

DRB Recommendation

Ranger Construction Industries, Inc. & FDOT District Four
For Project
SR-80 from SR-15 (US 441) to County Road 880

FPID: 428720-1-52-01/ 429246-2-52-01

Federal Aid Project Number: 1002-059-P

Contract No. T-4387

County: Palm Beach

DRB Issue: NOI #9 Issue Statement

Is Ranger Construction Ind. Inc. (Ranger) entitled to a three day compensable time extension?

Hearing Information: Dates January 30 & 31, 2017 from 9:00 am to 4:00 p.m. Held at PALM BEACH OPERATIONS, 7900 Forest Hill Boulevard, West Palm Beach, FL 33413-3342

Project Information

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

Original Duration: 460 days **Original Contract amount:** \$20,572,639.74

Scope of work: The improvements under this contract consist of safety and resurfacing, restoration and rehabilitation (RRR) improvements on SR 80.

Members of the Dispute Review Board

Dan Garner, P.E., Member

Don Henderson, P.E., Member

Ronnie Klein, Chairman

1. Summary of the Parties Positions

1.1 Summary of the Contractors position

The issue in this dispute is the Department's denial to grant a three day compensable time extension at the very end of the project to afford Ranger time to address a striping deficiency. The striping deficiency was not identified by the Department in their Punch List and notice of which was not provided to RCI until four calendar days (two business days) before expiration of contract time. Ranger began scheduling their striping subcontractor and hydro-blaster upon notification of the deficient striping, however, the earliest the work could be completed was three days after expiration of Allowable Contract Time resulting in the Department charging three day of liquidated damages. The contract is clear that the Department has a duty to provide a Punch List (Remedial Work List) and perform subsequent inspections of the items on that list. When items are discovered by the Department that were not on the list and more importantly not brought to the contractor's attention in sufficient time to correct the item within Allowable Contract Time, a time extension is warranted. Since all other work was complete except correcting the recently-found striping deficiency, the three day time extension is also compensable. Ranger does not dispute the need to correct the deficient striping, but does dispute the Department not granting compensable time to make the correction and charging three days of liquidated damages.

1.2 Summary of the Departments Position

The Department has reviewed the certified claim package submitted for this issue and finds no entitlement for the contractor. The Department reviewed the contractor's striping certification in preparation of closing out the project and noted several pay-item quantity discrepancies. The certified striping quantities were greater than the plan quantities, and as there had been no modifications to the original design, the project team performed a thorough and detailed inspection of the work. Upon completion of the detailed review, the Department brought the striping concerns to the Contractor's attention on March 30th, 2016 (Exhibit 16) with the concerns of the non-compliant striping and followed up with the EOR to determine if any of the striping could be left in place as-is. The Contractor was notified on April 1st, 2016 (two (2) days prior to the last contract date) that the striping needed to be corrected and placed in conformance with the contract documents. The striping needed to be corrected as it could have produced an unsafe condition for the corridor. As this was a safety project, it was critical for this work to be built in conformance with the plans. This work was estimated to take less than one (1) day to complete and wasn't scheduled and completed until five

(5) days after this notification and three (3) days beyond contract time. During this timeframe, the contractor was still performing contract work for the performance turf throughout the project and it was not until April 6th 2016 that this contract work and the deficient striping work was corrected.

The Department in no way has failed to meet its requirements of the contract in accordance with Specification 8-7.3.2 as Ranger indicates in their certified claim package. Per Specification 5-9.2 Failure to Reject Work During Construction (Exhibit 17), even though the Department failed to reject the defective striping at the time of the semi-final inspection and the punch list generation, the failure to reject the work, which Ranger agrees is deficient as indicated in their Time Extension Request, "in no way prevents the later rejection or obligates the Department to Final Acceptance." Additionally, "The Department is not responsible for losses suffered due to any necessary removals or repairs of such defects" which is the premise of this certified claim. The contractor is requesting the losses suffered for their "deficient striping" that were assessed through Liquidated Damages in accordance with Specification 8-10.2 in the amount of \$29,449.89 (\$9,816.63/day for 3 days) and requests additional compensation through a three (3) day compensable time extension in the amount of \$10,733.55. In addition, it is worth noting that since the certification package, which alerted the Department of the deficiency, was submitted after the generation of the initial punch list it was not unreasonable for the Department to revisit the work items that needed to be completed prior to final acceptance.

Furthermore, the Contactor was still completing performance turf contract work until the last contract day on April 6th, 2016. In accordance with Specification 5-11 the Department determined that the Contractor finally satisfactorily completed the work on this date and issued the written notice of Final Acceptance. It wasn't until this date that the Contractor completed the striping repairs and the performance turf requirements as part of the contract and as identified in the daily work reports (DWR's) from the inspection staff on site.

