

DISPUTES REVIEW BOARD RECOMMENDATION

11 October, 2004

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Florida Department of Transportation
2822 Leslie Road
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Ref: SR-674 (Sun City Center Blvd.) From 30th Street to West of US 301.
Contract No: T7004, Financial Project No: 255834-1-52-01 & 403759-1-52-01. Disputes Review Board hearing regarding (1) granite shortage, (2) extra work S-10 & S-10a and (3) unusual and abnormal weather.

Dear Sirs:

The Florida Department of Transportation and Ajax Paving Industries, Inc. requested a hearing concerning the above referenced issues. The Parties have asked the Board if there is entitlement and then the number of days associated with the entitlement.

CONTRACTOR'S POSITION

We will state the Contractors position by referencing and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Contractor.

The Contractors position paper has the following statements and references to document their claim for entitlement.

ISSUE NO. 1 AGGREGATE SHORTAGE

The Project Specifications required Type B-12.5 Superpave for widening base, Traffic Level "C" Superpave for all structural asphalt paving and FC-5 Friction Course. Superpave Asphalt mixes require aggregate meeting the requirements of Section 901 of the Department's Standard Specifications for Road and Bridge Construction, Year 2000. Because of a lack of a local mining source for aggregates meeting the Superpave specification requirements, all Superpave mixes in the local Project area utilize granite aggregates imported from out of state.

Ajax based its bid and planned its asphalt paving work using its Palmetto Asphalt Plant, adjacent to Port Manatee, located less than 13 miles from the Project. Ajax also based its bid on obtaining granite aggregate materials for the Superpave Asphalt from Martin-Marietta.

At the time the Project was bid there was not a local area shortage, or anticipated shortage, of granite aggregate materials for Superpave Asphalt. Throughout 2002, Martin-Marietta had been able to supply granite aggregate materials in sufficient quantity, for Ajax to maintain an average beginning month stockpile of 34,159 tons of granite aggregates for Superpave Asphalt at its Palmetto Asphalt Plant. However, on March 18, 2003 Martin-Marietta ran out of granite aggregates at their Port Manatee facility. Martin-Marietta expected to receive additional material prior to Ajax beginning paving operations as planned. On April 2, 2003 Ajax was informed by phone that the arrival date of the next shipment of granite aggregates would be very near Ajax's planned date for paving to start. This shipment date was later pushed back by 10 days. Ajax made inquiries to other suppliers, but were unable to secure the granite aggregates required for the project.

The project commenced and the critical activities progressed at such a rate that superpave Asphalt placement could have started on April 21, 2003, as per the schedule update prior to construction and the April 18 Schedule update. However, solely due to a lack of a sufficient supply of granite aggregates available to produce Superpave Asphalt Concrete material, Ajax was unable to start Superpave placement on that date. The aggregate shortage was area wide, beyond Ajax's control, and not a result of action or inaction on the part of Ajax. Because of the aggregate shortage, Ajax was unable to commence placement of the Superpave Asphalt pavement until May 20, 2003. The Department has acknowledged and does not dispute the fact that Ajax did not have sufficient granite aggregate to provide Superpave Asphalt to the Project between April 21 and May 20, 2003 and also has acknowledged that Ajax mitigated the impact resulting from the area wide aggregate shortage.

Supplemental Specifications, Section 8-7.3.2. states "*the Department may grant an extension of contract time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid.*" It further states that "*The Department will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the contractor or supplier. Such delays may include an area wide shortage, industry wide strike, or a natural disaster that affects all feasible sources of supply.*" The Department has granted contract time extensions for this very same issue in the past.

The Department had a responsibility to investigate our request for a contract time extension and make an adjustment to the contract. According to Section 8-7.3 of the Project Supplemental Specifications “*Upon timely receipt of the preliminary request of Contract Time from the Contractor, the Engineer will investigate the conditions, and if it is determined that a controlling item of work is being delayed for reasons beyond the control of the contractor the Engineer will take appropriate action to mitigate the delay and the costs of the delay. Upon timely receipt of the request for a contract Time extension the Engineer will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the controlling item of work beyond the control of the Contractor, then an adjustment of Contract time will be made, and a fiscal adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly.*”

Ajax requests that the DRB recommend that contract time be extended 31 days for the period from April 21, 2003 when all paving activities were delayed until May 20, 2003 when Ajax was able to start these activities. Ajax also requests that the DRB recommend Ajax is entitled to compensation for costs associated with mitigating this delay by hauling from a source other than anticipated at time of bid, paying truckers to wait in line to get loaded and transferring material already delivered, from one plant to the Palmetto Plant as well as job site costs and home office overhead.

