 12, 2016 through August 19, 2016.

Conclusion:

The RFP provides a date certain of June 1, 2015 “for Broward County to complete the construction of the Pembroke Road roadway approaches and permanent retaining walls proximate to the bridge termini.” By the FDOT providing this date certain along with the prescribed coordination efforts (i.e., “avoid potential construction conflicts between the two projects”), it was reasonable for the DBF to understand that access to both ends of the Pembroke Bridge would be available on June 1, 2015. The DBF could then adjust its means, methods and schedules around this date to best suit its efforts. The limitation of access on this date prevented the DBF from being able to best use its resources.

The RFP (Part VI Design and Construction Criteria, Article J – Sequence of Construction – Pembroke Road Overpass Bridge – Page 67 of 94) is very clear that the only activities to be completed by Broward County by June 1, 2015 were the Pembroke Road roadway approaches and permanent retaining walls *proximate the bridge termini*. Common roadway construction industry practice is to construct enough of the roadway approaches in order to

start construction of the end bents. This does not guarantee that the approaches would be available for access by the DBF.

It is recognized that the RFP requires coordination efforts for the Pembroke Bridge by both the FDOT and the DBF. As shown in RCI's timeline summary, RCI clearly did all that it could to coordinate as required by the RFP. However, as the "Contractor", RCI's leverage was limited and neither Broward County nor their Contractor, MCM, were willing to cooperate, therefore making RCI's efforts futile.

In recognizing that, RCI reached out to the FDOT, but again did not find a cooperative partner.

Regarding the FDOT's RFP requirements, they clearly had an obligation to facilitate the coordination of the work, but we were unable to find records of those efforts. As noted in RFP Section V.D. - Department Commitments, the FDOT is "responsible" to coordinate with Broward County to avoid potential construction conflicts. The FDOT failed to meet this commitment.

The RFP Part V – Project Requirements and Provisions for Work, Section D – Department Commitments – Pages 22 thru 28 of 94, Commitment #6 being referred by the DBF in their position paper does not refer to coordination during construction. The beginning of this section refers one to the Design Change/Construction Advertisement Reevaluation included in Attachment F (copy of this Attachment has been included within this rebuttal paper as reference for the DRB Members). This commitment refers to coordination during the design phase to make sure the commitments with the Reevaluation are adhered to. Commitment #5 just above this one in the commitment table clearly spells out "during design and construction".

The FDOT's failure resulted in an eight (8) month delay for C&G to gain the access that it was entitled pursuant to the RFP, that is access by June 1, 2015. Access was not allowed until February 26, 2016.

The inability to access the ends of the Pembroke Bridge through the County's roadway clearly delayed C&G's work and instead of standing down and waiting for access, C&G kept the work progressing through the use of a larger crane over an extended period of time. Reference to the other bridges completed by C&G on the Segments C&D projects shows that these bridges are easily serviced through deck construction using a small, RT crane (i.e., Tadano 100-ton hydro crane), with deck pours taking place within about 30 to 45 days of beam setting. By contrast, the Pembroke deck construction was pushed out months past its scheduled completion due to the access issue.

In conclusion, the FDOT's failure to provide the June 1, 2015 access as stated by the RFP resulted in additional costs to C&G for which we believe that entitlement is due.

1. The RFP is very clear that the Broward County contractor would be working on the roadway approaches at the same time that the DBF would be working on the Pembroke Road Bridge within the FDOT right of way.
2. The Pembroke Road Bridge was being constructed within the SR-93/I-75 limited access right of way. The

Pembroke Road Bridge could have been fully constructed from within the FDOT limited access right of way. However, the DBF elected to use the roadway approaches to help facilitate the construction of the bridge. The RFP clearly states that is the DBF's responsibility to obtain a permit from Broward County for any work affecting the Pembroke Road improvements beyond the limited access right of way. The DBF's request to have access from the roadway approaches to help facilitate the construction of the bridge required a permit from Broward County. The Broward County right of way permit was issued on February 25, 2016, and it was at such time the DBF started to use the roadway approaches for access to the bridge.