1.3 Summary of the Contractors Rebuttal

The Department states the striping quantities shown on Ranger's monthly certification prompted their investigation and ultimate discovery of the deficiency since the actual quantities were greater than the plan quantities. They state it was this investigation that caused them to find areas of striping discrepancies to which they brought to Ranger's attention on March 30, 2016. However, the

striping was performed over the course of the prior several months with certified quantities being submitted as work was completed. The striping was in place well prior to the Department generating the project punch list. (All project striping certification submittals are hereby included by reference) This is the crux of the dispute. The Department did not identify the striping issue on the project punch list (although it was patently visible to them) but more importantly identified it when there was only 4 contract days remaining - 2 of which being a Saturday and Sunday. The Department's failure to timely identify the need to correct the striping caused 3 days of liquidated damages since all other contract work was completed prior to expiration of contract time.

The Department states their failure to reject work does not relieve the Contractor from making corrections to the work. Ranger is not disputing this. Ranger did make the corrections to the work and is not seeking compensation for the direct cost of correcting the work. Ranger is seeking a 3 day compensable time extension for the Department's failure to perform in accordance with section 5-10.

Regarding the Department's position that performance turf was still being performed, this is an invalid argument to deny a compensable time extension. Performance turf obligations carry over outside contract time. It is a warranty issue in which certain turf establishment criterion need to be obtained in order to complete the warranty. In fact even the Department's own letter notifying Ranger of Final Acceptance states that Performance Turf is an exception since Ranger's obligation under the 570 specification continues beyond contract time.

The fact is, but for the Department's failure to adhere to section 5-10, final acceptance would have occurred on April 3rd not April 6, 2016.

1.4 Summary of the Departments Rebuttal

Per Specification 5-9.2, if the Department fails to reject defective materials, this does not obligate the Department for final acceptance. Additionally, the Department is not responsible for losses (basis for this claim) suffered due to any necessary removals or repairs of such defects. Both the loss of indirect costs as well as the losses from the assessed liquidated damages are included under this specification. The Department, and the Contractor, both failed to discover the deficient striping on the project. The contractor is not due the additional costs requested nor is due a time extension to correct their deficient work. The Department notified the contractor immediately upon discovering the work and with sufficient time to correct the work within the allowable contract time. Further, the

contractor was still performing contract work for their performance turf throughout the project and wasn't completed with all work until April 6th, 2016.

Therefore, the contractor was properly charged three days of liquidated damages for their failure to complete the contract work within allowable contract time per Specification 8-10.1 and losses incurred by the Contractor are 100% their responsibility.

2. Relevant Specifications

5-9.2 Failure of Engineer to Reject Work during Construction

5-10 Final Inspection

5-10.2 Inspection for Acceptance

3. Key findings and Analysis of facts

Ranger maintains striping deficiencies were not contained in the inspection for acceptance required by specification 5-10.2 Inspection for Acceptance. Their dispute is not with the condition of the striping but with the timeliness of the Departments deficiency notification. Ranger maintains that had the striping deficiency been included in the Final Punch List they would have had ample time to correct the deficiency within the allowable contract time. Ranger received the punch list March 10, 2016 showing Station, Roadway Side and Description of remedial work needing correction, with no inclusion of deficient striping.

Ranger did not receive notification of Pavement Marking issues (striping issues) until they received an email Wednesday March 30, 2016 at 5:08 pm. At this time they maintain they were unable to schedule their subcontractor to correct the deficient work within contract time.

The Department received the initial Striping Certification on February 18, 2016. The CEI for the project, Aim Engineering, did not fully recognize the extent of the quantity overruns until they received a revised certification on March 24, 2016. Aim went through the project site to determine the source of the overrun and identified the deficient striping areas. As part of that process, and in an effort to mitigate they determined that although FDOT Maintenance was willing to accept the striping as is, the Engineer of Record wanted the striping corrected to match the contract drawings. One stripe ran across a driveway and would have had to be corrected in either instance.

The Board has relied on contract specifications and all evidence presented in the Hearing conducted January 30, 2017 for NOI-9, relevant to the claim.

4. DRB Recommendation

The Board acknowledges the Departments last minute notification of the Deficient Striping work on March 30, 2016 leaving Ranger with little time to correct the deficiency prior to contract time expiring.

However, in making our recommendation we find the requirements under specification 5-10.2, Inspection for Acceptance, needs to be considered in conjunction with specification 5-9.2 Failure of Engineer to Reject Work during Construction and determine the Department met their obligations under these specifications.

Ranger is obligated under their contract to construct the project within close conformance with the plans and specifications, a point which Ranger has not disputed. Ranger or their Sub-Contractor had ample opportunity to review the project site when their striping certifications showed a quantity overrun. Ranger did not consider it a significant overrun and did not pursue reviewing the cause at the time the certifications were submitted. Ranger could have identified the deficiencies and should have had ample time to correct the deficiencies or try to mitigate the corrections as the CEI did when the deficiencies were discovered had they chosen to do so.

The Board recommends No Entitlement on this issue.

This Recommendation is the unanimous decision of the members of the Dispute Review Board.

Submitted by and for Date of Recommendation: February 17, 2017

A handwritten signature in blue ink, appearing to read 'R. Klein', is written on a light blue background.

Ronnie Klein, Chairman

Don Henderson, P.E., Member

Dan Garner, P.E., Member