ISSUE NO. 2 UNFORSEEN WORK

The Contract Plans (Plans) required construction of a new acceleration lane from Station 176+06 to Station 182+05. The Plans also called for new storm drainage and modification of existing storm drainage adjacent to the acceleration lane. Shoulder grading was called for at the median edge of the acceleration lane

Since no cross-sections were provided in the contract, Ajax used the information provided in the Typical Section Details on Sheet 5 of the Plans, the Summary of Drainage Structures table on Sheet 10 of the Plans and the Roadway Detail on Sheet 18 of the Plans to develop an estimate of labor, materials and equipment necessary for the work. Ajax also made a reasonable inspection of the site of the work prior to bid.

The detail on sheet 5 of the Plans indicates an end area of approximately 17 square feet of excavation and an end area of approximately 3 square feet of embankment on the median widening side. The detail indicated that over the 400 LF that the acceleration lane was to be at full width, the contractor would generate an excess of 207 cubic yards of

embankment material for future use. Excess material would also be generated during excavation of the taper. Based on this information, Ajax determined that the excavation for widening would produce more than enough embankment material to build the shoulders. No cost for the purchase of fill or grading of imported material was included in our estimate.

The locations and offsets for structures S-10, an existing structure, and S-10a, a proposed new structure, are given in the table on Sheet 10 of the Plans. Structure S-10 was shown to be at Sta. 179+35. Structure S-10 was to be moved 5 feet South in order to move it out of the new shoulder slope created by the construction of the acceleration lane. Structure S-10a, only 29 feet East of the end of the taper for the proposed acceleration lane, was to be installed at Sta. 175+60 and connected to S-10 with 375 feet of new 15" RCP. Since no grades were given in the plans, Ajax assumed that the addition of the acceleration lane would block the storm water flow to S-10 from the swale and the purpose of S-10a was to collect water that could no longer reach S-10.

After Ajax mobilized onto the Project and began its initial Survey, Ajax discovered that the actual site conditions differed from those presented in the contract plans. Structure S-10 was located at Sta. +/- 180+09, approximately 80 feet East of the location shown in the Plans. The Department requested that Ajax not extend the length of 15" RCP, but instead move structure S-10a 80 feet East. This placed S-10a at +/- Sta. 177+14, where the turn lane was still at full width. Ajax also discovered that the existing shoulder slope was much steeper than indicated in the plans and construction of the acceleration lane would not produce any excess fill, but instead would require that material be imported.

The Contract makes provisions for compensation for unforeseen work. In the Special Provisions for the Project section **4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment:** *A Supplemental Agreement or Unilateral Payment will be used to clarify the plans and specifications of the contract; to provide for unforeseen work, grade changes, or alterations in the plans which could not reasonably have been contemplated or foreseen in the original plans and specification;...* The unforeseen work relative to the drainage structures and acceleration lane clearly were subject to this provision and Ajax attempted to utilize this tool to resolve this dispute.

It states in the Supplemental Specifications Section **4-3.7 Differing Site Conditions:** *During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and*

generally recognized as inherent in the work provided for in the contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the contractor disturbs the condition or performs the affected work.” Latent physical conditions were encountered at the site that differed materially from those indicated in the contract. Ajax complied with this specification and even held 2 meetings with Department personnel at this site prior to beginning construction in an effort to resolve this unforeseen work.

ISSUE NO. 3 UNSUAL AND ABNORMAL WEATHER CONDITIONS

Ajax also had to contend with unusual and abnormal weather conditions over the course of the construction on the Project. The Contract originally provided Ajax with 120 calendar days to complete the Project.

