

D-5 Regional Dispute Review Board
Quantum Hearing Held on January 31, 2022
FDOT vs Com. Industrial Corp via Anderson Columbia (prime)
Contract No.: E5Z67
County: Marion
Project Name: I-75 Wildwood Weigh Station Repairs

RDRB = Don Cronk, Chairmen
Murray Yates, Member
Ernest Wolf, Member

Issue Summary:

Anderson Columbia's sub-contractor, Commercial Industrial Corporation (CIC) damaged buried Weigh-in-Motion (WIM) facilities while completing roadbed grading work for the access road serving the southbound I-75 weigh station.

The Department withheld substantial contract funds upon deciding to make the arrangements and complete the repair to damaged Weigh-in-Motion (WIM) buried facilities, in lieu of requiring the Contractor to arrange for, complete the repairs and accept the cost.

An entitlement dispute arose over the Contractor's responsibility(s) for the repair cost. The matter was further complicated because the WIM facilities are proprietary property of Mettler Toledo and the owner wanted to make upgrades to the system that was not a part of the damaged facilities. A RDRB Hearing was held to obtain a Board recommendation for resolving the issues of entitlement.:

The Boards recommendations resulting for the issues of entitlement were distributed on May 3, 2021 and were referenced in the quantum hearing held on January 21, 2022. The recommendations are presented as follows:

“The BOARD’s recommendations are based on the pertinent Contract provisions, and the facts and circumstances involved in the dispute.”

“The BOARD unanimously agrees that the FDOT was entitled to withhold funds from the contract. The Board, however, recommends that the Contractor only be held responsible to pay for that portion of the Department’s repair costs that are necessary to furnish, install and restore the WIM facilities damaged during the Contractor’s grading operation. The BOARD further recommends the Contractor not be held responsible for any costs that were not necessary to returning the WIM facilities to the same condition that existed prior to being damaged except in a location outside the plan roadbed. Consideration should be given to crediting the cost of not having to

relocate the damaged facilities and the cost should not include any for upgrading the system.”

“The Board also recommends the Contractor be provided a detailed itemized breakdown of the cost the Department concludes is the Contractor’s responsibility.”

Subsequent to the previously described entitlement hearing and resulting RDRB recommendations, the parties continued negotiations. It is apparent some agreement was achieved; however, the quantum issue could not be resolved.

Anderson Columbia/Commercial Industrial Corporation requested that this Regional Dispute Review Board reconvene to “recommend the amount that FDOT should withhold”.

The following positions & rebuttals are copies of the documents submitted to the BOARD. Attachments to the documents are not included by, if requested, the parties can furnish them.

Contractor Position:

“The dispute review board recommendation on May 3, 2021, was that FDOT was to provide CIC with a breakdown of the costs to make the repairs for the relocated conduits at the wildwood weight station. We requested this breakdown from FDOT and Sam Al-Turk. We never have received any breakdown, only a deduction in the amount owed from \$259,730.00 to \$179,556.34 for additional upgrades based on an email to Anderson Columbia. How was this amount established without a breakdown?

FDOT failed to provide us any backup, itemization, or documentation of the cost. We made a public records request to see the sublet agreement between Mettler-Toledo and their subcontractor Miller Electric. This was not provided. Since no breakdown was given, we requested an estimate from another electrical contractor for the work. The total for all the materials, labor and equipment to make these repairs was \$61,350.00 – not including additional savings from not having to relocate these utilities.

We are requesting that FDOT release the balance of the funds \$179,556.34 (amount withheld) minus \$61,340.00 (cost of the work) = \$118,216.34.”

FDOT Position:

“Below is the breakdown of the estimated repairs needed had the Department relocated the conduits prior to CIC damaging the infrastructure.

We estimated 5 days of excavator work to relocate the lines (7 hours per day to eliminate travel time for 2 guys), another 5 days of pulling wire, pull boxes, and testing once underground was done (7 hours per day to eliminate travel time for 2 guys). The FDOT has a standard overhead rate of 65% to account for insurance, vehicles, fuel etc.

The equipment cost was estimated at \$1,750.00 (Mini excavator at \$350/day for 5 days), miscellaneous material cost of \$5,500.00 (Conduits, fittings, wires), and labor cost of \$4,273.50 (140 hours at \$18.50/hour), for a total cost of \$11,523.50. The cost of the upgrade was \$57,000.00.

Based on this estimate the actual cost for the relocate and the upgrade is \$68,523.50. FDOT in good faith doubled up the cost of the relocation in favor of the contractor and released the credit of \$80,173.66 which is above the actual cost of the relocation and the upgrade.”

