

REGIONAL DISPUTES REVIEW BOARD RECOMMENDATION

October 15, 2004

Mr. Nick Mavromatis
President
Olympus Painting Contractors, Inc.
556 Anclote Road
Tarpon Springs, Florida 34689

Mr. Lenton Jenkins, Jr.
Project Engineer, Jacobs Civil, Inc.
18302 Highwoods Preserve Prkwy
Highwoods Plaza, Suite 200
Tampa, Florida 33647

Ref: Financial Project No. 405751-1-52-01, Bridge Painting, Pinellas & Hillsborough Counties

Gentlemen:

Olympus Painting Contractors, Inc. (Olympus) requested a hearing before the Regional Disputes Review Board (Board) concerning the time allotted for weather days and compensation for pay items 102-60 Work Zone Signs, 102-76 Advance Warning Arrow Panels, 102-77 High Intensity Warning Lights and 102-99 Variable Message Signs.

During the hearing it was discovered that the only difference between the Florida Department of Transportation (Department) and Olympus concerning the payment days for the Variable Message Signs was all within the original contract time and approved extensions. Based upon this information the Department and Olympus determined that they could work out any differences and settle the Variable Message Sign dispute without the Board having to make a recommendation on this issue.

Olympus' position is that they should receive something more than a day for a weather day (day for day) because that places them in the position of being unable to work on some of the days granted for weather. (Because they were not allowed to close lanes on weekends and they had to close lanes to be able to perform some of their contract work.) Olympus feels they should get a lane closure day for a lane closure day, which is different than a day for a day.

Olympus also expected to get paid for other traffic control devices (Work Zone Signs, Advance Warning Arrow Panels and High Intensity Lights) because the Special Provisions of the contract contained language that they feel provides for compensation for these items. Olympus feels that the Department made an error by not putting the other items in the pay item list in the contract.

The Department's position concerning the day for day time extension is that the Specifications are very clear and that is all that can be given for weather under the present contract. As far as payment for the other traffic control items the Department's position is that they are paid for under the Maintenance of Traffic item, pay item 102-1.

In the following discussion the references to various exhibits have been left in the narrative so that the reader can return to the original submittal and find the referenced exhibit if desired.

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CONTRACTOR'S POSITION

During the course of the project, Olympus was advised on a periodic basis that the FDOT was going to either award, or not award, an extension of contract time, based on the occurrence of inclement weather during the respective period preceding the notice. These awards however, were made on a "calendar day per delayed day" basis, which did not equitably account for the fact that under the contract provisions, the company was not allowed to perform lane closures on weekends or holidays. In other words, Olympus objected to the method that the FDOT utilized to award an extension of the contract time. It contends that under a reasonable interpretation of the phrase "day for day" basis set forth in section 8-7.3.2 of the Supplemental Specifications, it should be awarded a 'lane closure day for a lane closure day' to fairly compensate it for the fact that it actually lost such a day due to inclement weather.

On November 3, 2003, Olympus notified the CEI in writing of its intent to file a formal claim. (Appendix, 11 - 12). On November 11, 2003, Lenton Jenkins, the CEI with Jacobs Civil Inc., responded to Olympus notice, advising that:

I must inform you that each weather day extension that you have received has been issued through the normal operating procedures of the FDOT. If more considerations are to be made, that approval must be made at a higher level of the Department. (See Appendix, 13).

On March 8, 2004 (as amended on May 13, 2004), Olympus filed a formal claim with the FDOT regarding its method of calculating the extension of the contract time based on the occurrence of inclement weather. (Appendix, 14 - 19). Therein, Olympus noted that the FDOT's policy appeared to be based on Section 7.2.4 of the FDOT's "Construction Project Administration Manual," (the "CPAM") an internal agency manual that is not referenced in the Contract. As Olympus noted in its formal claim, that provision of the CPAM provides that for contract let prior to July 1, 2002, the FDOT would calculate the award of a contract time extension based on the number of workdays in a contractor's workweek. Thus, for situations such as Olympus' where it was limited to actually performing lane closures on only 5 days each week, the FDOT would extend the contract time by using a calculation method of 1.4 days per each delay day ($7/5= 1.4$).

