

DISPUTE REVIEW BOARD RECOMMENDATION

February 11, 2002

T.R. "Ty" Gillis
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4845 West Irlo Bronson Highway
Kissimmee, Florida 34746

Robert T. Murphy, P.E.
Smith & Company, Inc.
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Stuart, Florida 34994

RE: SR 530 (US 192) from 500 Feet West of Bonnet Creek to East of SR 535
Osceola County
FPIN No. 239670 1 52 01, 239670 1 52 02, 239670 1 56 01
239670 1 56 02 & 239670 1 56 03
WPI 5115727
Contract No. 20,208

Subject: Claim Issue - Utility Conflicts

Dear Sirs:

The Owner, Florida Department of Transportation (Department), requested a hearing to determine **entitlement** of Smith & Company, Inc. (Smith) to **additional compensation and contract time for "Utility Conflicts"** on the above referenced project. Should entitlement be established, the Parties were to negotiate the quantum of such entitlement.

Pertinent issues, correspondence and other information relating to the Department's and the Contractor's positions were forwarded to this Board for review and discussion at the hearing that was held on January 25, 2002. At the Board's request, the hearing was reconvened on February 08, 2002, in order that the Board could hear from the Contractor's Project Manager, Virgil Rook.

CONTRACTOR'S POSITION:

*Position Paper to Disputes Review Board
Issues of Utility Conflicts - **Delays Due to Utility Company Performance***

The Department and the Contractor have been unable to resolve a significant and profound delay to the project that has developed since project commencement but could not be presented and quantified to the Department until such time as the delay and impact was reasonably concluded.

*SCI submitted an Interim Request for Equitable Adjustment October 3, 2001. This request presented the adverse effects of **utility work originally planned in the contract documents consuming significantly greater durations than contemplated in the utility agreements and as allowed and approved on the baseline schedule for the project.** For the purposes of determining entitlement, SCI has provided herein a copy of the Statement of Claim and Schedule from our October 3 submittal, modified to address entitlement only (Tab A). In many cases, the utility companies did not perform work in accordance with utility agreements and/or performed added work on the project not originally contemplated. In either case, the utility work performed by others **extended the duration of the project in its entirety by delaying and interfering with critical items of SCI's work.** These delays and impacts not only delayed project completion, but forced the Contractor to **work out of sequence and inefficiently,** thereby extending the performance times of SCI crews and operations as originally scheduled, anticipated and approved. The Department has denied entitlement to this matter in their letter dated November 29, 2001, (copy enclosed) (Tab B) and refuses to entertain any negotiation or discussion in this matter. We have enclosed herewith documentation supporting our entitlement position in this matter.*

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As required by contract with FDOT that includes the Standard Specifications for Road & Bridge Construction (1996), the Supplemental Specifications and Special Provisions, SCI provided Notice Of Claim for the unforeseen conditions in compliance with Article 5-12, SCI Letter No. 504 dated August 27, 1999 (Tab C).

In response to our notice of August 27, 1999, GAI responded August 30, 1999 (GAI No. 207) (Tab D). In this letter, GAI indicates that "all of your down times and delays have been paid for on a work order, as of this date" and further requests that we provide "what utility and the area involved." for on a work order, as of this date" and further requests that we provide "what utility and the area involved."

*SCI responded August 31, 1999, Letter No. 506 (Tab E) referencing the Notice to Claim for Utility Delays and indicating that "the costs for loss of production will be forwarded to GAI as they are realized." It is our position the "the costs for loss of production will be forwarded to GAI as they are realized" was, in part, submitted October 3, 201, based on a cut-off date of April 29, 2001. It is our position that **the costs for loss production could of be fully realized until the impacts were concluded** and SCI could reasonably and thoroughly quantify the actual impacts. SCI has labeled our submittal Interim Request for Equitable Adjustment due to the fact that although a majority of adverse impacts due to utilities were concluded, they were, in fact, not completely concluded and some utility work was performed and impacted operations after April 29, 2001. Please note here that contract time was to expire shortly after April 29, 2001. SCI had also sustained significant economic damage due to the utility delays and extra work. SCI purposely submitted an Interim Request to substantiate, at a minimum, an estimated value in cost and time. This submittal would be enough information for FDOT to understand that a time extension and added cost of impacts was, in fact, valid and that SCI would not be placed in further economic hardship by assessing liquidated damages.*

Further, FDOT had never received a submittal from SCI which defined these impacts and FDOT had never, to this date, negotiated or incorporated these values into a contract modification. FDOT consumed over two months to review this submittal, did not request a meeting to discuss the four-volume (4) submittal. Upon notification from SCI that no communications had been received in this matter, FDOT provided a one-page letter indicating no entitlement at all, without specific details and that liquidated damage assessment would continue (Tab B).

*SCI recognizes that GAI/FDOT processed **201 work orders on this project**. The data provided to substantiate the costs of these work orders clearly defines what specific issues and costs are represented. Both FDOT/GAI and SCI could agree on specific direct cost impacts to the crews actually performing the work as they were realized. The **direct costs** of crews performing the work or the **direct cost** of crews down time has been submitted and agreed and is **not a part of this** submittal or request. SCI is not seeking compensation for labor and equipment previously submitted, negotiated and paid. **SCI seeks the costs and contract time extension necessary, as a result of actions or inactions by others, to the contract completion schedule due to unforeseen or foreseeable conditions.***

*In addition, FDOT requested and SCI submitted a revised baseline schedule, attempting to incorporate the extended work performance and interference caused by the extra and unforeseen utility work, which was rejected by FDOT. **FDOT also refused to provide revised dates of utility completion or revised utility agreements indicating time extensions.** FDOT refused to accept a revised schedule from SCI that indicated any completion date other than what time extensions had been granted as of that date. FDOT refused to recognize extended utility work by others and could not provide dates of completion. FDOT withheld pay estimates pending SCI's submittal of a project schedule that could not be achieved. SCI was forced to submit a schedule that implied acceleration to overcome the delays to the project by others beyond our control. Please refer to SCI letter No. 1275 dated December 4, 2000 (Tab F).*

*We also wish to call your attention to the Time Extension Request, SCI Letter No. 1211, dated October 18, 2000 (Tab G). During the submittal process of the revised baseline schedule as requested by FDOT/GAI, SCI attempts to explain the conditions that present the schedule (902C) with a **maximum negative float of 189 days**. The Department refused to recognize and acknowledge actual conditions on the project and repeatedly attempted to disclaim responsibility at the expense of SCI.*

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To date, FDOT has presented **twenty (20) contract modifications** to SCI on this project. Please refer to a summary and detailed listing (Tab H). There are **eleven (11) contingency Supplemental Agreements** totaling \$1,050,864.00 by which FDOT has issued **201 work orders to date**. There are **two (2) unilateral Supplement Agreements** totaling \$30,956.40. There are **seven (7) Supplemental Agreements totaling \$ 1,137,488.15**. There have been sixty-two (62) contract days granted due to contract modifications.

