

April 26, 1996

Faxed April 26, 1996

Mr. William S. Ciudad-Real, P.E.
MK/Centennial
6701 Muck Pond Road
Seffner, Florida 33584

Mr. Rammy Cone
The Cone Corporation
P. O. Box 310167
Tampa, Florida 33680

Re: WPI No: 7143198
State Project No: 10190-3428/6428
F.A.P. No.: ACDPI-ACNH-0043-(6) (FO)
Contract: Interstate 4, Segment 2
Description: State Road 400 (I-4) from I-75 East to McIntosh Road
Counties: Hillsborough

Subject: Recommendation of Disputes Review Board on the Dispute over Maintenance of Existing Highway/Overhead Sign Lighting at the I-4/I-75 Interchange.

At the request of MK/Centennial (MK), the Consultant Resident Engineer, and The Cone Corporation (Cone), the Contractor, hereinafter referred to as the parties, the Disputes Review Board (DRB) held a hearing on April 19, 1996 to consider a dispute over responsibility for maintenance of the existing highway/overhead sign lighting system in the I-4/I-75 Interchange which is located in the vicinity of the West end of the above referred project. Written documentation was furnished to the Board and the parties in advance of the hearing. This documentation includes a letter from MK dated March 13, 1996 and related attachments, thereto, and a letter from Cone dated March 29, 1996 and related attachments, thereto. Oral presentations were made to the DRB at the hearing.

Issue: Cone takes the position that Note No. 50 on Plan Sheet TC-2 reading, "The existing highway lighting at the I-75 Interchange shall be maintained at all times and paid for under Item 102-1 Maintenance of Traffic" does not make them responsible for maintenance of all highway/overhead sign lighting in the I-4/I-75 Interchange at their expense.

At the time work began on the project, all of the existing lights in the I-75 Interchange were functioning. Since then, some of the electrical circuits have malfunctioned. The Department of Transportation has agreed to compensate Cone for the repairs necessary to restore this lighting system to a functional condition.

The plans indicated only one light (T-171) within the limits of the project. The plans did not show the lights that existed within the limits of Pond 1-C and the Flood Plain Area. The Department of Transportation has also agreed to compensate Cone for grading work and installation of new electrical circuits made necessary by this plan deficiency.

MK instructed Cone to effect temporary construction measures and maintenance required to maintain the existing lighting at the I-75 Interchange and takes the position that payment for such work is included in compensation under Item 102-1, Maintenance of Traffic.

Cone contends that maintenance of lighting in the I-75 Interchange is not within the scope of work set out in the contract, and they are responsible for the lighting work for only the one light work is included in compensation under Item 102-1, Maintenance of Traffic shown in the plans.

Cone supported their position with the following:

1. Many of the lights within the area in which MK has ordered us to maintain lighting are outside the limits of any work related to this project.
2. Maintenance of existing lighting is not contained in the Description of Maintenance of Traffic work in Subarticle 102.1 of the Standard Specifications.
3. The plans did not detail the specific lights within the I-75 Interchange to which Note 50 on Plan Sheet No. TC-2 refers. Also, the limits of the I-75 Interchange are not defined in the plans, therefore, we included in our bid prices only the work shown to be done on the one light shown in the plans.
4. Subarticle 102-1.2 of the Standard Specifications, Sections Not Requiring Traffic Maintenance contains the sentence, "In General, the Contractor will not be required to maintain traffic over those portions of the project where no work is to be accomplished or where construction operations will not effect existing roads." The majority of the existing lights within the I-75 Interchange are clearly in areas where no work is to be accomplished and are outside the limits where construction will effect existing roads.
5. There is no way to reasonably quantify the work that might be required to maintain the lights at the time we prepared our bid for the project.

MK supported the position of the Department of Transportation with the following:

1. Note No. 50 on Plan Sheet No TC-2 clearly sets out the responsibility of the Contractor for maintaining all lighting within the I-75 Interchange and provides that payment for such work is to be included in the compensation for Item No. 102-1 Maintenance of Traffic.
2. These lights are a maintenance of traffic facility. The phrase "any other special requirements for safe and expeditious movement of traffic as may be called for on the plans" in the second sentence of Subarticle 102-1.1 of the Standard Specifications causes maintenance of lighting to be included in the work to be done under the Maintenance of Traffic item. The last sentence of Subarticle 102.1.1 states, "The term, Maintenance of Traffic, shall include all of such facilities, devices and operations as are required for the safety and convenience of the public...." The highway lighting and lighted overhead sign within the I-75 Interchange are "required for the safety and convenience of the public". Adequate roadway lighting within the limits of the I-75 Interchange is a critical safety feature.
3. The details shown in the plans for lighting cover only construction of new lighting, not maintenance of existing lighting.
4. Temporary construction along I-4 begins at approximately the centerline of I-75 and approximately twelve of the lights in question here are east of I-75.
5. DOT Maintenance forces do not work within the limits of a construction project.