In response to its formal claim, Lenton Jenkins responded on March 25, 2004. (Appendix, 20 - 21). In that response, Jenkins stated that the Contract Plans did "not prohibit you from working [on weekends or holidays], only from closing lanes."

Through its retained counsel, Olympus also challenge the FDOT's use of the CPAM to calculate the award of contract extensions, pursuant to the provisions of Chapter 120 of the Florida Statutes, on the theory that the relevant portion of the CPAM was in fact an administrative rule that had not been adopted as such as required. In that rule challenge, the FDOT unsuccessfully sought to have Olympus' petition dismissed, alleging that its remedy was, among others, to raise the issue before a Dispute Resolution Board.

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(Appendix, 22). Subsequently, the FDOT's Assistant general Counsel assigned to that proceeding formally threatened Olympus' counsel to seek an award of attorney's fees,"(Appendix, 23 - 24).

Due to the fact that Olympus' attorney had taken the fee on a contingency basis and his desire to not become involved in the dispute, he recommended that Olympus solely pursue the weather day dispute through the instant Dispute Review Board proceeding. Olympus' reluctantly agreed, and the case was voluntarily dismissed without prejudice to Olympus moving the Division of Administrative Hearings to re-open the case should the issue not be resolved. (Appendix, 25).

Throughout the period of the contract, the FDOT awarded Olympus an extension of the contract time of 22 days. Olympus contends that the FDOT should equitably award it 31 days, which reflects the use of the 1.4 factor previously used.

During the course of the project, Olympus provided various pieces of equipment as required by the Contract Plans to provide for the maintenance of traffic. A dispute arose between the company and the CEI with regard to providing a Variable Message Sign on one of the bridges, and it was discovered by the FDOT that due to a mistake on the part of the FDOT, the Bid Blank sheet, and that contained in the CEB software, did not contain a line pay item for the VMS Signs. As a result, Olympus' had only anticipated placing the VMS Signs on one (1) Bridge (the Kennedy drawbridge), based on the company's interpretation of the plans.

The parties met to specifically discuss the issue of compensation for providing the Variable Message Boards. As a result of this discussion, the parties entered into a Supplemental Agreement dated December 18, 2003, which was to provide Olympus with compensation in the amount of \$22,927.74. (Appendix, Exhibit 25 - 27). Nothing in the Supplemental Agreement provided Olympus compensation for the other three (3) categories of MOT equipment provided on the project. Nor was it ever mentioned at the time that the parties discussed compensation for the VMS signs that Olympus should file a claim, or would have to file such a claim, in order to seek compensation for the other categories of MOT equipment that the FDOT left off the bid blank.

On March 19, 2004 and March 23, 2004 (Appendix, 28) Olympus wrote to Lenton Jenkins, of Jacobs Civil Inc., requesting compensation for providing this equipment, and for the difference in the amount of compensation that the FDOT had provided for the Variable Message Boards, and the amount that Olympus calculated was due (a difference of \$3,162.37). (The variable message board portion of this is the item that the Department and Olympus determined at the hearing could be settled between themselves without a Board recommendation.)

On March 30, 2004, Jenkins responded to Olympus requests, indicating that no compensation would be provided because Olympus' President, Nick Mavromatis, had verbally agreed at some unspecified time that he would not pursue other MOT claims. Jenkins also suggested that no compensation would be provided because Olympus did not

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timely notify the FDOT of his intent to file a claim for these pay items, and therefore the FDOT did not track the use of MOT equipment, thus preventing it from later paying Olympus for providing these items. (Appendix, 29 -30).

On April 8, 2004 (as amended on May 13, 2004), Olympus filed its formal claim under the specifications regarding the compensation for providing the MOT equipment. (Amended Claim is at Appendix, 31 - 43).