3. RFP Part VI Design and Construction Criteria, Article G – Structure Plans, Section 2 – Criteria, Subsection h – Page 61 of 94 states the following:

For the Pembroke Road Overpass Bridge, the bridge runoff will convey into barrier wall inlets to be constructed on the roadway approaches, which will discharge into dry detention ponds located within Broward County right of way. **If the approaches and drainage are not in place at the time of bridge construction completion**, then the Design-Build Firm shall provide for temporary drainage measures that collect and convey the bridge runoff into the proposed I-75 swales. (Excerpt from FDOT's Position Paper Exhibit 4, emphasis supplied)

The RFP addresses the scenario that the Pembroke Road roadway approaches may not be constructed when the bridge is finished, requiring the DBF to provide temporary drainage measures. Thus, this RFP requirement clearly contemplates that the roadway approaches were not going to be completed by June 1, 2015 as asserted by the DBF.

4. The Technical Proposal submitted by the Design-Build Firm, Drainage Construction - Page 12 of 15 states the following:

Temporary inlets with vertical drainage will be provided to ensure controlled collection and discharge of runoff from the Pembroke Rd Bridge, until the approach roadway is completed. (Excerpt from FDOT's Position Paper Exhibit 5)

The DBF acknowledged in their Technical Proposal that the Pembroke Road roadway approaches may not be fully constructed before the bridge was completed and thus provided temporary drainage provisions in their technical proposal.

3.0 Findings from the Hearing Material to the Issue

* **The RFP language states in part:**

"The construction of the retaining walls and slips joints shall not commence until after June 1, 2015, unless otherwise approved by the Department. This restriction is intended for Broward County to complete construction of the Pembroke Road roadway approaches and permanent retaining walls proximate to the Bridge Termini".

Both parties agreed that the permanent retaining walls proximate to the bridge were complete on or about June 1, 2015.

* The Broward County Permit was applied for on February 12, 2016 and issued on February 24, 2016.

* The DBF believes that Broward County never intended to issue the permit until their contractor had reached substantial completion.

* The Department did not know whether the Broward County had intended to hold permit approval until their contractor had reached substantial completion from the beginning. The Department did state it would have not made a difference in their determination since access was never a given.

4.0 DRB Understandings and Findings of Material Facts

1. This issue comes down to whether the DBF's interpretation of the RFP is sound with regard to an implied unimpeded access to the Pembroke Bridge approaches after June 1, 2015. They base this interpretation in part on the fact that it is stated in the RFP "This restriction *is intended* for Broward County *to complete construction of the Pembroke Road roadway approaches* and permanent retaining walls proximate to the Bridge Termini".

2. C&G states access to the bridge from the approaches is the normal and safest way to construct the bridge. C&G expected to have access to the east and west ends of the bridge for personnel, equipment and materials. They read the RFP as stated above that the June 1, 2015 restriction was to allow Broward County to complete the approaches. C&G was partially relying on the Department to coordinate/ assist them in securing this access from Broward County while the County's contractor is constructing the very same roadway and approaches to provide the access at issue.

3. The Department states the RFP does not imply an unrestricted access to the Pembroke Road Bridge approaches. It does state a certain amount of work to be complete no earlier than June 1, 2015, which was completed. The RFP is also clear about coordination and the fact the DBF would be required to secure a permit from Broward County before access would be granted to the bridge approach areas outside the limited access right of way. With the coordination that was done, the work could have still been timely performed without incurring the alleged additional costs after the permit was granted in February 24, 2016 as final completion was recently granted in July 2018.

4. In compliance with the RFP, RCI/C&G planned to commence construction of the retaining walls and slip joints connecting to work within Broward County's right-of-way after June 1, 2015 as evident by the Baseline Schedule REV03¹ allegedly approved in July 2015 after some iterations.

5. Roadway approach and permanent retaining walls on each side only proximate to the Pembroke Road Overpass Bridge termini was in fact completed by June 1, 2015 as intended by the RFP².

¹ Refer to FDOT's Position Paper of July 9, 2018, Exhibit 6.

² Refer to RFP, Addendum No. 5, Section V, Sub-Section J, Page 67 of 94.

