

DRB Recommendation

NOI 40

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.

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1. Issue Statement

DRB Issue Statement for NOI 40 - Existing Gravity Wall along the west side of 25th street.

Please accept this correspondence as Morrison-Cobalt JV's (MCJV) Issue Statement regarding the impacts caused by the unforeseen condition of the existing gravity wall along NW 25th Street. This issue was originally identified within our Notice of Intent (NOI) #40 dated July 23, 2020. The Board is asked to make a recommendation as to entitlement only. The Contract Plans failed to identify an existing gravity retaining wall. The existing conditions differ materially from the original conditions presented in the contract documents and could not reasonably have been contemplated or foreseen in the original Plans. 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 including inefficiencies of labor and equipment. The delay/disruption began July 19, 2020 when it became apparent that work could not continue as foreseen in the original Contract Documents. The above mentioned NOI was submitted on July 23, 2020. Finally, the extra work began on July 27, 2020 as supported by the documentation. 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. Both of the above 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 Contractors position

Morrison-Cobalt JV's (MCJV) Position Paper regarding NOI 40 identifies adverse impacts and disruption caused by the Department's failure to fulfill its design obligations.

This issue was originally identified within MCJV's, Notice of Intent (NOI) #40 dated July 23, 2020. The Board is asked to make a recommendation as to entitlement only. The Contract Plans failed to identify an existing gravity wall. The existing conditions differ materially from the original conditions presented in the contract documents and could not reasonably have been contemplated or foreseen in the original Plans. 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 including inefficiencies of labor and equipment.

1.2 Summary of the Departments Position

The Department performed a detailed review of NOI 40. They summarize along with back-up materials that the Contractor:

- * Did not have impacts to controlling work items as required by Specification 5-12.2.2.
- * Conditions did not differ materially as required by specification 4-3, nor was there any notice of differing site condition provided.
- * The Contractor failed to meet the requirements of Specification 5-12.7 regarding the submission of mandatory claim records.
- * The existing gravity walls were clearly depicted in the plans.
- * At the time of bid the gravity walls were clearly visible in the field.

3. Summary of the Parties Rebuttals

3.1 Summary of the Contractors Rebuttal

MCJV reiterated, that the requirement to remove the unforeseen gravity wall took significantly longer than the originally estimated work in this area. They ask for additional costs related to the extra work required, due to the disruption to their schedule, described in their Position Paper and during their presentation at this Hearing.

MCJV explained that additional work effort, both Manpower and Equipment were due to the Department's failure to follow their own Plans Preparation Manual, by not annotating and clearly labeling an existing gravity wall within the Clearing and grubbing limits. Therefore not allowing them to properly address this work during the bid process.

3.2 Summary of the Departments Rebuttal

The Department stated it did not fail to perform its obligations under the Contract as stated above by MCJV. Pursuant to Special Provision 2-4, the Contractor is obligated to review/examine the Contract Documents and the Site of the proposed work carefully before submitting a proposal. The existing gravity walls were clearly visible in the field as shown in snippets from Google Street View and Pre-construction Videos included in the Department's position paper. Furthermore, the profiles of the existing walls were indicated on the Original Contract Plan Sheet No(s). 55, 191, and 194 within Exhibit No. 09 of the Department's Position Paper. The existing gravity wall is both shown on the project plans and visible in the field prior to the contractor submitting their bid. Therefore, the Contractor is not entitled to any impacts or disruptions related to NOI No. 040 as this work was included in the clearing and grubbing pay-item as outlined in the Department's position paper.

4. Relevant Specifications

1. 1-3 Definitions
2. 2-4 Examination of Contract Documents and Site of Work
3. 4-3 Alteration of Plans or of Character of Work
4. 5-12 Claims by Contractor
5. 8-7.3.2 Contract Time Extensions
6. 110-2 Standard Clearing and Grubbing

5. Key findings and Analysis of facts

1. MCJV submitted NOI 40 on July 23, 2020. This notice advised of a claim for extra work related to the required removal under clearing and grubbing of what they claimed were unidentified sections of gravity wall located west of 25th street.
2. Article 2-4 Examination of Contract Documents and Site of Work, requires prospective bidders to examine the documents and site before submitting a proposal.
3. Section 110-2 Standard Clearing and Grubbing, 110-2.1 Work Included: includes the removal of the gravity wall in question.
4. The Department included snippets from plan sheet no(s). 55,191, and 194 from the original contract plans that they describe as clearly showing the gravity walls in question. The contractor does not agree with this interpretation and points out the designer failed to specifically note the gravity wall.

5. The Department included snippets from Google street view - March 2015, that visually showed the gravity walls in question along the west side of 25th street as being clearly visible at the time of bid.
6. MCJV failed to meet the requirements of section 5-12.7 regarding mandatory claim records submission.

The Board has relied on contract specifications and all evidence presented in the submitted documents, and the Hearing conducted November 1, 2023 for NOI-40, relevant to this claim.

6. DRB Recommendation

The Contractor brought fourth this claim under Specification 4-3.4 Alteration of Plans or of Character of Work. In their claim the Contractor points out the requirement to remove the unforeseen gravity wall took significantly longer than originally estimated for work in this area. They ask for additional costs related to the extra work required, due to the changes in the character of work, and the disruption to their schedule. as MCJV described in the Hearing.

They explained that additional work effort, both Manpower and Equipment were required due to the Department's failure to follow their Plans Preparation Manual, by not annotating and clearly labeling the existing gravity walls within the Clearing and grubbing limits. Therefor not allowing them to properly address this work during the bid process.

The Board understands and acknowledges the Contractors Position associated with the work involved in the clearing and grubbing of the area where the gravity wall was located, although notes the Plans Preparation Manual is not part of this contract..

The contractor was obligated under Special Provision, Article 2.4 Examination of Contract Documents and Site of work, to perform a detailed site and plan review prior to bidding. From the Departments presentation it is clear the gravity walls would have been clearly visible to a site review. The Department shows snippets of plan sheets the Department defines as clearly depicting the gravity wall . These sheets did not specifically call out the gravity wall by note but did graphically show something in the area in question that could have warranted closer review. It is apparent it was in the Contractors power to identify this work during the bidding process.

The Board recommends **No Entitlement** to NOI 40.

Submitted by and for

Date of Recommendation: 11/7 /2023

Ronnie Klein, Chairman

Pat McCann P.E., Member

Rick Espino P.E., Member