Although the Department has indicated that all matters contained in our October 3, 2001, Interim Request For Equitable Adjustment have been addressed, in previous Supplemental Agreements and work orders, there is **not one work order or Supplemental Agreement known to SCI that addresses the issues** contain in the Interim Request for Equitable Adjustment. FDOT has not presented any specific evidence or document that accommodates the issues set forth in our request.

Therefore, it is our position that SCI has affirmatively given notice of an unforeseen, unanticipated adverse impact to the project that could not have reasonably been considered by SCI at the time of bid or contract award. SCI has assembled and substantiated entitlement and value for these changed conditions in our submittal dated October 3, 2001, to fulfill our obligations under the contract agreement.

The **Department has failed to recognize its obligations** under the contract, specifically the terms of Article 7-11.6.1 of the specifications to provide the necessary arrangements with utility owners for the removal or adjustment of utilities and failed to recognize its obligations under the contract, specifically the terms of Article 4-3.4, of the specification, to investigate the conditions and determine that these conditions materially differ from original conditions presented in the contract documents and, based on these failures, **it is obvious the Department and its consultant cannot recognize or understand SCI's entitlement in this matter.**

It is, therefore, our request to the Board to review this matter and provide a recommendation for entitlement to SCI.

ENTITLEMENT TO AN INTERIM REQUEST FOR EQUITABLE ADJUSTMENT (UTILITY CONFLICTS)

EXECUTIVE SUMMARY

The purpose of this section is to present an Executive Summary as to Smith & Company, Inc. ("SCI") Interim Request for an Equitable Adjustment ("IREA") for utility conflicts encountered on the project as of April 29, 2001. The Executive Summary includes the following sections:

- Project Overview;
- Summary of Issues & Impacts;
- Analysis of Utility Work;
- Statement of Claim / Contractual Access; • Summary

Based on the facts presented herein, it is clear that SCI is entitled and the Owner is required to issue an equitable adjustment to SCI for adverse utility impacts and delays on the project.

PROJECT OVERVIEW

SCI entered into a Unit Price Contract with the Florida Department of Transportation ("Owner") on August 26, 1998 to construct improvements to State Road 530 (US 192) from 500 feet west of Bonnet Creek to east of State Road no. 535 in Osceola County referred to as the ("Project.").

SCI entered a contract with the Owner for \$25,331,596.08 dollars with a 780-day contract performance period. Notice to Proceed was issued on September 25, 1998 and SCI started work on October 11, 1998 with a corresponding contractual completion date of January 15, 2001 on the project.

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SCI developed its original bid and project schedule in accordance with the Contract Document(s) issued by the Owner, and the Owner warranted that the Contract Documents were complete and accurate.

Based on the Contract Documents and the understanding that the plans and specifications that were released for construction were *complete and accurate*, SCI submitted a cost loaded schedule on December 1, 1998 to the Owner, which was subsequently approved by the Owner on May 20, 1999.

However, SCI planned schedule and cost of performance were adversely impacted due to, but not limited to, **Utility Conflicts that caused** the following:

- **Contract document defects and deficiencies;**
- **Changes which were Owner directed** or constructive and which resulted primarily from the Contract document defects/deficiencies;
- **Delays and Disruptions to progress** caused by the occurrence of Contract document defects/deficiencies, and changes, and
- **Inefficiencies caused by the occurrence of Contract document defects and deficiencies, and Delays and Disruptions.**

The aforementioned items had an individual as well as a cumulative impact on SCI ability to perform in accordance with its original planned method, manner, sequence and duration anticipated at the time of bid as represented in the approved baseline schedule.

As of this date, **SCI had not submitted** to FDOT nor has FDOT considered the **impacts of utility delays in any Supplemental Agreements or Work Orders issued.**

SUMMARY OF ISSUES & IMPACTS

The Owner had the contractual responsibility to make arrangements for the protection of or adjustment to utilities on the project. As stated in The Florida Department of Transportation Standard Specifications for Road and Bridge Construction 1996 Section 7, Paragraph 7-11.6 "Utilities" states in part the following:

*"7-11.6.1 Arrangements for Protection or Adjustment: ... **The Department will make the necessary arrangements with utility owners for removal or adjustment of utilities** where such removal or adjustment is determined by the Engineer to be essential to the performance of the required construction, provided normal construction procedures are used by the Contractor."*

Consistent with Section 7-11.6.1, the Engineer determined that the project did have essential utility removal and adjustments requirements on the project and subsequently the Owner included in the Contract Special Provisions Item 17 "Utility Adjustments" which states in part the following"

"The utility work which will be accomplished concurrently with the highway construction contract will involve facilities owned by the agencies listed below:

*Teco/Peoples Gas
Florida Power Corporation - Distribution
Sprint - Florida, Inc.
Florida Gas Transmission Company
Kissimmee Utility Authority
Time Warner Communications
Adelphia Cable d.b.a. Telesat Cablevision
Teco/Peoples Gas (JPA - UIHC Back Out)
Sprint - Florida, Inc. (JPA - UIHC Backout)
City of Kissimmee - JPA*

The anticipated scheduling of adjustments and relocation work are included on the Utility Relocation Schedules attached hereto."

