

DISPUTE REVIEW BOARD

State Road 200
Marion County, Florida
F.P.ID 238635-1-52-01 & F.P.ID 238635-1-55-01
Contract No. 20443

November 28, 2000

AMENDED 01/14/01 (See Pages 4 & 5)

Mr. Luther M. White, III
White Construction Company, Inc.
P.O. Drawer 790
Chiefland, Florida 32644

Mr. Stanley Milton
Metric Engineering, Inc.
6158 SW SR-200, Suite 200
Ocala, Florida 34476

Recommendation of Dispute Review Board:

Dispute No. 1 F.D.O.T. District No. 5

Hearing Date: November 13, 2000

Contractor: White Construction Company, Inc.
F.D.O.T. (CED): Metric Engineering, Inc.

DISPUTE:

This dispute involves 4 issues the Department of Transportation (FDOT) and White Construction Company, Inc. (WCCI) agreed to combine into one hearing. During the hearing the parties identified additional issues included in some of the major issues.

✓ **ISSUE No. 1:** Conflict with Sprint existing telephone direct buried cables and cables in buried conduit: depth of cut at Bee Hill: conflict with manhole at Station 306+50; conflicts with footings, sidewalks, curbs, and other obstructions, and conflicts with undisclosed utilities.

ISSUE No. 8: Differing site conditions at pond 3.

ISSUE No. 12: Conflict with SECO (Sumter Electric) guy wire and poles.

ISSUE No. 17: Deprived of revenue that could have been generated from timely installation of stored materials.

CONTRACTORS POSITION:

✓ **ISSUE No. 1:** Sprints existing cables were in conflict with Phase I grading, storm sewer construction, JPA utility relocation, sub-grade stabilization, and base construction. The contract documents did not provide notice that conflicting utilities would not be relocated.

ISSUE No. 8: The contract documents did not show the type of material encountered during the construction of Pond 3. WCCI encountered an enormous amount of boulders and unsuitable material during the excavation of Pond 3. The boulders and unsuitable material caused WCCI to have to expend additional monies to work around the impacts as they were encountered, removal of the boulders and unsuitable materials, and for changing of the work sequence.

ISSUE No. 12: The untimely removal of a guy wire and existing poles caused WCCI delays of 3 days in constructing a storm sewer and placing a drainage structure. This delay resulted in lost production for the pipe laying crew. This claim is for delays and damages due to SECO's power pole and guide wires at sta. 405. This conflict was discovered in the morning of October 19, 1999. WCCI could not work on the drainage in that area until the conflict was resolved. The conflict was resolved on October 22, 1999.

ISSUE No. 17: The delays resulting from Sprints conflicting existing telephone cables & conduit delayed WCCI installing the stored materials thereby depriving WCCI of the revenue that would have been generated therefore interest is due on that amount of delayed revenue.

DEPARTMENTS POSITION:

RECEIVED

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METRIC ENGINEERING

ISSUE No. 1: The only impact sustained by the *contractor's position* is directly attributed to a third party, Sprint. The settlement offered WCCI for these direct cost was rejected. WCCI may have been impacted by the utility work, but it was due to their insistence to perform work out of phase and contrary to the approved schedule. There is no doubt that the plans clearly described the requirements for the telephone system completion prior to removal. WCCI was obligated to honor that requirement and schedule their work accordingly. The phase I referred to by WCCI was Sprint's phase I and is not a part of the FDOT plans.

ISSUE No. 8: An analysis of the pond construction for ponds 1, 2, & 3 failed to corroborate the claim made by WCCI. The analysis reviewed relative work effort for performing pond construction from clearing and grubbing through final grading. This analysis showed that Pond 3 was the most efficient operation of the three ponds constructed to date.

ISSUE No. 12: A review of the daily reports was performed. While WCCI states that the conflict was discovered on October 19, 1999, the daily report shows that crews work(ed) a full day. The only note on the daily report indicated that work was affected by the lack of availability of the necessary drainage structure. The daily report for October 20, 1999 indicates that excavation for the drainage system was stopped at station 402+65 due to the guy wire conflict. The daily report also shows the crews working a full day. The next day, October 21, 1999 was a weather day due to rain showers stopping operations at 10:00 AM. The conflict was resolved on October 22, 1999. The daily report for this day shows drainage activities for a full days operation.