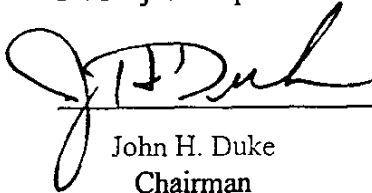
The finding of the DRB is that the provisions of the contract are inadequate to transfer responsibility for maintenance of highway/overhead sign lighting in the entire I-4/I-75 Interchange to the Contractor. The basis for this recommendation is as follows:


1. The meaning of the word "maintenance" as contained in the plan note is ambiguous when applied to the circumstances at hand. The New Webster's Dictionary (1992) defines "maintain" as follows: "to cause to remain unaltered or unimpaired//to declare to be true, valid etc//to defend the truth, validity etc//to preserve against attack//to provide for the needs of, *to maintain a large household*" (Underlining added for emphasis).
2. The limits of work for "maintaining the existing lighting at the I-75 Interchange" are not defined in the contract documents.
3. The lighting system involved here is a large, complex one. The scope of the work to be accomplished as maintenance of the existing system is not defined in Subarticle 102.1.1 of the Standard Specifications or elsewhere in the contract documents.
4. It appears that this lighting system is subject to numerous undefined circuitry problems that neither party can foresee.
5. Lights T-165, T-166, T-169, although not shown on the plans, were within the construction area need to construct the adjacent ponds and were readily observable.
6. Lights T-173 and T-177 were within the limits of Pond I-C and the Flood Plain Area and would have to be removed in order to construct the project as designed (an oversight of the designer).
7. Light T-171 was shown on the plans.

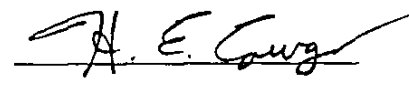
The Board, therefore, recommends that the Contractor maintain light T-171, protect and preserve lights T-165, T-166 and T-169. Further, the Department of Transportation provide separate compensation to the Contractor or other contractor for all work required to maintain the existing light system (other than T-171) within the I-4/I-75 interchange operational during the life of this construction contract.

I certify that I participated in all of the meetings of the DRB regarding the Dispute indicated above and concur with the findings and recommendations.

I-4 Project Disputes Review Board


John H. Duke
Chairman


G. A. "Dolph" Hanson
Member


H. E. "Gene" Cowger
Member

OPERATIONS

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Jul 12.96

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DEPARTMENT OF TRANSPORTATION

805 Suwannee Street, Tallahassee, Florida 32399-0430

ASH G. WATTS
SECRETARY

July 9, 1996

MEMORANDUM

TO: John Temple, Director of Operations

FROM: J. B. Lairsey, Director, Office of Construction

COPIES TO: Freddie Simmons, Bruce Seiler

SUBJECT: CLAIMS REVIEW COMMITTEE
STATE PROJECT NO. 10190-3428
MAINTENANCE OF EXISTING HIGHWAY LIGHTING

The Claims Review Committee met on July 3, 1996 to review the claim submitted on the above referenced project. The Committee agrees with the District that Note 50 on Sheet TC-2 requires the contractor to maintain existing lighting at the I-75 interchange at all times and references the MOT bid tab item. However, the Committee believes that in the four week period between advertising and submission of bid, it is not reasonable to expect the Contractors bidding the work to establish a reasonable amount to bid. This is especially true when there is not a defined scope for the word "maintained" in the note, nor are the limits of the interchange as apparent to the bidder as they might have been in the designer's or District's mind.

Therefore, the Committee has decided to direct the District to supplement Cone's contract by \$17,600 (which is the District-supplied figure of \$8,800 per year times the two remaining years left in the contract). The Contractor will be required to maintain the lighting in the whole interchange (as the District had intended) for the duration of the contract. Language in the supplemental agreement should, as clearly as possible, detail which work activities, lights and signs would be included, and which would not. Basically, those items which the Department normally considers as routine maintenance would be included, and those items which would be periodic in nature (i.e., work program funded as Phase 40) would not be. Make sure this work is not under contract to another vendor.

Suggested wording in the supplemental agreement follows:

"The overall objective is to maintain sufficient lighting in the interchange to (lights & signs indicated on attached drawing) provide a safe roadway. In general, two of the four luminaires in a typical high mast assembly are sufficient to satisfy the minimum illumination required."

A. For the purposes of this construction contract, the following activities are to be expected in order to meet the lighting requirements.

- 1. Replace luminaires when less than two per assembly are burning.
 - a. Lowering the cable is an essential part of this activity.

- 1. Replace luminaires when less than two per assembly are burning.

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July 9, 1996
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- c. Ballast assembly replacement, when indicated by the inspection of the ballast assembly once it is lowered, is included if needed.
 - d. Load center diagnostic analysis (to determine "what the problem is", as required when a high mast assembly or assemblies are not operating), may be required and would be included as a routine maintenance item.
 - e. Replacement of fuse(s) when indicated.
 - f. Resetting circuit breaker(s) when indicated.
2. Replace/repair conduit between high mast lights, or between a high mast light and the power source--when damaged or destroyed by construction activity.
 3. All sign lighting or overhead signs should be kept in operating condition.
- B. For the purposes of this construction contract, the items of work which the Contractor could reasonably expect the Department to pay extra for would be major repairs or a complete replacement of an entire high mast lighting system (pole, yawning, foundation, transformer base, load center, pull boxes, luminaires assembly, and cables/conduits between high mast lights), when such damage is not due to the Contractor's activities. Examples are traffic accidents which hit structural signs and/or high mast lights, and catastrophic lightning damage. It should be noted that lightning strikes are to be expected, will often be the causes of circuit breaker trips or blown fuses, and these routine repairs are included Section A (above) as paid for the Contractor.

The Contractor should be required to document his costs for the duration of the contract, not as a basis for additional compensation should actual costs greatly exceed \$6,800 per year, but as a condition for the supplemental agreement being approved. The Department should not only require this "post audit" information to support the S.A., but this tracking of actual routine maintenance costs will help the Department in future contracts as we attempt to clearly identify work included in the construction contract. The Committee believes that a much clearer definition of the work limits and scope of lighting maintenance needs to be in future contracts, along with information provided by the Department in the contract documents (prior to bid) stating the Department's estimate of annual costs for routine maintenance. Further, a statement about an adjustment to the contract should actual costs greatly exceed the estimate would be appropriate in the contract documents. This could probably be handled somewhat like the asphalt adjustment at the end of the contract.

JBL/wc