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The Owner further included detailed Utility Relocation Schedule(s) which are summarized in the following table:

UTILITY RELOCATION SCHEDULE

UTILITY AGENCY	FDOT PLANS	PRIOR TO CONSTRUCTION	DURING CONSTRUCTION
<i>TECO/Peoples Gas</i>	<i>January 1995</i>	<i>0</i>	<i>40</i>
<i>Florida Power Corp. -Distribution</i>	<i>June 20, 1997</i>	<i>60</i>	<i>25</i>
<i>Sprint - Florida</i>	<i>Nov. 3, 1997</i>	<i>180</i>	<i>42</i>
<i>Florida Gas Transmission Comp.</i>	<i>Nov. 3, 1997</i>	<i>0</i>	<i>19</i>
<i>Kissimmee Utility Authority</i>	<i>June 20, 1997</i>	<i>120</i>	<i>120</i>
<i>Time Warner</i>	<i>June 20, 1997</i>	<i>0</i>	<i>120</i>
<i>Adelphia Cable dba Telesat Cable</i>	<i>June 20, 1997</i>	<i>0</i>	<i>0</i>
<i>TECO / Peoples Gas (JPA)</i>	<i>January 1995</i>	<i>0</i>	<i>121</i>
<i>Sprint - Florida (JPA)</i>	<i>Nov. 3, 1997</i>	<i>0</i>	<i>72</i>
<i>City of Kissimmee (JPA)</i>	<i>Feb. 13, 1998</i>	<i>0</i>	<i>495</i>

As evidence by multiple dates included under the FDOT plans column, it is evident by its presentation that FDOT had superior knowledge **that utility companies were not utilizing the current plans** in developing the individual utility relocation schedules included in the contract documents.

In accordance with the Utility Relocation Schedule SCI prepared and submitted its planned method, manner, sequence and duration of activities to complete the project within the contract performance period, which submittal has approved by the Department. However, **utility relocations were not completed in accordance with the utility relocation schedule** included in the contract and SCI performance was adversely impacted and delayed.

ANALYSIS OF UTILITY WORK

SCI planned on utilizing the traffic control plans in the original contract documents to complete its work and to coordinate the utility work described in the individual utility relocation schedules contained within the contract. Utilizing the FDOT's traffic control plans, SCI originally anticipated working in a systematic and controlled sequence to complete the work in an expeditious and cost effective manner.

The following table summarizes the Utility Work on the project in terms of SCI original plan as submitted in the Baseline Schedule and the actual progress as included in SCI June 1, 2001 update.

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BASELINE VERSUS ACTUAL UTILITY RELOCATION (SUMMARY)

ACT. ACTIVITY ID DESCRIPTION	BASELINE ESTART	BASELINE E.FINISH	BASE WD	06/01/01 ESTART	06/01/01 E.FINISH	ACT. DUR.
<u>Florida Gas Transmission</u>	<u>08-Mar-99</u>	<u>08-Sep-00</u>	<u>19</u>	<u>03-May-99</u>	<u>01-Jun-01</u>	<u>396</u>
<u>Florida Power Corporation Relocation</u>	<u>23-Nov-98</u>	<u>18-Dec-98</u>	<u>25</u>	<u>01-Jun-00</u>	<u>09-Mar-01</u>	<u>282</u>
<u>Kissimmee Utility Authority</u>	<u>11-Nov-98</u>	<u>31-Mar-99</u>	<u>296</u>	<u>16-Jul-99</u>	<u>09-Jun-01</u>	<u>695+</u>
<u>Sprint - Florida</u>	<u>08-Mar-99</u>	<u>13-Jul-00</u>	<u>113</u>	<u>22-Feb-99</u>	<u>09-Jun-01</u>	<u>839+</u>
<u>TECO / Peoples Gas</u>	<u>12-Oct-98</u>	<u>14-Dec-98</u>	<u>160</u>	<u>19-Jan-99</u>	<u>25-Jun-99</u>	<u>158</u>
<u>Time Warner</u>	<u>11-Nov-98</u>	<u>14-Dec-98</u>	<u>120</u>	<u>30-Jun-00</u>	<u>12-Oct-00</u>	<u>105</u>

Notes:

1. Column "Base WD" quantifies the total planned work days (original dur.) included in SCI baseline schedule.
2. Column "Act. Dur." Quantifies the total duration from the actual start to actual finish.
3. The "+" indicates Utilities that as of 6/1/01 update still have open activities.

Included in each individual Utility Section of this IKEA is a detailed analysis and chronology of the events SCI encountered on the project.

*As a result of impacts associated with the Utility work on the project, **SCI encountered a changed condition and was not able to proceed in accordance with its original planned method and manner of construction.** As a result, SCI crews were on the project longer than original anticipated and were inefficient as a result of having to work around the utilities and to accommodate utilities that were not presented in the documents nor known to SCI, which presented unforeseen conflicts.*

The following table summarizes SCI planned "Work or Crew Days" in its baseline schedule:

SUMMARY CREW - BASELINE SCHEDULE	E. START	E. FINISH	ORIG. DUR
Concrete Crew	11-Jan-99	1-Dec-00	
Scheduled Work Days		"Sum of OD"	146
Embankment Crew	26-Oct-98	14-Aug-00	
Scheduled Work Days		"Sum of OD"	254
Base Crew	18-Jan-99	3-Nov-00	
Scheduled Work Days		"Sum of OD"	90
Stabilization Crew	5-Nov-98	13-Oct-00	
Scheduled Work Days		"Sum of OD"	95
Storm Crew	16-Oct-98	29-Sep-00	
Scheduled Work Days		"Sum of OD"	333
Water Crew	14-Dec-98	7-May-99	
Scheduled Work Days		"Sum of OD"	137

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The following table represents **actual crew days** SCI has incurred on the project as of April 29, 2001 based on the FDOT Daily Construction Reports:

SUMMARY CREW -ACTUAL	ACTUAL / FDOT DAILY'S
Concrete Crew	
Work Days	193
Embankment Crew	
Work Days	568
Base Crew	
Work Days	245
Stabilization Crew	
Work Days	168
Storm Crew	
Work Days	541
Water Crew	
Work Days	294

Based on SCI planned crew days as depicted in its approved baseline schedule and its estimated total crew days from the FDOT dailies and SCI projection, the following table represents SCI additional crew days on the project.