In his response to the formal claim dated April 16, 2004, Jenkins again stated that the claim was denied, noting that Olympus had not timely given notice its intent to file a claim for anything but the VMS signs, and that FDOT had resulting not been "afforded the opportunity for keeping strict account of actual labor, materials, equipment and time," as had been done with the VMS Boards (Appendix, 44 - 45) notwithstanding that the equipment was placed in accordance with the Traffic Control Plans of the FDOT, under their Inspector's supervision and requirement at all times.

On April 30, 2004, in accordance with the specifications, Olympus timely filed a written appeal of the decision denying its claim, and requested that the FDOT refer the claim to the Board. (Appendix, 46 - 48). Interestingly, in response to a public records request made by Olympus, the FDOT has furnished Olympus with numerous documents reflecting that actual records do exist showing when various MOT equipment was in fact deployed by Olympus during the project, or which should have shown this information. (Appendix, Composite Exhibit 49). As can be observed, some of these documents appear to have been marked "voided" in the pertinent areas where actual quantities of the equipment were, in fact, tracked.

On May 27, 2004, an amendment to the claim was made to reflect a corrected invoice (#503), totaling \$3,268.57. In this claim, Olympus is seeking compensation for a total of \$ 31,427.1 7, which represents the total amount due for each of the four (4) categories of equipment.

By this submission, Olympus hopes to persuade the Dispute Review Board that it is entitled to compensation from the FDOT for these claims.

Olympus argues further in their rebuttal of the Department's position as follows:

The FDOT correctly notes that Olympus submitted a written claim on March 8, 2004, amended May 13, 2004, seeking an adjustment in the amount of the extension to the contract time awarded pursuant to section 8-7.3.2 of the Supplemental Specifications, based on the occurrence of inclement weather days. As to its posture regarding the claim, the FDOT simply recites a portion of section 8-7.3.2 of the Supplemental Specifications incorporated into the parties' underlying contract.

The relevant provision thereof provides that an extension will be granted under the qualifying conditions, "on a day for day basis." Respectfully, the Department makes no argument opposing Olympus' position set forth in its formal claim, as amended on May

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13, 2004. Based on the lack of an argument opposing Olympus' position, it must be assumed that the FDOT cannot formalize a position to rebut Olympus' contention that it is reasonable interpretation of the phrase "day for day basis" as set forth in section 8-7.3.2 of the Supplemental Specifications, to allow Olympus' to recoup a lane closure day for a lane closure day." (See Olympus Position Paper, at 6)

Pertinently, it should be noted that if the intent of the FDOT was to enact a contract term which resulted in an award of an extension of the contract time based on the occurrence of inclement weather circumstances on a "calendar day per delayed day basis," it easily could have done so, and should have done so, by clearly stating such in a clear manner in the relevant Supplemental Specification. Indeed, the term "calendar day" is already defined in section 1- 1 of the FDOT's 2000 Standard Specifications, to mean "[e]very day shown on the calendar, ending and beginning at midnight."

Respectfully, the failure of the FDOT to specifically indicate in its Supplemental Specification regarding extensions of the contract time due to the occurrence of inclement weather conditions that such would be computed on a "calendar day per delay day basis,," the resulting ambiguity led Olympus to believe that the phrase "day for day" actually meant a "working day for delayed day basis. The FDOT's Standard Specifications define a "working day" as "any calendar day on which the Contractor works or is expected to work in accordance with the approved work progress schedule." Given the fact that the scope of work required that Olympus perform closures of traffic lanes in order to complete this work, and the fact that the Traffic Control Plans did not allow for such closures two days of each calendar week, it is reasonable and equitable that the FDOT compute the amount of the contract time extensions in a manner that allows the contractor to gain what he has lost - a lane closure day for a lane closure day. Utilizing the computational factor of 1.4 that is set forth in the section 7.2.4 of the FDOT's CPAM, which applied to contracts let prior to July 1, 2001, achieves such a reasonable, equitable, and just result. Accordingly, Olympus requests that the Board find that it is entitled to computation of the contract time extensions for inclement weather in such a manner.