June of 2003 was the 6th wettest June in recorded history in Tampa, which recorded 13.19 inches of precipitation, but the Ruskin, FL reporting center located less than 4 miles from the Project recorded 18.19 inches of precipitation, 12.69 inches above the average for Tampa. August of 2003 was the 4th wettest August in recorded history in Tampa, with 12.36 inches of precipitation recorded by the National Weather Service in Ruskin Florida 4.76 inches above the average for Tampa.

On a lump sum project the contractor must estimate quantities and costs for traffic control devices, their maintenance and the engineer's field office based on contract time and a reasonable assumption of weather impacts. Ajax assumed no more than 12 workdays (10%) would be affected by inclement weather, based on the anticipated early March start. There was no way Ajax could predict the extraordinary amount of rainfall that would occur over the duration of the Project. The Department occupied the field office, and devices for traffic control had to be kept in place and maintained during weather days. On Unit Price projects these items are paid for on a per day basis, even on weather days. The Department set contract time for the Project, and quantities in Ajax's estimate for these items was based on contract time.

The contract states in Special Provisions Section 109-3 **Compensation.** *“Payment will be made for each day the field office is occupied by Department personnel...”* The number of Work Zone Signs and Changeable Variable Signs was determined by the number of contract days and sheets 27 and 28 of the Plans. These items as well as barricades and highlights would have been paid for by the day for every day they were in use on a unit price project. Ajax also had to maintain and repair these devices during periods of inclement weather. Therefore,

we also request payment under pay item 102-1 Maintenance of Traffic, per day for 43 days.

The FDOT Standard Specifications for Road and Bridge Construction January, 2000 makes provisions to compensate the contractor in the event that there is an error in a lump sum quantity. Section **9.3.3.1 Error in Lump Sum Quantity** states *“the Department will adjust the lump sum compensation only in the event that either the Contractor submits satisfactory evidence or the department determines and furnishes satisfactory evidence that the lump sum quantity shown is in substantial error as defined in 9-3.2.1.”* A substantial error is defined as the smaller of a difference of 5% between plan quantity and final quantity or a change of more than \$5,000.00.

Section **7-14 Contractors Responsibility for Work** states *“Rebuild, repair, restore, and make good without expense to the Department, all injury or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance, except that in the case of extensive or catastrophic damage. The Department may, at its discretion reimburse the contractor for the repair of such damage due to unforeseeable causes beyond the control of and without the fault or negligence of the contractor, including but not restricted to Acts of God, of the public enemy, or of governmental authorities.”* There is a provision made in the specification to relieve the contractor for injury resulting from extensive or catastrophic Acts of God.

There is no question that the engineer’s field office and all maintenance of traffic devices were in use and maintained for every day that the contract was extended for weather. Through no fault of or negligence by Ajax these items had to be in use and maintained additional unanticipated days. These overruns were caused by Acts of God. Ajax believes that these unusual and abnormal weather conditions constitute extensive damage as defined in **7-14** and that the lump sum quantity was in error. Therefore we request that the DRB find that Ajax is entitled to additional compensation for the excess impacts weather had on these items.

DEPARTMENT'S POSITION

We will state the Departments position by referencing and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Department.

The Departments position paper has the following statements and references to document their claim for entitlement.

The Department does not dispute the fact that Ajax did not have sufficient granite at the particular plants providing asphalt to this project (Nokomis Palmetto) between April 21, 2003, when they intended to begin paving and May 20, 2003, when they actually began paving. The Department's position, however, is that Ajax was able to mitigate the granite shortage issue later in the project. The project was not fully prepared to receive all the asphalt at the time that AJAX was affected by the granite shortage. We believe that the project was ultimately delayed due to contractor caused delays.

The State Construction Office issued Memorandum No 33-03, entitled "Granite Aggregate Supply Problems in Central and Southwest Florida" on November 7, 2003 describing options to contractors related to the granite shortage. This project was not active at the time of the publication of the memorandum, nor did it cover past projects.

"On active projects, the Department will consider non-compensable time extensions on a case-by-case basis if the Contractor has made an effort and taken all appropriate steps to mitigate this problem. Before any time extension is granted, the District Construction Engineer needs to coordinate such requests with the State Construction Engineer prior to approving any such extensions."