SUMMARY CREW - BASELINE SCHEDULE	PLANNED CREW DAYs	ACTUAL AS OF 4/29/01	DELTA CREW DAYS
Concrete Crew			
Work Days	146	193	-47
Embankment Crew			
Work Days	254	568	-314
Base Crew			
Work Days	90	245	-155
Stabilization Crew			
Work Days	95	168	-73
Storm Crew			
Work Days	333	541	-208
Water Crew			
Work Days	137	294	-157

STATEMENT OF CLAIM / CONTRACTUAL ACCESS

Since utility companies did not complete their work accordance with **Utility Relocation Schedules** in the contract and the Contract Documents did not include all utility work required on the project, **SCI performance was impacted and delayed**. Therefore, in accordance with the following contract provisions, SCI is clearly entitled and the Owner is required and compelled in good faith to compensate SCI accordingly.

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The Florida Department of Transportation Standard Specifications for Road and Bridge Construction 1996 Section 4, Paragraph 4-3.2.3 "Conditions Requiring Supplemental Agreement" states in part the following:

"Supplemental agreement shall be used to clarify the plans and specifications of the contract; ...; to provide for unforeseen work, grade changes, or alterations in plans which could not reasonably have been contemplated or foreseen in the original plans and specifications; ...; and to make the project functionally operational in accordance with the intent of the original contract.

"Additional or unforeseen work having no quantity or price provided in the contract will be paid at a negotiated price. Where the cost is negotiated, the Contractor shall submit an estimate to the Department in terms of labor, materials, equipment, overhead, and other expenses incurred solely as a result of the additional or unforeseen work..."¹

The text of this subarticle does not apply to a delay claim."²

The Florida Department of Transportation Standard Specifications for Road and Bridge Construction 1996 Section 8, Paragraph 8-3.2 "Submission or Working Schedule" states in part the following:

Within 21 calendar days after the contract has been awarded or at the preconstruction conference... the successful bidder shall submit to the Engineer a work progress schedule for the project.

The schedule shall show the various activities or work in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the project within the contract time. The schedule shall show the order and interdependence of activities and the sequence in which the work is to be accomplished as planned by the Contractor...

Sufficient liaison shall be conducted and information provided to indicate coordination activities with utility owners having facilities within the project limits. The schedule shall conform to the utility adjustment schedules included in the contract documents unless changes are mutually agreed upon by the Utility Company, the Contractor and the Department.

When approved this original schedule will constitute the baseline against which progress will be measured."

The Florida Department of Transportation Standard Specifications for Road and Bridge Construction 1996 Section 8, Paragraph 8-7.3 "Adjusting Contract Time" states the following:

*"8-7.3.1 Increased Work: The **Department may grant an extension** of contract time when the contract amount is increased due to overruns in original contract items, **adding new work items or unforeseeable work being required**. Consideration for granting an extension of contract time shall be based on the extent that the time required to complete the additional designate work impacts the contract completion schedule."*

*"8-7.3.2 Contract Time Extensions: **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...** When failure by the Department to fulfill an obligation under the contract results in delays in the controlling construction operations, such delays will be considered as a basis for granting credit to the contract time..."*

¹ Actually this also reads "to settle claims"

² This last sentence is in 4-3.2.3 relating to the calculation of costs.

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The affect of utility relocations and adjustment work on job progress will be considered as the basis for granting a time extension only if all the following criteria are met:

1. **Delays are the result of utility work not detailed in the plans or utility work detailed in the plans that is not accomplished in reasonably close accordance with the schedule included in the special provisions.**
2. **Utility work actually affected progress toward completion of controlling work items.**
3. **The Contractor took all reasonable measures to minimize the effect of utility work on job progress including cooperative scheduling of his operations with the scheduled utility work at the preconstruction conference and providing adequate advance notification was given to utility companies as to the dates on which their operations must be coordinated with the Contractor's operations to avoid delays.**

If the **Contractor claims additional compensation** in addition to a time extension, the documentation must also include **detailed cost analysis** of the claimed extra compensation.

The Florida Department of Transportation Standard Specifications for Road and Bridge Construction 1996 Section 1, Paragraph 1-14 "Controlling Work Items" states the following:

"Those work items that are directly interrelated such that each has a definite influence on progress of the overall work."

The contract is very clear regarding changes, and unforeseen and additional work associated with utilities and therefore **SCI is entitled and the Owner is compelled to provide compensation for increased costs occasioned by utility conflicts and additional and unforeseen work performed.** Furthermore, in the event of changes to the work, whether the changes were directed by the Owner or were essential to the satisfactory completion of the contract within its intended scope, SCI is entitled to receive a fair and equitable adjustment to its contract price and contract time.

CONCLUSION

By no fault of SCI, the project was impacted by Utility Conflicts that could not have been reasonably anticipated or foreseeable at the time of bid. In addition, the Owner's failure to include complete and constructible utility relocation schedules impacted the project. The effects of the incomplete utility relocation schedule data and the additional and unforeseen work performed by SCI impacted SCI planned method, manner, sequence, and duration of performance on the project. Therefore, SCI is clearly entitled to an appropriate adjustment to SCI contract.

DEPARTMENT'S REBUTTAL:

Subject: FDOT Response to "Entitlement to an Interim Request for Equitable Adjustment, Utility Conflicts", Submitted by SCI on January 11, 2002

In addition to the Position Paper previously submitted on behalf of the Florida Department of Transportation, (FDOT), we are also providing this brief response to the above referenced document from Smith and Company, Inc., (SCI), contractor on the subject project. **This new document submitted by SCI addresses "entitlement" specifically, and was not included in previous submittals on this issue.**

SCI states that, "For the purposes of determining entitlement, SCI has provided herein a copy of the Statement of Claim and Schedule from our October 3 submittal, modified to address entitlement only (Tab A)". We found no Tab "A" in the document, and in reviewing the Statement of Claim provided, found there were no changes or modifications made to the original submittal.