Contractor Rebuttal to FDOT Position:

“In rebuttal to FDOT’s position, CIC states the following:

The breakdown we received per FDOT’s position paper provides no detail of the work performed as requested per the previous DRB recommendation. It only provides an estimated cost to relocate, as well as a lump sum amount for the upgrades. This does not help us to know where and how much was spent on the conduit relocation associated with the work done by CIC.

A few things to consider:

1. On September 10, 2020, Anderson Columbia requested drawings and details of the work to be done for the relocation, so CIC could perform the work. (Attachment #1)
2. On September 26, 2020, a meeting was held with FDOT and Mettler Toledo to discuss the relocation. At that time, they had contracted electrical subcontractor (Miller Electric) to make the repairs. The electrical contractor had been provided a drawing (Attachment #2). Neither CIC nor Anderson Columbia was ever provided a drawing; we only obtained it by asking the Miller Electric representative to make a copy for us.
3. On September 27, 2020, we sent an email to FDOT acknowledging that the work was now taking place and requested they track it accordingly so, if necessary, all discussion regarding the work being completed would be transparent. (Attachment #3)
4. Our Project Superintendent did track the work of the electrical contractor making the repairs. These notes are included (Attachment #4). They had roughly 10 days with 3 men; it should be noted that a fair amount of that work was used on upgrades and repairs not associated with this relocation.

Mettler Toledo provided a price of \$259,730.00 for the work. It was only after we questioned the upgrades and additional expenses that FDOT acknowledged they

had put them in the cost of the relocation. Further, CIC has the following questions:

1. What did these upgrades consist of?
2. Is there an itemized detail of what was done for the upgrades?

FDOT claims this work is proprietary. However, there is nothing proprietary about conduit and wire.

In an effort to partner, we propose that CIC will pay the costs associated with the repairs and relocation per Stokes Electric's quote of \$61,350 less the estimated FDOT relocation costs of \$23,071 for a total of \$38,279 paid by CIC."

FDOT Rebuttal to the Contractor Position:

"The contention that CIC/Anderson Columbia never received any breakdown was addressed in the Motor Carrier Size and Weights (MCSAW) Position Paper submitted to all parties electronically and by hard copies. They were provided with a detailed accounting of the different components of Labor, Materials, and Equipment and the costs associated with each one of them. As specifically stated by the Board, the Board will not revisit any issues previously addressed and would focus the scope of this upcoming January 31, 2022, Hearing solely on the \$80,173.66 Quantum. Thus, the MCSAW Position should constitute a full and thorough completion of the scope of this Hearing.

However, since CIC/Anderson Columbia persist on questioning the cost estimate of the work performed by Mettler Toledo, MCSAW would like to point out the following considerations:

- Mettler Toledo is the sole proprietary of the Weigh-in-Motion (WIM) Scale System at the Wildwood Weigh Station. As such they have elements integrated into the repairs (established as upgrades) that required a tailored design to be compensated for. Following this design, Mettler Toledo produced and distributed a drawing to CIC/Anderson Columbia, anticipating they would enter some sublet with them. This never happened from June 2020 to the end of September 2020 until MCSAW decided, after three months, to give Mettler Toledo notice to proceed with the repairs. CIC/Anderson Columbia instead, used the Mettler Toledo drawing to extract take-off quantities and submit them to get a quote from Stokes Electric of Central Florida. This expensive and crucial factor was neglected or omitted by CIC/Anderson Columbia.
- When the Department issues a Bid Solicitation Notice for a given Contract with exactly the same Pay Items for all the bidders, obviously they never get the same amount bid by all the different contractors. To illustrate this pertinent fact, MCSAW has compiled below the

results of the March 5, 2019, Letting of Contract E5Z67 I-75 WILDWOOD WEIGH STATION REPAIRS:

Rank	Vendor	Total Bid	Percent of Low Bid
1	ANDERSON COLUMBIA CO., INC	\$11,314,430.29	100.00%
2	COMMERCIAL INDUSTRIAL CORP	\$12,226,104.75	108.06%
3	SOUTHLAND CONSTRUCTION, INC.	\$13,363,636.36	118.11%
4	GOSALIA CONCRETE CONSTRUCTORS, INC.	\$13,794,073.59	121.92%

Finally, during the entire duration of the work (9/29/2020 to 11/3/2020), Mettler Toledo assigned a Project Manager to supervise the progress of the work and provide quality assurance. Another significant item neglected or omitted.”