ISSUE No. 17: Upon review of the basis of this claim, nameiy the shortfall of anticipated work, it was found that the largest component of the shortfall (75%) was geogrid. This material was to be used in the pond bottoms. The construction of the ponds was unaffected by the Sprint relocation work. In addition, WCCI's premise is based on an invalid schedule. The approved baseline schedule depicts this work being performed in reasonable proximity to the actual dates.

BOARDS FINDINGS:

- ✓ ISSUE No. 1: The Sprint Technical Provisions on page 9 of 9 section (I) *Adjust & Modify Existing Conduits*:
 - (1) *Contractor shall exercise care in adjustments to existing facilities during the installation of new facilities when necessary per plans.*
 - (2) *Contractor shall not interrupt telephone communications service during adjustments and shall coordinate adjustments with inspector.*
 - (3) *Payment shall be made under Pay Item No. 1832-700 Conduit, Adjust & Modify, per liner foot.*

Sheet U-36 (Detail Sheet) of Sprints Utility/Telephone Plans: *General Projects Notes*:

4. *Contractor's attention is called to the fact that there may be some areas of possible conflicts.*
5. *It shall be the contractor's responsibility to locate and protect any and all existing SPRINT facilities on this project. The cost is included with pay items 1821-320 and 1832-114-XXX.*

The Traffic Control Plans (Sheets 279-324) are silent concerning the JPA utility work.

The Utility Adjustments Plans (Sheets 325-356) show the location of existing telephone lines to be removed.

The Sprint Utility/Telephone Plans (Sheets U-1-U-37) show the location of the JPA relocated telephone/conduits.

The Roadway Cross Sections (Sheets 184-278) clearly identify existing telephone lines.

ISSUE No. 8: The Roadway Soil Survey (Sheet 115 of plans) states in the NOTES:

1. *Strata boundaries are approximate and represent soil strata at each test hole location only. Any _____ limits. Subsurface variations between borings should be anticipated as indicated in Section 2-4 of the standard specifications _____.*
7. *Rock, boulders, or other hard materials shall be anticipated to be encountered in excavations at various depths on all strata throughout the subsurface profile. The contractor shall anticipate the need for special equipment and/or procedures to facilitate excavations and disposal onsite.*

Section 2-4 in the Supplemental Specifications to the 1991 Standard Specifications for Road and Bridge Construction 1994 states the following: *The bidder is expected to examine carefully the proposal, plans, Standard Specifications, Specifications Package, Supplemental Special Provisions, contract forms, and the site of the proposed work before submitting a proposal for the work contemplated.*

In the Special Provisions for this project on page 257 Article 110; Sub-article 120-7.2- Clearing and Grubbing-Boulders: *Any boulders encountered in the roadway excavation (other than as permitted under the provisions of 120-7.2), or found on the surface of the ground, shall be removed and disposed of by the contractor in areas provided by him.*

FDOT **DID** acknowledge in Pond 3 the plans did not depict the excessive quantity of boulders and limerock encountered during excavation of this pond and did enter into an agreement to remove this material from the project. This agreement was to pay WCCI \$15.33 per ton for the removal of the boulders and limerock.

ISSUE No. 12: In the FDOT's package on page 8 the review of this issue states the following:
October 20, 1999-Excavation for the drainage system was stopped at station 402-65 due to the guy wire conflict.

October 21, 1999-Operations stopped at 10:00 AM due to rain showers. A rain day was granted.

October 22, 1999- The conflict was resolved. The daily report for this day shows drainage activities for a full days operation.

WCCI in their INTERIM CLAIMS ANALYSIS Volume I-Text page 27 of 43 identifies the conflict at station 405+00 which in conflict with the Department's report.