In the second disputed issue brought before the Board for hopeful resolution, Olympus seeks compensation from the FDOT for various categories of Maintenance of Traffic ("MOT") equipment, in accordance with (and as required by) the contract documents (primarily the Traffic Control Plans). As noted in its initial Position Paper, Olympus contends that the project specifications: clearly identified the four (4) various categories of MOT equipment that it was required to provide on the jobsite; clearly identified the basis for computing the compensation that the FDOT would in turn provide; and clearly identified the specific pay items associated with each respective category of MOT equipment. However, due to the FDOT's oversight, the Bid Blank provided to all of the bidding contractors mistakenly failed to include a specific line item for these four (4) pay items provided for in the Supplemental Specifications. Consequently, Olympus mistakenly submitted its bid without including a bid amount for these four (4) categories of equipment it was required to provide.

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Notably, the FDOT did eventually agree to compensate Olympus for providing @-one category of equipment - Variable Message Signs - through a Supplemental Agreement executed by the parties near the end of the project period (executed by FDOT official on December 19, 2003). See, Olympus Position Paper, Appendix at 25 - 27.

In both of its letters denying Olympus' request for compensation having properly provided these categories of MOT equipment (including the VMS equipment), and in its Position Paper, the FDOT steadfastly has refused to acknowledge any liability to Olympus for providing the respective equipment, advancing a host of reasons for so doing. The FDOT's most recent statement for denying liability is set forth in its Position Paper, as follows:

Regarding the MOT related claim, the Contractor did not submit a timely Intent to File a Claim. Thus the Department performed no tracking or documentation of the number of items and associated costs.

Respectfully, this underlying basis for this position is belied by the FDOT's duty to insure that a contractor provides the appropriate MOT equipment on every phase of a project, its concurrent duty to maintain accurate records of the actual MOT provided, and its own records related to the project. Accordingly, the FDOT's position is without merit and lacks factual support.

In support of its position that Olympus was required to file a Notice of Intent to File Claim related to compensation for the remaining three (3) categories of MOT equipment, the FDOT claims:

Regarding the MOT related claim, the Department had in good faith and with justification negotiated a claim for Variable Message Boards (VMS) after the Contractor had submitted a timely Intent to File a Claim. With no notice to the Department, the Department maintained inadequate MOT related equipment utilization records nor negotiated with the Contractor for any additional payment because MOT pay item was lump sum.

While - at first blush - this position sounds reasonable, the inescapable fact remains that there is absolutely no factual basis for the FDOT'S claim that Olympus filed a "Notice of Intent to File Claim" regarding the VMS Boards, which according to the FDOT, predicated the parties ultimate execution of the Supplemental Agreement to provide Olympus with compensation for providing the VMS equipment.

The FDOT contends that Olympus is not entitled to compensation for the three (3) remaining categories of MOT equipment because it did not timely file a Notice of Intent to File a Claim pursuant to section 5- 12.2.1 of the Supplemental Specifications. That section provides in material part:

Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or for which is by written

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directive expressly ordered by the Engineer pursuant to 4-3, the Contractor shall notify the engineer in writing of the intention to make a claim for additional compensation

(Contract Supplemental Specifications, § 5-12.1 Claims for Extra Work). Accordingly, based on the language of the foregoing Specification, a Notice of Intent to File a Claim under that section was only required if the contractor deemed that additional compensation is due for work or materials not expressly provided for in the Contract.

Notably, the contract documents, including the Special Provisions and Supplemental Specifications, "form the Contract between the Department and the Contractor." See, 1-3 Definitions, Contract, FDOT Standard Specifications for Road and Bridges (2000 ed.) Thus, as the matter of compensation for providing the various categories of MOT equipment were expressly provided for in the Special Provisions, which by definition, is part of the Contract, Olympus was not required to file a Notice of Intent to File Claim under section 5-12.2.1. The FDOT's position on this issue is erroneous under its own specifications, and accordingly, the Board should find that Olympus is entitled to compensation for providing the MOT equipment as provided for in the Supplemental Specifications.