"No additional compensation shall be made to the Contractor due to the impacts of the supply problem unless otherwise approved by the State Construction Engineer."

It is our belief that AJAX had an opportunity to mitigate this delay and in fact did so. The ultimate delay in completion of the project is actually a result of poor subcontractor work, bituminous plant problems and some poor quality asphalt pavement.

AJAX could have paved some mainline during the granite issue period, but could not have milled and paved the shoulders until the drainage work was substantially completed. AJAX's schedule shows the start of milling the shoulders occurring after the drainage was completed. Since the drainage wasn't completed until October 7, 2003, this became the controlling item of work for project completion. Any work on the mainline in May would not have effected the final completion date of the project.

In conclusion, Ajax has not proven that the delayed completion of this project was due to the supply of granite aggregate. Actually, the delay in the final acceptance date of this project was due to an inability to get drainage completed in a timely manner and bituminous plant failures totaling 76 days.

ISSUE NO. 2

As mentioned previously, this project is a lump sum project. As such, contractors are expected to understand a project well enough so that quantities such as cuts and fills are anticipated in their lump sum bid. Ajax is claiming that in the area of Structures 10 and 10A they ran into an unforeseen condition requiring additional fill to be delivered and placed beyond what they had expected and included in their bid.

This claim entitlement has previously been denied in the Department's letters dated April 30, 2003 and May 5, 2003. As noted in the Department's letter of April 30, 2003, "the determination was made to construct this area as shown in the plans (sloping north)... This office does not consider this to be extra work as stated in your correspondence, but work required by the original contract and plans." The letter of May 5, 2003 is very clear in the following quotation: "I would like to bring to your attention to supplemental specifications section 2-3.1 for lump sum contract. This section states:

"The bidder is responsible for the determination of quantities constructed within the plan limits or dimensions.

The Department does not assume any responsibility for any incidental information in bid documents that may be construed as a quantity of work and/or materials."

Also, supplemental specifications section 2-4 states, "Examine the Contract Documents and the site of the proposed work carefully before submitting a proposal for the work contemplated." And "The bidder's submission of a proposal is prima facie evidence that the bidder has made an examination as described in this Article." Nothing at the project changed between the time of the bid and the actual construction to result in an unforeseen condition. Ajax has not provided any documentation to change our position. As a result, it is the opinion of the Department that Ajax is not due any compensation for this issue.

In conclusion, on lump sum projects such as this Ajax has a responsibility to understand the project well enough to anticipate the quantities of materials needed and it should not have been considered an unforeseen condition, plus, they did not meet Specification 8-7.3.2 therefore, Ajax failed to preserve its rights to additional compensation or time for this issue.

ISSUE NO. 3

As the Department understands this portion of the claim, Ajax is requesting additional compensation for the additional days that the field office and maintenance of traffic devices were needed due to weather and the additional days it took to complete the project.

First, the specifications are very clear as it pertains to delays due to inclement weather. Specification 8-7.3.2 states, "No additional compensation will be made for delays caused by the effects of inclement weather." It is believed by the Department that a prudent contractor should factor in weather delays, as they affect every project, when estimating a lump sum project.

Also, Ajax is requesting the daily rate for the field office and MOT devices for days requested to perform extra work covered in FSAs from the Department. As for the days the Department granted for extra work, Ajax is not entitled to additional compensation for these items because the FSA is full and complete settlement of the matters set forth in the FSA. In addition, some of the extra work items referenced above did not even require additional MOT devices.

In conclusion, Ajax is only entitled to additional compensation for delays caused by the Department only, not due to weather or contractor caused delays. There is no evidence that this occurred.

DISPUTES REVIEW BOARD FINDINGS

ISSUE NO. 1 AGGREGATE SHORTAGE

In a letter from AJAX to the Department dated April 25, 2003 The Department was made aware of an allegation of material shortage, namely granite aggregate.

In a letter from the Department to AJAX Paving dated Jun. 8, 2004 the Department acknowledged a material shortage of granite aggregate, did exist.