RDRB’s Evaluation and Conclusions:

The BOARD’s findings were as follows:

1. The Department has not yet provided the Contractor or the BOARD with a detailed itemized cost breakdown. When asked why, the Department representatives stated that they did not have the records needed to complete the requested cost breakdown.
2. The lack of material quantities, labor data, and a description of the equipment used results in the BOARD having to rely upon the limited information provided which is not detailed sufficiently to allow preparation of an independent repair cost estimate. In this case the Board has estimated a quantum amount based upon the information received from the party’s submittal documents and information received during the quantum hearing.
3. The Contractor obtained and included a price quote or proposal from a local electrical contractor (Stokes Electric of Central Florida, Inc. or Stokes Electric). The price quote was included as an attachment to the Contractor’s position paper. The contents of the price quote were discussed in the quantum hearing and both parties agreed the information was a reasonable estimate except it was noted the estimated labor hours could be adjusted to include time spent doing miscellaneous activities such as electrical and fiber optic cable connections.

A written summary of the daily work activities, including the actual repairs and the upgrades to the WIM system, resulted from intermittent daily reviews by the Contractor’s personnel. This documentation was provided as Attachment #4 to the Contractor’s rebuttal paper and was used as the basis for increasing the labor cost as provided by the Stokes Electric proposal.

In summary, the cost documentation received in the position and rebuttal papers along with the additional information received during the hearing was used as the basis for the BOARD’s quantum estimate. The BOARD concluded the Stokes Electric’s price proposal to be the best available estimate of the repair cost subject to only two adjustments (*i.e.*, elimination of the \$750 permit fee and adding \$4,500 to the labor cost.)

4. The Department’s position paper provided a cost breakdown of estimated repairs needed had the Department relocated the conduits (and their contents) prior to the Contractor damaging the infrastructure. The Departments cost estimate is \$11,523.50.

The Department’s estimated cost to relocate the WIM facilities is needed because had the originally planned relocation of the existing facilities have been accomplished prior to the Contractor proceeding the road grading work the damage would have been avoided. However, repairing the damaged existing facilities resulted in eliminating the Department’s cost for relocation work since that work never occurred. Therefore, the BOARD concludes the Contractor should not be held responsible for \$11,523.50 as outlined in the Department’s position paper to restore and/or replace the conduits damaged by CIC.

The BOARD also concludes a clarification is appropriate. It is the BOARD’S understanding the contract provided for the Department to be responsible for completing the needed relocation of WIM facilities that are the property of the proprietary owner Mettle Toledo.

5. The following summarizes the basis for the BOARD’S quantum recommendation:

- A. **Repair Estimate Amount (Amended Stokes Electric’s Estimate):** \$65,700.00
 - Materials \$46,600 + Equip. \$5,600 + Labor \$13,500
 - Adjusted to delete permit cost.
 - Adjusted labor cost to add \$4,500 based on data provided by AC/CIC’s Attachment #4 to rebuttal.
 - See Attachment #3 of AC/CIC’s position paper dated 1/14/2022)

- B. **FDOT’s relocation estimate IF damage had not occurred:** (\$11,523.50)
 - Materials \$5,500 + Equip \$1,750 + Labor 4,273.50.
 - See FDOT position paper dated 1/14/2022.

- C. **Estimated fair amount Contractor is responsible for:** \$54,176.50
 - Deduct 2. amount from 1. amount shown above.

6. The BOARD has avoided using or referring to the monetary amounts the Department withheld from the contract and the amount indicated to be paid the Contractor as identified by a unilateral payment form provided as Item #2 to the Contractor’s position paper. The BOARD is only recommending the quantum amount that should be withheld from the contract amount due to the Contractor, to compensate the Department for the damage repairs cost for which Contractor is responsible.

RDRB Recommendations:

The BOARD’s recommendations are based on the pertinent information received for the quantum hearing, the information covered during the actual hearing and the testimony. The Board used the best

available information to address “the amount that FDOT should withhold” per the Contractor’s request dated November 9, 2021. The BOARD’s **analysis of quantum** does not consider extenuating circumstances not addressed by the Department or the Contractor’s representatives.

The Board recommends that Anderson Columbia/Commercial Industrial Corporation be held responsible for the sum of \$54,176.50.

All board members continue to strongly encourage both parties to consider the quantum analysis, and the above recommendation. We encourage the parties to resume negotiations in good faith and reach a fair and equitable solution to the quantum issue(s) prior to incurring significant additional litigation costs.

The BOARD unanimously reached the recommendations presented and reminds the parties the recommendations are non-binding. If the BOARD has not heard from either party within 15 days of receiving this recommendation, the recommendation will be considered accepted by both parties.

Respectfully submitted by the D5 & Turnpike North Regional Dispute Review Board.

Don Cronk – Chairman
Murray Yates – Member
Ernest Wolf – Member

By: Donald M. Cronk Jr.

Date: February 7, 2022