The three letters included in the SCI document regarding **Notice of claim**, (Tabs "C", "D", And "E"), are **not specific or timely enough to enable the Engineer to track costs as required.** In fact, SCI's letter of August 31, 1999, implies that there may or may not be problems with under ground utilities in the future. The letter contains language such as: "there are several utility companies that could foreseeably cause loss of production." and addresses "possible conflicts" with other utilities. **It appears that SCI was not aware of any specific utility problems or conflicts at the time.**

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As **utility conflicts did occur during this period**, despite everyone's best efforts on the job, the **FDOT was quick to respond, and addressed each conflict to the full satisfaction of SCI as evidenced by SCI's sign-off on the appropriate Work Orders. The release language on each of the Work Orders and Supplemental Agreements is unconditional.**

The letter of October 18, 2000 was never receive (sic) by this office, and cannot be found in our files.

In summary, the MOT maintains its previously stated position in response to SCI's "Interim Request for Equitable Adjustment, Utility Conflicts". **There is no entitlement over and above that already granted by the FDOT on this project.** The document submitted by SCI offers no new information on any of the key issues already addressed in our previous response.

Every utility conflict encountered on this project was handled expeditiously by the FDOT in accordance with the procedures stated in the contract documents. **Each proposal submitted by SCI in response to a utility conflict was mutually negotiated to the full satisfaction of all parties.** All parties then freely executed the resulting Work Order. **The release language contained on these Work Orders was accepted without qualifications and cannot be ignored.** It states:

"The Department and the Contractor agree that the total cost shown above constitutes full and complete settlement of the costs incident to performing the work described above in accordance with the covenants and restrictions of the above referenced Contingency Supplemental Agreement".

Each Contingency Supplemental Agreement under which the Work Orders were issued contained the following release language:

*"The Department and the Contractor agree that the cost agreed to and documented on the Work Order constitutes a full and complete settlement of the issues set forth in that Work Order. The **Contractor accepts the terms of this Supplemental Agreement as related to cost determinations as full compensation for all costs of equipment, manpower, materials, overhead, profit, and delay damages and for all their costs**".*

The release language in the Work Orders and Contingency Supplemental Agreements signed and agreed to by SCI serves as a waiver of all subsequent claims for costs and/or time related to the utility issues addressed therein. There is therefore no contractual entitlement to any cost or time for these utility issues in excess of that already paid and granted under the associated Work Orders.

DEPARTMENT'S POSITION:

Subject: FDOT's Position Paper for the
"Interim Request for Equitable Adjustment, Utility Conflicts"

On behalf of the Florida Department of Transportation (FDOT), we are presenting this Position Paper to the DRB in response to the interim request for equitable adjustment submitted by Smith and Company, Inc. (SCI), the prime contractor on the referenced project. **Please note that the contract does not recognize such "requests for equitable adjustment". The contract only recognizes claims as defined therein.**

SCI is requesting an "interim" equitable adjustment of approximately \$4.2 million for costs and schedule impacts during the job alleging that the FDOT failed to fulfill its contractual obligations in making the necessary arrangements with Utility Owners for removal or adjustment of utilities in a timely manner. The "interim" period covers from the start of the contract (NTP issued September 25, 1998) through June 1, 2001. SCI has included in their request a SCI-prepared removal/relocation schedule for each of the Utility Owners, and claims that the Utility Owners failure to meet this schedule severely impacted SCI's ability to perform the work.

The request submitted by SCI consists of several issues that do not relate directly to each other. Rather than request adjustments for specific incidences as they did continually throughout the project, SCI claims that the Contract Documents contained defects and deficiencies, and that the FDOT did not meet its contractual obligations in correcting the same. The result, as claimed by SCI, was that the Utility Owners did not meet the schedule anticipated by SCI for relocation of utilities. This is claimed by SCI to

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be the sole cause for almost doubling the contractor's estimated costs for manpower and equipment on the project, and resulted in a **delay of 186 Contract Days**.

FDOT RESPONSE:

The FDOT's contractual obligations were totally and completely fulfilled on this contract, and no entitlement exists for payment of the requested amounts or granting of the requested time in excess of that already paid and granted by the FDOT.

Under Sub-article 8-3.2 of the Project Special Provisions, SCI was required to submit a CPM schedule for the entire project within 30 calendar days after execution of the contract, or at the pre-construction conference, whichever was earlier. The contract was executed on August 25, 1998, and the **Pre-Construction Conference was held on September 23, 1998**. SCI did not submit the CPM schedule in a timely manner as required by the contract documents as cited above. The **CPM baseline schedule for this project was first submitted on December 1, 1998, and finally approved on April 19, 1999**, following the rejection of **five previous submittals**. This was approximately seven months after the date stipulated in the contract for having an approved CPM Project Schedule that would allow other parties (such as the FDOT and Utility Owners) to schedule their activities accordingly.

Weekly Job Progress Meetings were held with the contractor throughout the job in the on-site offices of the FDOT's Representative. Included in the agenda for these meetings was the topic of "Utilities". It was here that any actual or potential utility conflicts were discussed so that the proper steps could be taken to reduce or eliminate problems related to such conflicts. At these meetings, it was **SCI's responsibility to advise the FDOT of upcoming work activities (two-week look ahead), and call attention to the impact of utilities on these immediately planned events as well as impacts for the future**. In every case the FDOT was responsive to the contractor's request, and took appropriate action to remedy such conflict situations in an expeditious fashion. As evidence of this, the Minutes of these Weekly Job Progress Meetings are included in this response as "Exhibit A".

In addition to the Weekly Job Progress Meetings held with SCI in which utilities were discussed as noted above, Weekly Utility meetings were also held in the same office, involving SCI, the FDOT, and all of the Utility Owners involved on the project. During these meetings, SCI was encouraged to discuss all interfaces between the SCI's work plan and the utilities, so that these items could be brought to the attention of all participants and handled appropriately. The Minutes of Weekly Utility Meetings are also included in this response as "Exhibit B".

By conducting the meetings noted above, the FDOT was clearly fulfilling its contractual duties, despite SCI's claims to the contrary. **There were some specific instances where conflicts did arise between utilities and construction work despite the extensive cooperative efforts of all parties**. In each of these instances a full investigation was made and a **negotiated settlement was reached** between the FDOT and SCI in a timely manner. These individual instances were carefully documented as Work Orders (additions to the contract), and were agreed to and signed by a duly authorized representative of SCI.