On page 83 of the Supplemental Specifications Article 8-7.3, of the Standard Specifications, is deleted and replaced by the revised wording provided in the Supplemental Specifications. These Supplemental Specs are to be used for this project specifically. The Supplemental Specs go on to detail how to adjust contract time on this project. Under this spec the Department may grant time extensions for the following reasons: (1) The Department may grant an extension when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time

of bid. (2) The Department will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage...

As a condition to granting a contract time extension the Contractor must comply with certain requirements as spelled out in Supplemental Specifications 8-7.3. The Contractor must submit (1) a preliminary request for an extension of Contract Time in writing to the Engineer within ten calendar days after the commencement of a delay to a controlling item of work. (2) The Contractor must submit to the Engineer a request for a Contract Time extension in writing within 30 days after the elimination of the delay to the controlling item of work identified in the preliminary request for an extension of Contract Time.

The letter dated April 25, 2003 from AJAX Paving to the Department complies with the ten day notice of a delay regarding a material shortage for this project.

In Memorandum No: 33-03 from Ananth Prasad, State Construction Engineer regarding granite aggregate supply problems he states that the Department will consider non-compensable time extensions on a case by case basis if the Contractor has made an effort, and has taken appropriate steps to mitigate this problem. He goes on to state that no additional compensation shall be made to the Contractor due to the impacts of the supply problem unless otherwise approved by the State Construction Engineer.

The Department states in their position paper and in the hearing that the Contractor could not have started paving because of the drainage installation and other issues. The Contractor's base line schedule showed that paving was the critical path operation for this project during the time of aggregate shortage.

ISSUE NO. 2 UNFORSEEN WORK

In the Special Provisions, written specifically for this contract, there is a provision made for payment to the contractor for unforeseen work or plans clarification. Under Special Provisions 4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment: *A Supplemental Agreement or Unilateral Payment will be used to clarify the plans and specifications of the contract; to provide for unforeseen work, grade changes, or alterations in the plans which could not reasonably have been contemplated or foreseen in the original plans and specification;...to make*

the project functionally operational in accordance with the intent of the original Contract...

Weekly report for week ending 5/13/2003 shows rough grading median area at C/L SR 674 from Sta. 170+00 to 181+00. No dump trucks are shown in the equipment section as being on the project. A front-end loader is shown to be active.

Weekly report for week ending 8/27/2003 shows grading median Sta. 175+50 to 181+90 added fill. No dump trucks are listed in the equipment section as being on the project. A front-end loader is shown to be used on this day.

Weekly report for week ending 8/28/2003 shows grading median Sta. 175+50 to 181+90 added fill. No dump trucks are listed in the equipment section as being on the project. A front-end loader is shown to be used on this day.

The invoices provided by the Contractor show "fill dirt" being brought to the project from 4/28/03 to 5/28/03. These dates coincide with the dailies and weeklies showing topsoil being placed for sod.

ISSUE NO. 3 UNUSUAL AND ABNORMAL WEATHER

Section 4-1 of the Special Provisions states that this is a lump sum contract and *that all references to payment under individual pay items, regardless of where those references are contained in the Contract Documents or when in time any such pay item reference is incorporated in the Contract Documents, are **superseded by the pay item references in this Special Provision.***

Under 109-3 of the Special Provisions it states that ***Payment will be made for each day the field office is occupied by Department personnel, except for the period of time identified before Contract work begins. Price and payment will be full compensation for all labor, material, equipment and utility charges necessary to provide, furnish, maintain, and remove the field office.*** Payment will be made on a per day basis.

Supplemental Specification 8-7.3 Adjusting Contract Time states that ***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... No additional compensation will be made for delays caused by the effects of inclement weather.***

In the Standard Specifications for Road and Bridge Construction under section 5-2 **Coordination of Contract Documents** Special Provisions takes precedence over the Supplemental Specifications. Therefore Special Provision 109-3 overrides Supplemental Specification 8-7.3 regarding allowance for delays caused by inclement weather. This is pertinent to weather days for the field office.

DISPUTES REVIEW BOARD RECOMMENDATION

The Board is governed in our decision making process by the plans, specifications (standard, supplemental, technical, special), and the contract. Therefore our recommendation is based on the above documents and findings.

