

DRB Recommendation

NOI 39

For the Contract between

Morrison-Cobalt Joint Venture (MCJV) & FDOT District Four

For Project

CR-712 (Midway Road) Reconstruction from West of 25th Street to
East of SR-5 (US-1)

FPID: 231440-2-52-01

Federal Aid Number: 8886-777-A

Contract No. T-4434

County: Saint Lucie (SLC)

Hearing location, Date and time:

3601 Oleander Ave. Date November 1, 2023 from 9:00 am to 4:00 p.m.
Held at the Treasure Coast Operations Center Fort Pierce, FL

Members of the Dispute Review Board

Pat McCann P.E., Member

Rick Espino P.E., Member

Ronnie Klein, Chairman

Project Information

Type: Bid Build **Contractor:** Morrison-Cobalt Joint Venture (MCJV)

Original Duration: 1,213 days **Original Contract amount:** \$28,848,291.55

Scope of work: The improvements on this project include reconstructing the existing two-lane Midway Road to a four-lane, divided highway with a raised median; installing a new signal at Sunrise Boulevard; constructing a new bridge over the North Fork St. Lucie River; constructing a 6-foot sidewalk on the north side and a 12-foot multi-purpose trail on the south side Midway Road; constructing 4-foot bike lanes on both sides of the roadway; reconstruction of S. 25th Street approximately 1000' to the south & north of Midway Road; reconstruction of Sunrise Boulevard from W. 1st Street to Charlotta Street; reconstruction of Oleander Avenue from W. 2nd Street to Merritt's Ditch; drainage improvements, including constructing 6 retention ponds at 5 locations; and signage, signalization, and lighting improvements.

Table of contents

1. Issue Statement
2. Summary of the Parties Positions
 - 2.1 Contractor's Position
 - 2.2 Department's Position
3. Summary of the Parties' Rebuttals
 - 3.1 Contractor's Rebuttal
 - 3.2 Department's Rebuttal
4. Relevant Specifications
5. Key findings and Analysis of facts
6. Recommendation

1. Issue Statement

DRB Issue Statement for NOI 39 – Revision to Drainage Structure S-1010

Please accept this correspondence as Morrison-Cobalt JV's (MCJV) Issue Statement regarding the impacts caused by the disruption and extra work caused by design errors and last minute revisions to replace Drainage Structure S1010 from an end wall to a ditch bottom inlet. This issue was originally identified within our Notice of Intent (NOI) #39 dated July 21, 2020. The Board is asked to make a recommendation as to entitlement only. The Contract Plans contained design errors and could not be constructed as originally designed. The Engineer of Record revised the Drainage Structure once we were ready to commence causing further disruption, additional work and delays. This is a condition requiring a Supplemental Agreement or Unilateral Payment under Specification 4-3.4. The above is a claim for extra work and delay/disruption damages including inefficiencies of direct labor and equipment. The delay/disruption began July 20, 2020 when it became apparent that work could not continue as designed in the original Contract Documents. Morrison-Cobalt JV received notification of the last minute design change after 5PM on July 20, 2020. The above mentioned NOI was submitted on July 21, 2020. Specification 5- 12.2.1 Claims for Extra Work states the Contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based. Specification 5-12.2.2 Claims for Delay states the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay. The conditions of timeliness were met. MCJV's Position Paper will be submitted in accordance with the schedule to be established by the Board.

1. Summary of the Parties' Positions

1.1 Summary of the Contractor's position

Morrison-Cobalt JV's (MCJV) Position Paper defines impacts regarding the, disruption and extra work caused by design errors and last minute design revisions to Drainage Structure S-1010 deleting an end wall and adding a ditch bottom inlet. This last minute design revision would

require the planned work to be abandoned as it would require a new drainage structure to be fabricated.

* The work as originally planned was part of the Controlling Items of Work (CIOW) as identified within the June 2020 CPM Schedule. Ultimately, the completion of that drainage structure was delayed. The design revision impacted the work at and around Structure S-1010 from July 20, 2020, to September 24, 2020.

* The planned finish for the work around S-1010 was September 4, 2020. MCJV mitigated this issue by halting construction in this area and working elsewhere.

* The CIOW was disrupted and delayed and this issue caused MCJV delays and disruptions in the progress of the work.

* Throughout various Disputes Review Board (DRB) Meetings the Department was agreeing with "entitlement" as documented in those DRB meeting minutes.

1.2 Summary of the Department's Position

The Department has reviewed the Contractor's NOI, Certified Claim package, Issue Statement, and Contractor's Position related to NOI No. 039 and determined conclusively that the Contractor is NOT entitled to direct indirect costs and disruption as supported by the contractual documents presented with their Position Paper:

* There were no impacts to Controlling Work items as required by Specification 5-12.2.2.

* Contractor failed to meet the requirements of Specification 5-12.7 regarding Mandatory Claim Records, including weekly documentation of daily records.

* There were no impacts to Extra Work as outlined in Specification 1-3 and Specification 5-12.2.1.

* Contractor failed to meet the requirements of Specification 8-7.3.2 regarding Time Extension Requests and MCJV concurs no additional time is being requested.

* Conditions did not differ materially as required by Specification 4-3, nor was there any notice of differing site conditions provided.

