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Brevard Operations

DISPUTES REVIEW BOARD RECOMMENDATION

8 March, 2004

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5220 S. Washington Rd.
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Ref: SR-5 (US 1) From Post Road to Pineda Causeway Contract No: 21485, Financial Project No: 237550-1-52-01. Disputes Review Board Hearing regarding equitable adjustment for Bell South Impact.

Dear Sirs:

The Florida Department of Transportation and RKT Constructors, Inc. requested a hearing concerning the above referenced issue. The Contractor believes he was impacted by the time that it took Bell South to complete their work according to the Utility Relocation Schedule and therefore is entitled to resolution of the above issue in a claim settlement. The Department claims the delays were caused by the Contractor's own failure to perform its work according to its own schedule.

CONTRACTOR'S POSITION

We will state the Contractors position by referencing, copying 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.

RKT was and is obligated by the above mentioned contract to allow for a set amount of time in our baseline construction schedule in order to give Bell South ample opportunity, in which, to relocate their existing telephone poles and ancillary systems out of the way of the new roadway and utility construction. RKT completely fulfilled our contractual requirement by extending Bell South a full 172 days of contract time in which to complete their work as stated in the Joint Partnership Agreement for this project. Additionally, an extra 23 calendar days of

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float time was granted by RKT to Bell South in order to assist them in completing their operations.

Bell South ultimately utilized the entire amount of contract time given, the entire amount of float time given, and 129 calendar days thereafter in which to be deemed substantially complete with their base contract operations. RKT believes it is also important to point out that at the end of the 129 day extended period, Bell South still had several existing manholes that needed to be removed which were part of their original scope of work to be completed in the base contract time frame.

RKT believes that we are, however, entitled to and are currently seeking equitable compensation for any and all additional direct costs, inefficiencies, indirect costs, and contract time extensions incurred that are associated with the 129 calendar day overrun taken by Bell South which was not granted by the contract or the courtesy of RKT

As previously stipulated Bell South had a total of 172 days of contract time in which to complete their work, which was acknowledged by their designated project representative, Mr. Corea, at the preconstruction meeting held on June 4, 2002. RKT had some clearing and grubbing work which needed to take place before the clock would start ticking on or any work that could be undertaken by Bell South for the project. RKT completed the work that was necessary in the time frame between the preconstruction conference and August 5th.

“As of August 5, 2002 the clearing and grubbing on the south end of the project is complete and BellSouth can start placing our proposed facilities? Mr. Corea goes onto say, “BellSouth is aware that the clock is now ticking and is mobilizing to complete the work detailed on the utility work schedule on time.” Had Bell South ultimately followed through on the statements made in their letter of August 19, 2002, their portion of the work would have been completed in late January or early February of 2003. On the contrary, however, the various record documents for the project will show that Bell South was not substantially complete with their base work until July 7, 2003 which is well beyond the contract time and float time allowed for project completion.

RKT firmly believes that Bellsouth clearly and undisputedly had a profound impact to our operations as the result of their actions, or lack thereof, resulting in the failure of Bellsouth to complete their work in a prudent and timely manner. RKT believes that a fair reading of the project records would suggest that the department also clearly believes that RKT has proven entitlement for us to receive some form of fair and equitable compensation that is attributable to Bellsouth's impact on the project.

DEPARTMENT'S POSITION

We will state the Departments position by referencing, copying 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 no entitlement.

The Department respectfully submits this statement and explanation of its position regarding what will be referred to herein as the Bellsouth Issue. It is the Department's understanding that the Board will consider the facts presented by both sides and render a decision regarding entitlement only that is consistent with the terms of the contract. The value or amount of any time extension or additional compensation requested by RKT will not be discussed by the parties or considered by the Board in this hearing.

The delays experienced by RKT during the alleged "impact period" of March 1, 2003 through July 7, 2003 were caused by RKT's own failure to perform its work according to its own schedule in areas where RKT is not claiming the Department or Bellsouth is at fault, namely, installation of new waterline, approval of the new waterline, and removal of the existing waterline which all had to be done before roadway work in the South section could start. Project documentation reflects that there were no delays in the pipe and inlet installation nor was there a substantial increase in RKT's production upon Bellsouth's completion. RKT's "self-inflicted" delays and inefficiencies are well documented. Therefore, the Department respectfully requests that the Board rule that RKT is responsible for its own delays and additional costs in this regard.

RKT originally planned to start South section roadway work on November 29, 2002 but did not start this work until August 8, 2003, or over 8 months late. RKT is claiming that the alleged Bellsouth impacts occurred between March 1, 2003 and July 7, 2003. All of BellSouth's underground work in the South section was completed by December 5, 2002 and therefore did not fall within the impact period. The impacts claimed against BellSouth, with the exception of the removal of above-ground cables and telephone poles in the South section median, all occurred in the North section. Any impacts that might have taken place in the North section had absolutely no effect on the start of South section roadway work, which was controlled by RKT's installation of the South section

waterline and removal of the existing line. There was therefore no delay to the project schedule caused by Bellsouth, even though it took Bellsouth longer to complete its work than the time period stated in the URL, because once the South section roadway work started the schedule was being controlled by activities that supported the continuation of roadway work.