SECTION 7-11.6 Utilities: Subsection 7-11.6.1- (3rd paragraph) 1991 Standard Specifications:

Circumstances under which it will be considered essential to remove or adjust (or to other wise protect) utilities in order to construct the project shall include, but not be limited to, the following:

- (3) Utilities lying within the normal limits of excavation for underground drainage facilities or other structures (except as provided in paragraph (4) below). Such normal limits shall extend to side slopes along the angle of repose, as established by sound engineering practice, unless the side slopes of the excavation are required by the plans or special provisions to be supported by sheeting, or the contractor elects to sheet such excavation for his own convenience.*

- (4) Where utilities cross pipe trenches transversely etc., etc.*

Subsection 7-11.6.2 Cooperation with Utility Owner: The contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum and that services rendered by the utility owners will not be unnecessarily interrupted. (IN PART).

During some of the DRE monthly meetings both the Department and WCCI remarked about the limited width of right-of-way in some parts of this project to accommodate the utilities and roadway typical section.

ISSUE No. 17: The contractor, WCCI, was paid by FDOT under **SECTION 9-6.5 of the 1994 Standard Specifications, Partial Payments for Delivery of Certain Materials** for all materials delivered to the job site in accordance with these specifications.

In the FDOT's Submittal Package, page 9, it pointed out that 75% of the work described in WCCI claim was the Geo-Grid item and not related to delays attributed to utility delays.

WCCI's production dates did not correspond with the approved base line schedule therefore the quantity of delays could not be sustained.

BOARD'S RECOMMENDATION:

Based on the materials supplied to the Board and presentations to the Board during the DRB hearing the Board finds:

- ✓ **ISSUE No. 1:** The information contained in the plans and specifications clearly identify the existing underground telephone/communication facilities and the responsibility of the contractor. Sprint's offer of \$96,000.00 to cover directional bore cost and delays resulting from this work, is reasonable. The Board finds **NO ENTITLEMENT** for the contractors claim other than the offer from Sprint.

ISSUE No. 8: The Soil Survey Borings of pond 3 show strata 6-LIGHT GREY WEATHERED LIMESTONE- only in three bore hole samples. The cross sections show only 615 CY's of pond excavation and 829 CY's of subsoil excavation classified as strata 6. Due to the Board witnessing the excavation during monthly site visits, it was noted by the Board the soil survey did not accurately depict strata 6 at this site. Also by understating this material did overstate the amount of useable material. The Board agrees with the Department, by it's agreement to pay for boulder removal, the contractor is due ENTITLEMENT for this claim.

ISSUE No. 12: The electrical transmission utility work was not a part of the JPA contract therefore the standard specifications prevail. Under these specifications the utility is obligated to maintain clearance for the contractors underground construction. The Board finds the contractor was delayed due to this conflict but the delay involved only TWO (2) DAYS and that the contractor has ENTITLEMENT to recover cost for these 2 days.

ISSUE No. 17: Based on information presented the Board finds **NO ENTIRLEMENT** for this claim.

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 DRE 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 by both parties.

I certify that I have participated in all meetings of this DRE regarding these issues and concur with the findings and recommendations.

Respectfully Submitted

Disputes Review Board
E.K. Richardson, P.E. DRE Chairman
A.R. Cone DRE Member
S.W. Thurmond DRE Member

SIGNED FOR AND WITH CONCURRENCE OF ALL MEMBERS:



E.K. Richardson, PE, DRE Chairman

January 14, 2001

AMENDMENT TO RECOMMENDATION:

Issue No. 8

The BOARD has reviewed the recommendation issued November 28, 2000 and has determined expansion of the original report is necessary to provide a clear and concise understanding of the BOARD'S findings.

The last sentence of the Issue 8 Recommendation was as follows: " The Board agrees with the Department, by it's agreement to pay for boulder removal, the contractor is due ENTITLEMENT for this claim".

To clarify the intent of the Board this sentence should be revised to read: "The Board agrees with the Department, by its agreement to pay for boulder removal, the soil borings did not reasonably depict accurately the quantity of limerock removal or unsuitable material removal". Therefore the Board finds the Contractor is ENTITLED to compensation for the additional work and materials to remove the unsuitable materials in addition to the boulder removal previously negotiated.

The Chair apologizes for any misunderstandings as a result of its first Recommendation and feels this expansion will clarify the original intent of the Board.

SIGNED FOR AND WITH CONCURRENCE OF ALL BOARD MEMBERS:

A handwritten signature in black ink, appearing to read "E.K. Richardson", with a long, sweeping flourish extending to the right.

E.K. Richardson, DRE Chairman