3. Summary of the Parties' Rebuttals

2.1 Summary of the Contractors Rebuttal

Although previously stated otherwise during various DRB meetings, the Department is now claiming no entitlement is justified.

* Accepting partial compensation for the additional structure via the existing pay item does not void entitlement for this claim.

* Within the Qualified Acceptance Letter, MCJV does not need to object to prior payments in order to maintain its rights to claim for additional compensation.

* The Department fails to consider that the design revision halted work in that immediate surrounding area, required procurement and fabrication of a new drainage structure and involved rescheduling of the work.

* The Department conveniently and incorrectly attributed the Activity "A21450 - Drainage Improvements Midway west of 25th Street."

* **CIOW Items from July 20, 2020 to October 18, 2020 are summarized as follows: A100260 - Drainage Improvements: 25th St SB south A100280 - Excav & Embankment 25th St SB A100300 - Stabilization 25th St SB A100320 - Curb & Gutter Construction 25th St SB A100340 - Base 25th St SB A100360 - Concrete Sidewalk 25th St SB** All of the above activities were delayed or their performance extended as a result of the changes to the design being addressed within this NOI 39.

* The Department also wrongfully believes that last minute plan revisions can be implemented past the originally scheduled completion date without any material impacts on the contractor nor cause extra work. This issue is a "Claim for Delay" under Specification of 5-12.2.2 for the delays to a CIOW and a "Claim for Extra Work" as described in Specification 5-12.2.1 for the additional work caused both at the structure and the subsequent activities of extended crew times needed to complete the work.

* MCJV is not requesting additional time related to this issue because it appears there were other controlling items, both prior to and subsequent to this delay, which caused greater time delays.

* MCJV is requesting compensation for additional labor and equipment costs as a result of this issue and the additional work not originally anticipated within the Contract.

* The site conditions differed to the point where the plans were revised, a new structure was needed, additional work was necessary and the CIOW was delayed.

3.2 Summary of the Departments Rebuttal

MCJV states, The Department caused extra work not originally anticipated in the Contract including but not limited to unnecessary crew movements around the project leading to inefficiencies affecting the total number of days crews needed on the project MCJV is requesting compensation for additional labor and equipment costs as a result of this issue and the and the additional work not anticipated within this Contract.

The Department responds there were no inefficiencies and no supporting documents to support their claim or statement.

MCJV states the Department caused extra work not originally anticipated in the Contract including but not limited to unnecessary crew movements around the project leading to inefficiencies affecting the total number of days crews needed on the project

The Department responds the timesheet and equipment ledgers supplied with the Certified Claim provided no context and no correlation to the issue in NOI 39. They also don't include any information related to the Subcontractor that performed the drainage work.

The Department's Position on NOI No.39, The Contractor is not entitled to their claim for NOI 39, they were unable to produce factual documentation tying their stated inefficiencies and extra work efforts to this claim.

4. Relevant Specifications

1. 1-3 Definitions
2. 4-3 Alteration of Plans or of Character of Work
3. 5-12 Claims by Contractor
4. 8-7.3.2 Contract Time Extensions

5. Key Findings and Analysis of Facts

1. MCJV filed NOI 39 July 21, 2020.
2. MCJV maintains that due to a plan error requiring the addition of S-1010 caused extra work not originally anticipated in the Contract including but not limited to unnecessary crew movements around the project leading to inefficiencies affecting the total number of days crews were needed on the project. They submitted a certified claim, but backup does not contain project records corroborating the basis of the additional costs being tied to NOI 39.
3. This change was purported to have occurred as the drainage sub was ready to begin work activities at this location. Based on the records neither a de-mob/re-mob nor a time extension was requested as the contractor was able to mitigate delays by pursuing other work.
4. MCJV failed to meet the requirements of section 5-12.7 regarding mandatory claim records submission.
5. There is no dispute that S-1010 as changed was paid under an existing pay items.

The Board has relied on contract specifications and all evidence presented in the submitted documents and the Hearing conducted November 1, 2023 for NOI-39, relevant to this claim.

6. DRB Recommendation

The Contractor brought fourth this claim under Specification 4-3 Alteration of Plans or of Character of Work. In their claim the Contractor points out the work in question took significantly longer than originally estimated in their bid. They ask for additional costs related to the extra work required during the time difference between their original estimate and the as built.

MCJV explained that additional work effort, both Manpower and Equipment was due to extra work required by the Department's design error requiring a new drainage structure. MCJV stated they were continually disrupted leading to inefficiencies and an inability to level resources and efficiently workflow the project as intended resulting in extra work.

The Board understands and acknowledges the Contractors Position associated with the effect on progress of the new installation of S-1010.

However, the contractor was paid through an existing pay item for the new S-1010, and this change resulted in less earthwork and grading at this location. The Contractor did not comply with the submittal requirements of 5-12.7 and based on the lack of depth of the supporting material available, we are not able to conclusively attribute direct impact to this NOI.

The Board recommends **No Entitlement** to this issue.

Submitted by and for
/2023

Date of Recommendation: 11/07

Ronnie Klein, Chairman

Pat McCann P.E., Member

Rick Espino P.E., Member