6. As evident from the aerial photo dated June 2015³, there was considerable incomplete construction at various stages on either sides (east and west) of the Pembroke Road Overpass Bridge approaches within Broward County's right-of-way being performed by Broward County's contractor that would require coordination between the two contracts (Broward County and the FDOT) if RCI/C&G were permitted by Broward County to work concurrently within Broward County's right-of-way in the same work zones.
7. Regardless of the level of coordination by either FDOT or the DBF, the ultimate risks associated with RCI/C&G working concurrently within the same work zones rests squarely with Broward County if they granted a permit to RCI any earlier than February 24, 2016 prior to Broward County contractor's work being substantially completed notwithstanding C&G alleged schedule obligations on other Segments along the I-75 Express Lanes projects.
8. Although more challenging and less cost effective having to work exclusively from the FDOT's right-of-way only, RCI/C&G did in fact constructed the connection to the Pembroke Road Overpass Bridge terminis prior to receiving the permit on February 24, 2018 from Broward County, which upon receipt then allowed the approach slabs and the bridge deck to be poured using access granted through Broward County's right-of-way.
9. The net effect and outside any set milestone delivery-date obligations in the contract is that Pembroke Road over I-75 was open to the travelling public of Broward County in 2016 before the entire interstate Project was finally accepted in July 2018 with the Parties unsuccessfully being able to negotiate a set off in equity for the cost differential having to work exclusively from the FDOT right-of-way. Any disputes arising out of claims to entitlement and reliance of a set off in good faith as was discussed at the hearing

³ Refer to FDOT's Position Paper of July 9, 2018, Exhibit 7.

involving equity is outside the jurisdiction of this DRB and remains squarely between the Parties.

DRB Recommendation

The Design Build Firm made a determination based on their interpretation of the RFP they would receive unimpeded access through the Pembroke Bridge approaches being constructed by Broward County. In part the language associated with the June 1, 2015 date says "This restriction is intended for Broward County to complete construction of the Pembroke Road roadway approaches". (RFP section V.X and Section VI.G)

You could infer from this the intent was to complete the bridge approaches sometime on or after the June 1, 2015 date. However this is only a partial excerpt from one section of the RFP, and doesn't speak to the intent of when access would be allowed".

When you read the RPP as a whole, (RFP Section X.) Adjoining Construction Projects, The Design Build Firm is tasked with coordinating construction activities with other construction Projects, including The "Pembroke Road Grade Separation".

The RFP further states "It is expected that the Broward County contractor will be on site in advance of the Design Build Firm. It is [also] anticipated that the roadway approaches to the Pembroke Road overpass will be under construction concurrent with this contract."

In addition, reading the RFP as a whole, it states under the "Pembroke Road Grade Separation" the "Design Build Firm is responsible for obtaining a permit from Broward County for any activities affecting the Pembroke Road improvements beyond the limited access right of way. The Design Build Firm shall take into account the permit application review process and approval time when submitting for a permit".

The Design Build Firm disputes the Department's right to deny their NOI based on RFP requirements to coordinate the required work with Broward County's contractor.

In evaluating this issue and taking the contract as a whole, it is clearly the DBF's responsibility to coordinate with both Broward County and their Contractor. As part of this

coordination a more timely application for a permit would have defined the access question on or before June 1, 2015 or for that matter any time before the later as-planned date depicted on the approved baseline schedule REC03 to trigger any potential concerns of the concurrent construction activities and risks in having two separate contractors working in Broward County's right-of-way.

At that point if the permit had had been denied, the Design Build Firm would have had an earlier opportunity to mitigate accordingly, or negotiate and secure an equitable position outside the confines of the contract with the Department to move forward with the more expensive process of working from below to open the bridge earlier for the benefit of the traveling public, if such was deemed to be a compensable benefit to the Project.

The Board recommends no entitlement on this issue.

Submitted by and for Date of Determination: August 16, 2018

8/16/2018

X Ronnie S. Klein

Signed by: ronnie s klein

Ronnie Klein, Chairman

Robert Cedeno, Member

David Donofrio, Member