In denying Olympus compensation for providing the remaining categories of MOT equipment provided under the contract specifications, the FDOT has stated several reasons for not doing such, most prominently that Olympus failed to timely file a Notice of Intent to File a Claim. However, presuming arguendo, that Olympus was required to file a Notice of Intent to File Claim under section 5-12.2.1 of the Supplemental Specifications (see C, supra), whether a "claim" existed was dependent first upon when the FDOT disputed that it owed Olympus compensation. The definition of the term "claim" or "contract claim" in the governing Specifications provides that a claim exists when:

A written demand submitted to the Department by the Contractor in compliance with 5-12.3 seeking additional monetary compensation, time, or other adjustments to the Contract, the entitlement or impact of which is disputed by the Department.

See, 1-3 Definitions, Contract Claim (Claim), FDOT Standard Specifications for Road and Bridges (2000 ed.)

Based on the foregoing definition, there was no actual "claim" for Olympus to notify the FDOT of until the agency disputed Olympus' request for compensation for providing the three (3) categories of MOT equipment. To be sure, given the facts surrounding the FDOT's admission that it was responsible for not including a line item for the VMS boards in the bid blanks provided and its resulting resolution of its error by execution of a Supplemental Agreement with Olympus, it was not unreasonable for Olympus to assume that it would be paid for these additional MOT categories of equipment that were also mistakenly left off the bid blank.

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Factually, Olympus submitted its invoices for these categories of MOT equipment to the CEI, Lenton Jenkins, by transmittal letter dated March 19, 2004. Jenkins subsequently left a message with Olympus staff indicating that the company would have to file a claim seeking such compensation. On March 23, 2004, Olympus' President, Nick Mavromatis, wrote to Jenkins, expressing his bewilderment as to Jenkins suggestion that a claim be pursued, and inquiring why the issue "should not be treated as a supplemental agreement, just as you did for the VMS signs." (See, Olympus Position Paper, Appendix, at 28).

It was not until Jenkins wrote to Mavromatis on March 30, 2004, that he informed him of the fact that the FDOT was disputing Olympus' entitlement to compensation for providing the three (3) categories of MOT equipment, presumably based upon an alleged oral agreement made by Mavromatis to not pursue any other claims against the FDOT. (Id. at 29-30). Accordingly, it was only at that time that a "claim" plausibly came into fruition, given the definition of such in the Standard Specifications.

It was only thereafter that Olympus began to initiate a claim under the procedures set forth in section 5-12 of the Supplemental Specifications. As its original invoices and cover letters of March 19, 2004, were obviously indicative of the FDOT intent to require Olympus to pursue a formal claim. It did so in writing on April 8, 2004 (as amended on May 13, 2004)

Given these facts and circumstances, Olympus' efforts were both reasonable and understandable. After all, the compensation for the VMS equipment had been handled through a Supplemental Agreement executed well-after project had begun and the equipment deployed. Accordingly, the Board should find that Olympus's April 8, 2004 claim was filed timely after its receipt of Jenkins letter dated March 30, 2004, in which he first advised the company of the FDOT's decision to not compensate the company for providing the MOT equipment.

The FDOT lastly contends that it cannot compensate Olympus for having provided relevant categories of MOT equipment during the project, ostensibly because having not received a Notice of Claim, the FDOT performed no tracking of the equipment deployed. Respectively, this position is wholly irresponsible.

In the first place, Olympus was responsible to deploy the various categories of MOT equipment in the number and place indicated on the Traffic Control Plans provided by the FDOT. It had no option to not deploy the equipment, or to do so in the manner and method of its choice. To contend otherwise is simply irresponsible and ignores the actual facts adducible from both the Traffic Control Plans and the various FDOT/CEI inspection reports created during the project.

Olympus goes on to argue that the Department requires the CEI to maintain a log sheet of all traffic control devices, and the Department did this for the first part of the project, up until Olympus left the project for a number of weeks, but neglected to do so when Olympus returned to complete the project. In addition the Contractor Past Performance Rating gave Olympus a 100% score on the Maintenance of Traffic section.