Each and every utility conflict issue brought to the FDOT's attention by SCI was handled expeditiously by the FDOT in accordance with the procedures prescribed in the contract. Throughout the project, **SCI was very diligent and thorough in quantifying their requests for additional time and costs associated with specific instances of utility conflict**. The many proposal letters submitted by SCI for utility issues are testimony to that fact. The time and costs requested by SCI for each utility issue were the basis for the negotiated Work Orders that were issued by the FDOT.

Each Work Order issued on this project contained the following release language:

"The Department and the Contractor agree that the total cost shown above constitutes full and complete settlement of the costs incident to performing the work described above in accordance with the covenants and restrictions of the above referenced contingency Supplemental Agreement".

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Each Contingency Supplemental Agreement under which the Work Orders were issued contained the following release language:

"The Department and the Contractor agree that the cost agreed to and documented on the work Order constitutes a full and complete settlement of the issues set forth in that work Order. The Contractor accepts the terms of this Supplemental Agreement as related to cost determinations as full compensation for all costs of equipment, manpower, materials, overhead, profit, and delay damages and for all their costs."

The release language in the Work Orders and Contingency Supplemental Agreements signed and agreed to by SCI serves as a waiver of all subsequent claims for cost and/or time related to the utility issues addressed therein. **There is therefore no contractual entitlement to any cost or time for these utility issues in excess of that already paid and granted under the associated Work Orders.**

During the course of the job, if there were utility conflicts of an unpredictable nature, or if there were no other means to remedy a specific utility conflict situation, the FDOT issued Work Orders, fully negotiated to the satisfaction of SCI, to fully compensate SCI for such conflicts. In evidence of this, we have attached copies of the utility-related Work Orders and Contingency Supplemental Agreements issued on this project as "Exhibit C". **SCI has not provided evidence of any specific unresolved utility conflict issues over and above those included in the Work Orders.** Neither has SCI provided evidence of any contractual entitlement to costs or time in excess of that already paid and granted in these Work Orders.

The total amount paid through the Work Orders and Contingency Supplemental Agreements for utility issues was approximately \$330,800.00. SCI now seeks to ignore the complete resolution and waiver of their previous utility claims and submits what amounts to a "total cost claim" for the entire amount of time they are late in completing this project. It is incomprehensible that these very same issues could now be worth over \$4.2 million.

REQUEST/VOLUME I - EXECUTIVE SUMMARY:

In response to the open-ended allegations in the Executive Summary of SCI's "interim request", the FDOT states that it was in fact very contractually responsive to the SCI's needs and progress during the utility protection/relocation portion of this project. SCI was advised in the Contract Documents that various Utility Companies would be working on the project during the construction period. **The schedule for this work by the Utility Companies was not given in the Contract Documents**, only the estimated duration of time necessary to complete the utility work was given. The actual start/complete dates for these utility operations were to be scheduled to assist SCI on the job, based on SCI's approved Working Schedule. SCI failed to meet the contract requirements under section 8-3.2, Submission of a Working Schedule, by not submitting a schedule in the time required at the onset of the project.

The contract requires the schedule to be submitted within 30 calendar days of award of the contract, or at the Pre-Construction Conference, whichever is earlier. SCI did not submit the Working Schedule at the Pre-Construction Conference held on September 23, 1998. SCI first submitted their schedule on December 1, 1998, and **after five re-submittals, finally obtained an approved Working Schedule on May 20, 1999**, some seven months after the Pre-Construction Conference. Despite this approximate seven-month contract period of not having an approved Working Schedule, the FDOT still conducted the required weekly meetings with SCI and the utility companies to coordinate the work.

SCI did not take all reasonable measures to minimize the effect of utility work on job progress, including the lack of cooperative scheduling of SCI's operations with the scheduled utility work at the Pre-Construction Conference, contrary to what SCI states on page 12 of the request. Likewise, **SCI did not provide adequate advanced notification to the utility companies as to the**

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dates their operations must be coordinated with SCI's operations to avoid delays, as SCI further states in the same paragraph.

SCI has been fully compensated for both costs and time associated with utility conflicts on the job as explained above.

REQUEST/VOLUME II - UTILITIES:³

*The **Contract Documents provide an estimate of the calendar days each utility company would require to relocate their respective utilities on the project.** The Documents do not provide a schedule for this work, but **rely on the close coordination between SCI and the utility companies involved to schedule the work in an optimal manner.***

*Volume II of the Request presents the "Baseline" versus Actual Utility Relocation Summary for each of the Utility Companies involved. Clarification is needed to determine which baseline schedule was used in arriving at the dates shown. The original baseline schedule was not approved until May 20, 1999. Based on this representation, four of the six utility companies were scheduled to be complete with all of their work prior to the baseline schedule being approved. The other two utility companies were to start on March 8, 1999, also prior to the baseline schedule approval. These **undated schedules, prepared and presented by SCI, gave no indication as to whether or not the schedules had been reviewed and concurred with by the various utility companies involved, or even presented to them for review and approval.***

*Note that **two of ,the utility companies** elected to have their work performed directly by SCI on the project under a Joint Participation Agreement with the FDOT. This means that all work associated with that particular utility relocation was **directly performed by, and under the control of SCI.** This JPA work performed directly by SCI accounts for a total of 567 calendar days on the project as follows:*

<i>Sprint Florida</i>	<i>72 calendar days</i>
<i>City of Kissimmee</i>	<i>495 calendar days</i>

In those instances where utility conflicts were called to the attention of the FDOT, each individual issue was immediately addressed with SCI through a negotiated settlement and the issuance of an appropriate Work Order as explained above.

REQUEST/VOLUMES III AND IV - SMITH CREWS:

In these volumes, SCI presents an undated schedule showing various baseline operations denoted as "original baseline", or presumably the schedule approved on May 20, 1999. An updated schedule dated June 1, 2001 is shown below the original baseline schedule, containing substantially more items of work and an extended completion date. Immediately following these schedules are selected excerpts from the Owners "Construction Daily Reports" for certain select days.