Project records indicate, contrary to RKT's claims, that they were installing pipe, structures, box culverts, sidewalk, gravity and retaining walls, as well as excavating various ponds and installing waterline. RKT's crews and equipment were fully productive, therefore, records indicate that there was no substantial increase in production upon the completion of the Bellsouth impact, which would be an indicator that Bellsouth was in some way delaying RKT.

Many of the conflicts cited by RKT in its REA occurred when RKT was installing storm drainage in the North section. It is obvious from project records that the coordination between Bellsouth and RKT in the North section was not as good as it should have been. Conflicts were experienced by both parties. However, the primary cause for these conflicts was the fact that RKT did not stay ahead of Bellsouth with the clearing, grubbing and grading operations, did not properly locate Bellsouth's underground cables before digging, and stockpiled both dirt and pipe at the known installation locations that.

FINDING OF FACTS

The following is a compilation of facts that the Board got from the position papers and the hearing. We also generated a SureTrac schedule from the Contractors approved schedules that were accepted by the Department. That schedule is attached to this recommendation.

- Bellsouth did have 172 days to complete their work. All Bellsouth's work was to be done in Phase I. Bellsouth stated that this was 172 work days. RKT stated that it was 172 calendar days. 13 Jul 02 to 31 Dec 02
- Bellsouth could have started their work on the south end in Aug. 02 rather than 1 Nov. 02
- It appears to the Board that based on the engineering weeklies and dailies that Bellsouth was not very efficient in the prosecution of their work. The utility dailies that the Board reviewed on 27 February 2004 was for JPA work and did not refute the time frames for Bellsouth work days as shown in RKT's position paper.

- Bellsouth completed their work on the south end of the project on 5 Dec 02 that would impact the road work according to the baseline schedule.
- Based on the position papers and the hearing Bellsouth was substantially complete with all their work on 7 Jul 03.
- RKT allowed 172 calendar days for Bellsouth in their baseline schedule dated 9 Jul 02. Bellsouth work was shown to be done in 172 calendar days during RKT's 295 calendar days of phase I work. 10 Jul 02 to 30 Apr 03
- RKT scheduled the construction of the box culvert for 7 Aug 02 to 16 Sep 02
- Actual time for the box culvert was from 25 Sep 02 to 27 Jun 03
- RKT scheduled the waterline (south) for 6 Sep 02 to 17 Oct 02
- Actual time for the south waterline was 11 Dec 02 to 7 Apr 03
- In a previous position paper in the executive summary pages 6&7 of 7 RKT states “—we should finally be able to start in July, 2003 that which should have taken place back in early February, 2003 or 5 months previous. More importantly, the reason why RKT is getting such a late start on previously scheduled items is due largely in part to impacts incurred with these box culverts---.”
- RKT'S position paper did not indicate what the controlling item of work was impacted by Bellsouth.

In the FDOT Standard Specifications in 8-7.3.2 it states “ *Make a preliminary request for an extension of Contract Time in writing to the Engineer within ten calendar days after commencement of a delay to a controlling item of work. If the Contractor fails to provide this required notice, the Contractor waives any rights to an extension of the Contract Time for that delay.*” This specification clearly states that the contractor should inform the engineer of any impacts or delays to the controlling item of work. The Board did not find any documentation showing the Bellsouth impact to a controlling item of work.

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.

The bullets listed above clearly indicate that RKT was the cause of the delays. The delay in the project was the waterline and box culvert through 7 Apr 03. After this date the box culvert became the delay until completion on 27 Jun 03. Bellsouth completed their work on 16 Jun 03

which was in the time frame of the box culvert delay. The Board finds that there is no entitlement to the Contractor as requested.

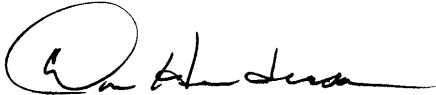
The Board sincerely appreciates the cooperation of all parties and the information presented for our review in making this recommendation.

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, P.E., Chairman Peter Markham, P.E., Member Mark Puckett, P.E., Member

Signed for and with concurrence of all members

A handwritten signature in black ink, appearing to read "Don Henderson", written over a circular stamp or mark.

Don Henderson, PE

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DISPUTE REVIEW BOARD
SR 5 PINEDA CAUSEWAY TO POST RD

- Early bar
- Progress bar
- Critical bar
- Summary bar
- ◆ Start milestone point
- ◆ Finish milestone point