

September 22, 2017

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RE: SR 5 (US 1) North of Pine St. to North of Cidco Rd.
Fin. Proj. No. 237592-2-52-01, Contract No. T-5431

Determination Regarding Issue Preservation Astaldi Issue 3.1 Inefficiency

The Florida Department of Transportation (FDOT) has objected to Disputes Review Board (DRB) hearing requests made by Astaldi Construction Corp. (ACC) on the basis that ACC has not properly preserved their entitlement to a DRB hearing.

The DRB must follow the procedures given in the Three Party Agreement and in the DRB Operating Procedures.

DRB Operating Procedures
Section 5.4

"... Only disputes or claims that have been duly preserved under the terms of the Contract will be eligible to be heard by the DRB.

Three Party Agreement
II Scope of Work

B. Procedure and Schedules for Dispute Resolution:

"...Only disputes or claims that have been duly preserved under the terms of the Contract as determined by the BOARD will be eligible to be heard by the BOARD..."

The DRB can only develop a Recommendation as a result of the DRB hearing process. Therefore, the DRB does not offer an opinion concerning the merit of either party's positions on this issue.

The DRB has reviewed written statements from both parties concerning preservation and has made the following determinations only with regard to the question of preservation.

Issue 3.1 Inefficiency

There is an indication, based upon the documented record that the FDOT was aware of ACC's inefficiency claim and may have participated in negotiations with ACC on the issue. However, ACC did not comply with the requirements of Specification Section 5-12.2 Notice of Claims, which requires written notice of the intention to claim to be provided to the Engineer.

Both ACC and the FDOT provided Appellate Court references supporting their positions on the question of preservation of claim rights. However, the DRB is not able to determine the legal relevance and correct application of case law to the question of ACC's preservation of claim rights on Issue 3.1.

The DRB is limited and required to keep its considerations within the terms of the Contract. Therefore the DRB must strictly follow the language of the contract. In the absence of a written notice of intent to claim the DRB is unable to hear this issue.

Respectfully submitted,
Disputes Review Board

Ralph Ellis Jr. – Chairman
Don Henderson – Member
Murray Yates - Member

Signed for all with the concurrence of all members.

Ralph D. Ellis, Jr.

Ralph D. Ellis, Jr.
Chairman