CONCRETE CREW: The original baseline schedule shows 17 items of work with an approximate completion of December 1, 2000. The 6/1/01 updated schedule shows 61 items of work with an approximate completion of July 1, 2001. The data provided by the submitted schedules and excerpts from the job daily reports do not even imply that utility conflicts alone impacted the productivity this crew attained on the job. Specifically, the dates of March 30, 1999 and April 1, 1999 includes activities other than concrete related work

EMBANKMENT CREW: The original baseline schedule includes 15 items of work with a completion date of approximately July 2000. The 6/1/01 update includes some 51 items of work with an approximate completion date of June 2001. In reviewing the excerpts from the job daily reports, there is no direct connection made with the utility work and conflicts with the

³ References to Volumes II-IV are to the full submittal package to the FDOT and was not submitted to the DRB for consideration on the matter of Entitlement.

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embankment crew to require this extended amount of time. It should also be noted that the comments include not just grading, but stabilizing sub-grade, dumping, spreading and working the limerock base.

BASE CREW: The original schedule for the base crew shows 7 items of work, and completion around November 2000. The updated schedule of 6/1/01 shows 30 items of work with a completion of around February 2001. Comments from selected job daily reports include other activities such as clearing and grubbing, excavation, as well as base work.

STABILIZATION CREW: The original baseline schedule for this crew shows 7 items of work with a completion date of approximately October 2000. The 6/1/01 update includes 15 items of work with a completion date of approximately February 2001. Selected excerpts from the job daily reports supporting this revised schedule include activities other than stabilization.

STORM CREW: In a manner similar to the above the original schedule grew from 25 items of work to 55 items of work, with the approximate completion changing from September 2000 to May 2001.

WATER CREW: Increased from 6 items of work to 12 items of work, with approximate completion changing from May 1999 to October 2000.

During this period, the basic scope of the project was not increased. A substantial increase in the scope of the project would have been required in order to justify the additional time for the re-scheduled completion dates, and for the increase in the number of items of work. **It is obvious, however, that the original baseline schedule had not been attained.** Nowhere in these sections of the request does SCI make the statement that utility conflicts alone created the lack of productivity. The selected excerpts from the job daily reports clearly would not support such a statement. Reasons for the schedule overruns are not substantiated by the job daily reports for any of the work crews shown.

Attachment "A" hereto shows a sampling of SCI's daily manpower on the job, including all superintendents and foremen as well as the work crews. **The sampling does not tend to support the total manpower claimed by SCI.** This limited sampling of the original job daily reports also indicates that the individual crews named above were not restricted to only their named line of work. In some instances, it would appear that one crew might perform more than one specific line of work. Further, the daily job manpower reflected in the sample job daily reports on the project may not tend to support these full, individual crews for the durations indicated.

CONTRACT DOCUMENTS:

Article 2.4 of the 1966 Edition of the FDOT Standard Specifications for Road and Bridge Construction (Specs) states in part, "**The bidder is expected to examine carefully** the proposal, plans, Standard Specifications, Specifications Package, Supplemental Special Conditions, contract forms, and **the site of the proposed work before submitting a proposal for the work contemplated.** Such shall also include investigation as to the condition to be encountered as to the character, quality and quantities of work to be performed and materials to be furnished and as to the requirements of all contract documents."

Investigation of the site, plans, and bid documents for this project clearly indicated that that the proper coordination of utilities would play a major role in construction planning and scheduling.

Article 5.2 of the Specs regarding coordination, states "These Specifications, the plans, special provisions, and all supplementary documents are integral parts of the contract, and a requirement occurring in one is as binding as though occurring in all."

There are notes on several sections of the plans cautioning SCI about the approximate locations of various utilities, and to call for locate before working in the vicinity.

Article 5-12 states in part, "Where the contractor deems that extra compensation is due him for work or materials not clearly covered in the contract or not ordered by the Engineer, the Contractor shall notify

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the Engineer in writing of his intention to make claim for extra compensation, before he begins the work on which he bases the claim. If such notification is not given, and the Engineer is not afforded proper opportunity for keeping strict account of actual cost, then the Contractor thereby agrees to waive the claim for such extra compensation."

In this instance, proper notice was not given to the Engineer before the work was accomplished, therefore, the claim has been waived.

Article 7-11.6.1 states in part, "At points where the Contractor's operations are adjacent to utility facilities or other property, damage to which might result in expense, loss, disruption of service or other undue inconvenience to the public or to the owners, work shall not be commenced until all arrangements necessary for the protection thereof have been made. The contractor shall be solely and directly responsible to the owners and operators of such properties for any damage, injury, expense, loss, inconvenience, or delay, caused by the Contractor's operations. The Department will make the necessary arrangements with utility owners for removal or adjustment of utilities where such removal or adjustment is determined by the Engineer to be essential to the performance of the required construction, provided normal construction procedures are used by the contractor".

The FDOT, through Weekly Job Progress Meetings, and Weekly Utility Meetings held throughout the project, fulfilled its contractual duties in coordinating utility relocation work on the project. Despite the number of meetings held, utility relocation on this project was made difficult due to SCI's neglect in providing a timely initial schedule for its operations, and further complicated by the excessive production slippage in the schedule once it had been approved. This slippage is alleged in SCI's "Request".

Article 7-11.6.2 states in part, "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."

Cooperation in this case would require SCI to carefully plan its work in advance and advise the Engineer and the utility owners through the many meetings held of any potential conflicts before they occur. This would also require extensive use of the many utility locates called for on the plans.

Article 8-3.2 regarding the submission of the Contractor's Working Schedule states in part, "Sufficient liaison shall be conducted and information provided to indicate coordination activities with utility owners having facilities within the project limits. The Schedule shall conform to the utility adjustment schedules included in the contract documents unless changes are mutually agreed upon by the Utility Company, the Contractor, and the Department."

In this case, the Contract Documents included only the estimated time duration on the job for each of the utility adjustments. Start/ Stop dates were not given, but were contingent on SCI's approved job schedule.

POSITION SUMMARY:

SCI's "interim request" does not justify any entitlement for contract costs or extensions of contract time in excess of that already paid and granted. SCI has been fully compensated for all utility conflicts during the project, and has released their rights for further claims related to these issues. Whether SCI should or should not have released these rights is not the issue to be decided by the DRB. The fact remains that SCI did in fact release these rights with their full knowledge.