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DEPARTMENT'S POSITION

The Department submitted an original position statement in an August 2, 2004 letter to the Board and amended that letter on August 25, 2004 when it was discovered that that Olympus was asserting claims that the Department had felt were settled. The Department did not submit a rebuttal paper prior to the hearing. The Department's position is as follows:

This letter is to amend the original Department's position dated August 2, 2004. For the record, OLYMPUS PAINTING CONTRACTORS, INC. (Contractor), submitted a claim letter dated March 8, 2004, amended May 13, 2004, for inclement weather delays. The Contractor had voluntarily dismissed their CPAM challenge (see July 22, 2004 email from Fenniman to Conroy/Prasad). The Department incorrectly assumed that the DRB claim had been dismissed. Thus, this position amendment is necessary. The Contractor also submitted a claim letter dated April 8, 2004, amended May 13, 2004, for MOT related issues. The Department originally denied both claims in letters dated March 25, 2004 and March 30, 2004, respectively.

The Contractor has no right to the claims brought to this Board regarding Contract Time Extensions and Maintenance of Traffic (MOT) issues. For both claims the Contractor has no right to additional compensation because the Contractor should adhere to the Contract and the Contract Supplemental Specifications. For the latter, additionally, the Contractor did not submit a timely Intent to File a Claim for payment for MOT and submitted the claim after contract time had expired. Since the MOT issue was initially discussed verbally and subsequently in written correspondences, the Department's position has been consistent in denying the claim.

Regarding the weather delay claim, the Contract Supplemental Specifications Article 8-7.3.2 Contract Time Extensions, the signed contract states:

"The Department will grant time extensions, on a day for day basis, for delays caused only by the effects of rains or other inclement weather conditions or related adverse soil conditions prevent the Contractor from productively performing controlling items of work resulting in:

(1) The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items due to adverse weather conditions; or

(2) The Contractor must make major repairs to work damaged by weather, provided that the damage is not attributable to the Contractor's failure to perform or neglect; and provided that the Contractor was unable to work at least 50% of the normal workday on pre-determined controlling work items.

No additional compensation will be made for delays caused by the effects of inclement weather."

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Regarding the MOT related claim, the Department had in good faith and with justification negotiated a claim for Variable Message Boards (VMS) after the Contractor had submitted a timely Intent to File a Claim. With no notice to the Department, the Department maintained inadequate MOT related equipment utilization records nor negotiated with the Contractor for any additional payment because the MOT pay item was lump sum. Furthermore, the Contractor had agreed verbally to no additional claims after the pursuit of the VMS claim. That, with the Contractor not submitting the Intent to File a Claim for other MOT issues along with the VMS claim, proves the existence of the verbal agreement.

After all the work was completed and the project final accepted, the contractor requested payment for other items listed in his "Claim for Additional Compensation for Provision of Maintenance of Traffic Equipment on Project Sites" dated April 8, 2004 and Qualified Acceptance letter dated April 13, 2004. Upon receiving this request, payments for these items were denied in accordance with the provisions of Section 5-12.2.1 of the Supplemental Specifications, see CEI letter dated April 16, 2004.

Subsequently, the Contractor submitted a revised Qualified Acceptance letter dated May 27, 2004 addressed to Mr. Grant Young, including the inclement weather delays and MOT claims with additional VMS charges. In accordance with the noted Supplemental Specifications, the Contractor is not entitled to be paid after contract time expired.

In summary, the Department's position is as follows:

- 1) Regarding both claims, the Contractor should adhere to the Contract and the Contract Supplemental Specifications.
- 2) Regarding the MOT related claim, the Contractor did not submit a timely Intent to File a Claim. Thus the Department performed no tracking or documentation of number of items and associated costs.

Therefore, no compensation or payment can be made for the Time Extension Claim and MOT items which were past the allowable contract time.

REGIONAL DISPUTE REVIEW BOARD FINDINGS

The Department and Olympus will work out their differences concerning the number of compensable days during the original contract period and additional contract days granted (for weather) for the VMS Boards without a recommendation from the Board as discussed with both parties at the hearing.

