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Contract E5L60
FAP No. 411665-2-582-01

RE: SR464 over CSX Railroad Delay Hearing

The Dispute Review Board held a hearing March 20, 2009 at the Ocala Operations center. The hearing involved the Contractor's request for a compensable time extension due to late delivery of CSX signal system installation. The Design Build Contract placed the responsibility for all contract negotiations with CSX on the Florida Department of Transportation. The Contractor is seeking a compensable time extension for late delivery of the system.

CONTRACTOR'S POSITION

The information given to KSC prior to bid stated that the Railroad and the Department would install the crossing surface and traffic control devices before October 31, 2007. KSC relied on these representations when putting its bid and schedule together. KSC was delayed when the FDOT failed to perform the CSX Signal Relocation work in a timely manner. The initial request of eleven days represented the amount of days projected by KSC prior to completion of the delayed operations. After analyzing all applicable project schedules, KSC has concluded that the delay experienced is twenty six days, with twenty three being compensable.

KSC's original plan was to make the shift from phase 1A to Phase 1B on February 26, 2008, the latest date for completion of CSX Signal Relocation work was January 31, 2008. The Signal work was not completed until February 7, 2008. KSC partially mitigated the damages experienced, but unfortunately had to postpone, redistribute, and re-sequence its work and the work of its subcontractors, causing a delay of twenty six (26) calendar days.

The FDOT alleges that KSC caused delays to the project but provides no evidence to support this allegation. KSC has provided a time impact analysis and an as built schedule of the events to substantiate the delay. KSC refers to Section 5-12.6.2.1 and Section 4-3.2.1(d). KSC, in requesting a time extension, never requested an extension to the Bonus Completion Date. KSC's time extension request was a request to the project completion schedule. Costs incurred by KSC for the delay have absolutely nothing to do with "accelerating". As a result, Section 8-13 is inapplicable to the time related costs KSC seeks in this delay claim.

DEPARTMENT'S POSITION

KSC asserts they were delayed during the construction of the temporary crossings across the railroad intersection. It is the Department's position that this was a concurrent delay to controlling items of work and therefore KSC is only entitled to a time extension to their contract with no additional compensation.

In their position paper they stated they were impacted 11 days by the CSX delay. Due to the concurrent delay, the Contractor is entitled to a seven day time extension from February 1, 2008 through February 7, 2008 which was the agreed timeframe between the Department and KSC for the CSX delay. KSC has submitted additional information in their rebuttal and changed the delay from 11 to 26 days. KSC also included several schedule exhibits that were not in their position paper. The Department has reviewed the information and concluded that no delay was due to CSX not having completed their work by February 7, 2008. KSC was not close to paving the detour for phase 1A until the middle of March, as shown in the progress photos dated March 10, 2008.

Section 8-13 of the Design Build Specifications states that if KSC is pursuing the "bonus" Payments they cannot file claims for delay, also any cost for KSC to overcome delays are non-compensable.

BOARD FINDINGS

The Board has reviewed all the information submitted by the Contractor and the Department. We are aware that both parties agree that CSX did not complete their work by the scheduled date of October 31, 2007. The work was completed February 7, 2008. The Contractor performed a delay analysis that showed an eleven day delay. The owner originally believed it was a seven day delay. The Department has changed their position after the Contractor's rebuttal and now believes that the project was not delayed by CSX's late completion of the temporary signal. In our review and understanding of the events, we believe the Contractor took mitigating action to overcome the late delivery by CSX. This involved re-scheduling subcontractors, postponement and re-sequence of work. The Board finds that the Contractor is entitled to a time and related cost for 11 days, as set forth in Section 4-3.2.1 (d) of the project specifications. If subsection (1) is the greater of (1) or (2), the Contractor would be due compensation per section (1). It should be noted that 10 days are deducted in subsection (2) leaving 1 day compensable, whereas there is no deduction of days in subsection (1).

Signed by the Board Chairman with concurrence of Board members



Robert D. Buser