

## DISPUTE REVIEW BOARD RECOMMENDATION

December 2, 2003

Mr. Stephen W. Smith, President  
Smith & Company, Inc.  
2400 SE Federal Highway, Suite 210  
Stuart, Florida 34994

Mr Mark DeLorenzo, P.E.  
AIM Engineering & Surveying, Inc.  
5802 Breckenridge Pkwy., Suite 100  
Tampa, Florida 33610

**RE:** SR-50 from CR-485/SR-50A to US-98 (SR700), SR-45 (US-41) from VFW Road to Benton Avenue. F.P.ID 254805-1-52-01, etc., Contract No. 20358, Hernando County.

**ISSUE: Request from Smith & Company, Inc. (SCI) for Time Adjustment due to Delays Resulting from Port of Tampa Security.**

Should entitlement be established in favor of SCI, the Dispute Review Board (DRB) was **NOT** to Consider **Quantum**. The DRB feels quantum should be negotiated between the Florida Department of Transportation (FDOT) and SCI.

Pertinent information and rebuttals relating to the parties positions were provided the DRB prior to the hearing held on November 21, 2003 at the Resident Engineers office on Lemon Street in Tampa, Florida. Both parties provided testimony during the hearing.

### **CONTRACTOR'S POSITION:**

By letter from Grubbs Construction Company (GCC) to SCI dated October 17, 2002 GCC states: *"This letter is in reference to the granite shipping problems faced during August. As of August 1, 2002 the security at the Port of Tampa changed. They began requiring identification badges for the truck drivers that ship materials out of the port. The truckers that shipped granite from the Port of Tampa to our asphalt plant did not get proper identification badges prior to the change. Due to this they were unable to bring the granite to our asphalt plant on a consistently reliable basis.*

*The attached chart shows the use of granite based on the percentage of granite in the asphalt mix shipped and the amount of granite received. Delays in receiving granite caused by the enhanced security at the Port and the unpredictability of how much granite we would actually receive limited our production to an average of 323 tons per day during August. We were forced to pave turnouts, shoulders and other low-volume areas instead of mainline roadway. We could not schedule more than one crew on this job until we had sufficient quantities of granite in our yard.*

*The unreliable supply of granite also caused scheduling of our work crews. We could not schedule our crews for full production until we had actually received the granite. This caused us to delay high-volume production with three crews until Saturday, September 14, when we used 1,516 tons of granite and laid over 2,527 tons of asphalt.*

*We believe the combination of the truckers delay at the port of Tampa due to the enhanced security and the unreliability of supply of the state-approved granite prevented us from full production until September 14, or 45 days delay beyond our control. We therefore request 45 additional days."*

### **DEPARTMENT'S POSITION:**

*"Based on conversations with the compliance director at the Port of Tampa, the truckers received advanced notification that the special passes will be required. The notification provided to the truckers to obtain the*

security clearance passes was provided beginning on January 1, 2002. The notices were handed to each truck entering the port and posted throughout. In addition, the Tampa Port Authority letter, shown on pages 3 – 6, was mailed to all trucking companies on file with the Port of Tampa and ports throughout the state. The notification gave the truck drivers 5 temporary passes up to August 1, 2002 then permanent passes with an FBI background check would be required. The August 1, 2002 deadline was extended until August 15, 2002. The contractor claims the delay began on August 1, 2002. Based on the advanced notification to obtain the proper clearance, all truckers had more than enough time.

Florida Statutes 311.12 – Seaport security standards, shown on pages 7- 9, spells out the requirements that the seaports must follow, Section 3-b states by January 1, 2002 each seaport security plan shall identify criminal convictions or other criminal history factors ..... Based on the Florida Statutes, the Port of Tampa implemented the process as described above.

The letter provided by the supplier of the granite material, Martin Marietta, states that Grubbs may have been out of material for as long as 15 days after August 1, 2002. The letter also reinforces the original deadline of August 1, 2002 to obtain proper clearance passes and that the responsibility falls on the individuals to obtain the clearance. It is not a surprise to anyone that these measures were put in place and minor delays are expected just as individuals encounter at the airports.

**Conclusion:**

*The information obtained from the Port Authority and contained in the Florida Statutes proves that the truckers had more than ample time to obtain the proper clearance passes and Smith & Company, Inc. is not entitled to an extension in contract time."*

**BOARDS FINDINGS:**

- Evidence or testimony was not presented that the delays experienced by SCI/GCC at the Port of Tampa were industry wide for the Tampa Bay Area.
- The advance information distributed by the Port Authority provided adequate notice to all parties wishing to enter the Port that proper identification would be required.
- Section 8-7.3.2 Contract Time Extensions in the 1991 General Specifications states in part: *"Delays in delivery of materials or component equipment which affect progress on a controlling item of work will be considered as basis for granting a time extension if such delays are beyond the control of the contractor or supplier. Such delays might be an area-wide shortage, an industry-wide strike or a natural disaster which affects all feasible sources of supply. In general, the Contractor shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delay in delivery was in no way the fault of the Contractor."*
- By letter of September 17, 2002, Martin Marietta Aggregates to Grubbs Construction made the following statement (in part): *"It has been brought to my attention that your company was out of material for as long as 15 days just after August 1, 2002. Please understand that we at Martin Marietta share your concern for this unfortunate occurrence, which was the result of the Tampa Port Authority's security restrictions."*

**BOARD RECOMMENDATION:**

**Based on materials submitted to the Board and Presentations to the Board at the Hearing, the Board finds NO ENTITLEMENT to the Contractors "Request for Time Adjustment due to Delays Resulting from Port of Tampa Security."**

The Board sincerely appreciates the cooperation of all parties and the information presented for its review in making this recommendation.

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

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

Respectfully Submitted,

Dispute Review Board:  
E.K. Richardson, Chairman  
John H. Duke, Member  
Lester C. Furney, Member

**SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:**

**E. K. Richardson**

E.K. Richardson, DRB Chairman

cc: Joy Chritiano, Jim Hubbard, Cliff Cooper, Frank E. Proch, Kent Selzer, John Duke,  
Lester Furney