The Board has reviewed all the information provided by the Department and AJAX Paving Industries. We listened to all the parties at the hearing held on 17 September, 2004. Our recommendation is based on the above facts and finding of fact.

ISSUE NO. 1. AGGREGATE SHORTAGE

There is entitlement to the Contractor. The Contractor did give notice to the Department regarding the shortage which is in compliance with Supplemental Specification 8-7.3. The Department recognized the supply shortage issue but did not monitor the impacts to the Contractor. The Memorandum from the State Construction Engineer that a time extension is due if a supply problem does occur. The standing of this memorandum was verified by the writer with Ananth Prasad by phone on the 29th of September, 2004.

In accordance with the Supplement Specifications and Memorandum No. 33-03 the Board recommends 30 days non-compensable time be granted the Contractor. This covers the period from 21 April, 2003 to 20 May, 2003. The 21 April date is the date that paving could have started if granite would have been available. The 20 May date is when superpave placement began.

This recommendation is based on Supplemental Specification 8-7.3 and Memorandum No: 33-03.

ISSUE NO. 2 UNFORSEEN WORK

The Board recommends 2 compensable days for the unforeseen work. The Contractor has the right to rely on the accuracy of the contract documents to prepare a competitive bid. The Board recognizes that the contract documents states that the contractor is to investigate the

character, quality and quantities of the work to be performed. However it is not reasonable for the Department to expect a contractor to survey any portions of a project prior to bid to verify the fill/embankment quantities. **This recommendation is based on Special Provision 4-3.4.**

Based on the contract documents the contractor should have had excess fill material for use between Sta. 170+00 and Sta. 181+00. The actual field conditions did not provide this excess fill. With the relocation and actual location of S-10 and S-10a fill was required to be brought in.

The required fill was located somewhere within the project site. On the dates that work was performed between Sta. 170+00 and Sta. 181+00 the dailies did not show any dump trucks on the job hauling fill material. The fill was placed between the stations listed above. A front-end loader was shown to be used on these two days when fill was placed. This activity is shown on the dailies and weekly reports as occurring on two consecutive days in August 2003.

ISSUE NO. 3 ABNORMAL AND UNSUAL WEATHER

The Board recommends entitlement for field office compensation to the Contractor for each day the field office is occupied by the Department. **This recommendation is based on the Special Provisions section 4-1 and 109-3.**

Section 4-1 simply states that all pay items referenced any where are superseded by items referenced in this Special Provisions. Section 109-3 is part of the Special Provisions and designates a pay item to be used for field office compensation. Therefore based on section 4-1 this is a valid pay item for this contract.

The Board recommends no entitlement for weather delays. This recommendation is based on section 8-7.3 of the Supplemental Specifications stating that *No additional compensation will be made for delays caused by the effects of inclement weather.*

The Board recognizes that 55 days of weather in a 120 day contract is very unusual and is not something that the Contractor or the Department could have reasonably anticipated. The Contractor stated that they had anticipated 10% of the contract time to be weather days. This would mean that 43 days (55-12) would be unanticipated weather days. The wording in the Supplemental Specification 8-7.3 regarding no additional compensation is identical to the standard specification given in the Standard Specification Manual 2000. In a standard contract (not Lump sum) the Department would compensate the contractor for MOT

devices in place during the time extensions given for inclement weather delays.

With the Standard and Supplemental Specifications being the same the Board suggest that the two parties try to partner through some amicable agreement on paying for MOT devices during the weather time extensions. The Department and the public certainly benefitted from the MOT devices being in place during the inclement weather days.

SUMMARY

The Board recommends 30 days non-compensable time for the aggregate shortage based on S.S. 8-7.3 and Memorandum No. 33-03.

The Board recommends 2 compensable days for unforeseen work based on Special Provision 4-3.4.

The Board recommends compensation for the field office for every day that it is occupied by Department personnel beyond the original contract time based on Special Provision 4-1 and 109-1.

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

The Board unanimously reached the recommendation and reminds the parties that it is only a recommendation. 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.

Submitted by the Disputes Review Board

Don Henderson, Chairman Jack Norton, Member Lester Furney,
Member

Signed for and with concurrence of all members

Don Henderson, PE