Olympus' fax to Mr. Jenkins of April 15, 2003, in which Olympus states:

As discussed earlier, as far as I can see, our contract does not state I am responsible for providing any Variable Message Signs as referenced on Page 23 as a pay line item 102-99 or 2102-99, please refer to our original

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proposal line items for verification, you will see that our line items do not include either of the above mentioned, **however, due to the requirement for a prompt execution of this project, we shall provide a VMS, and, if it is concluded that a VMS is not within our contract, we shall require compensation accordingly.** Please advise on conclusion.

This wording certainly puts the Department on notice that if it is determined that the VMS Boards are not a part of the contract, Olympus will claim for them. Hence, a Notice of Intent to Claim.

There are no written Notices of Intent to Claim for the remaining traffic control devices until after the expiration of the contract time.

There was a minimum of 10 pay estimates submitted and paid during the contract duration. The other MOT equipment claimed by Olympus, Work Zone Signs, Warning and Channelization Devices and Advance Warning Arrow Panels would normally have been paid for on each payment estimate, but were not submitted as pay items until after the expiration of contract time.

The Department believed that these items were covered in the Maintenance of Traffic pay item and did not keep track of them for some period during the contract time.

Mr. Mavromatis stated during the hearing that he included in his bid the labor to place and remove the various maintenance of traffic items during the project. The contract language is clear as to what is included in payment for the traffic control devices as follows:

Work Zone Signs – Price and payment will constitute full payment for furnishing signs, supports and necessary hardware, **installation, relocating, maintaining and removing** signs.

Warning and Channelization Devices – Prices and payments will be full compensation for furnishing, **installing, relocating, maintaining and removing** the warning devices, including the costs associated with the attached warning lights as required.

Advance Warning Arrow Panels – Such price and payment will constitute full compensation for furnishing, **installing, operating, relocating, maintaining and removing** advance warning arrow panels.

It appears that the labor associated with these devices has already been paid under the Maintenance of Traffic items.

Specification 8-7.3.2 Contract Time Extensions states in part:

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The Department does not include an allowance for delays caused by the effects of inclement weather in establishing Contract Time.

The Department will grant time extensions, **on a day for day basis**, for delays caused only by the effects of rains or other inclement weather conditions or related adverse soil conditions prevent the Contractor from productively performing controlling items of work resulting in: ...

The Department's position is that "a day for a day" is a calendar day for each day of delay. The Contractor's position is that "a day for a day" is a work day, in this case a lane closure day, for a work day. Which for the 22 calendar days that Olympus was granted would be approximately six additional days. Olympus was precluded from closing lanes on two days per week, by the specifications. The specifications make no mention of a calendar day for a day of weather, but do say a day for a day. The Board has not found any specification provision or contract notes that define a day for a day. A contract with these limiting conditions in the Contract Documents (2 days/week with no lane closures) it would only be reasonable that if a production day on a controlling or critical path item is lost due to weather that day be replaced with a production day, a day for a day. On a contract with no limits on production days, a day for a calendar day is reasonable.

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The Board finds entitlement for Olympus to a lane closure day for a lane closure day time extension.

Olympus has already been paid, by their own admission, for the labor involved with the other traffic control devices and no attempt was made during the contract to invoice for the Work Zone Signs, Warning and Channelization Devices and Advance Warning Arrow Panel the Board finds no entitlement to these items.

The Board sincerely appreciates the cooperation of all parties and the information presented for its review in making this recommendation. The Disputes Review Board's recommendation should not prevent, or preclude, the parties from negotiating an equitable solution (should it be appropriate) to any issue pursuant to their partnering agreement.

Please remember that a response to the Board and the other party of your acceptance or rejection of the recommendation is required within 15 days. Failure to respond constitutes an acceptance of this recommendation by the non-responding party.

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I certify that I have participated in all meetings of this Board regarding this issue and concur with the findings and recommendations.

Signed for, and with the concurrence of, all members.

Members: Lester C. Furney, Don Henderson & John C. Norton

John C Norton, P.E.

Chairman