The FDOT faithfully and correctly discharged all of its duties in coordinating utility relocations throughout the project, in negotiating settlements with SCI for costs and time, and in issuing the appropriate Work Orders for the same.

When utility conflicts did arise on the job, the FDOT was very responsive to SCI's requests. Following an immediate investigation, a Work Order was negotiated with SCI for time and costs due to the utility conflict. These Work Orders were negotiated and signed off by an authorized representative of SCI. There were no exceptions taken (Exhibit C).

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SCI failed to submit a timely Job Progress Schedule, and did not have an approved Job Progress Schedule until approximately seven (7) months into the project. This impacted the normal progress of the job.

The excerpts from the job daily reports do not create or constitute entitlement in any way. Excerpts from the selected job daily reports cited do not support the allegations by SCI.

SCI has failed to show in detail how the utility relocation on the job impeded his productivity or progress. SCI's allegations are not substantiated in any manner.

SCI's monthly earnings on the contract were in line with his original early and late projections for the period during which utility work was performed. It is contradictory that SCI achieved its anticipated and planned monthly earnings on the project for this period and alleges such substantial delay impact on the same. This is shown in Attachment "B" hereto.

*Attachment "C" hereto contains a summary of utility-related Work Orders on this project and addresses the calendar days included in these Work Orders. **SCI had requested a total of 48 calendar-days extension to their 780 calendar-day contract due to all utility conflicts encountered.** Through negotiations between SCI and the FDOT, **SCI knowingly and willfully agreed to a contract extension of 32 calendar-days for all utility conflicts with no reservations.** This extension of contract time has already been granted by the FDOT and accepted by SCI. There are no provisions in the Contract Documents that would entitle SCI to re-visit these Work Orders and now "request" additional time to complete the project based on the utility conflict issues to which SCI has already agreed.*

*Although entitled a "Request", SCI's presentation represents a claim for additional money and time. **It is, in fact, a claim for time and damages due to alleged cumulative impacts on the job.** Under the Contract Documents, timely notice must be given to the Engineer to enable him to accurately track actual costs. Timely notice was not given to the Engineer by SCI in this instance, and as stipulated in the Contract Documents, SCI has therefore waived its rights to claim.*

CONTRACTOR'S REBUTTAL:

None received from the Contractor.

BOARD FINDINGS:

- The Contractor's recitation of article 4-3.2.3 is in error in its implication that Supplemental Agreements cannot be used to settle claims. The text reads:

*4-3.2.3 **Conditions Requiring Supplemental Agreement:** Supplemental agreement shall be used to clarify the plans and specifications of the contract; to document quantity overruns that exceed 5 % of the original contract amount; to provide for unforeseen work, grade changes, or alterations in plans which could not reasonably have been contemplated or foreseen in the original plans and specifications; to change the limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; **to settle contract claims;** and to make the project functionally operational in accordance with the intent of the original contract. Supplemental Agreement may be used to expand the physical limits of a project only to the extent necessary to make the project functionally operational in accordance with the intent of the original contract. The cost of any such agreement extending the physical limits of a project shall not exceed \$100 000 or 10% of the original contract price, whichever is greater....*

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- Construction Bulletin No. 01-02, dated January 29, 2002, reads:

SUBJECT: CONSTRUCTION PROJECT ADMINISTRATION MANUAL (CPAM) CHANGES

...

*Chapter 4, Section 7, **Contingency Supplemental Agreements and Work Orders (Unforeseen Additional Work)***

All references to "Unforeseen" are deleted.

Article 4.7.5 is deleted and following substituted:

4.7.5 Identifying the need for a Contingency Supplemental Agreement, Work Order and Field Supplemental Agreement

*Field Supplemental Agreements are funded through an Initial Contingency Amount Pay Item (999-25 or 2999-25), where as, Work Orders are funded through a **Contingency Supplemental Agreement**.*

A Field Supplemental Agreement/Work Orders (Form No. 700-010-80) may be used to document additional work or contract changes in accordance with Section 4.3.5.1 of the CPAM with the following restrictions:

- *A Field Supplemental Agreement/Work Order shall not be written to include normal overruns of existing contract items of work at established contract unit prices shown in the contract documents.*
- *A Field Supplemental Agreement/Work Order shall **not be used to settle claims**.*

...

*The terms of the **Field Supplemental Agreement/Work Order** shall provide for **full and complete settlement of all issues described therein**.*

- The CPAM describes a Contingency Supplemental Agreement and Work Order:

Construction Project Administration Manual:
Contract Modifications

May 1, 1999
Revised: March 1, 2001

Section 4.7 CONTINGENCY SUPPLEMENTAL AGREEMENTS AND WORK ORDERS (UNFORESEEN ADDITIONAL WORK)

4.7.1 Purpose

The Districts may request certification of funds for timely authorization of **unforeseen additional work necessary to complete the work** in accordance with the intent of the original contract; the responsibility to authorize the Contractor to proceed with that additional work may be delegated to the Project Engineer.

...

4.7.4 Background

Due to the complexity or size of construction projects, it is expected that **unforeseen additional work may be necessary on some projects to complete the work** and make the project functionally operational in accordance with the intent of the original contract.

Expedient authorization for unforeseen additional work may be required to **avoid delay** to the progress of the work and to **avoid potential delay claims**.

4.7.5 Definitions

Unforeseen additional work shall meet all the following qualification:

- (1) The additional work shall be necessary to complete the project in accordance with the intent of the original contract.
- (2) The additional work shall not add features to the project which functionally expand the original contract.
- (3) The additional work shall be **previously unforeseen**.
- (4) A timely completion of the additional work shall be necessary to **prevent a delay** to completion of the project or **exposure to excessive additional costs**.
- (5) The additional work shall not include normal overruns of existing contract items

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of work at established contract unit prices for work shown in the contract documents.

- (6) The total cost of all additional work associated with any incident shall not exceed the following limits, except as shown in **Section 4.7.6** below.
 - (a) If the Original Contract Amount is \$5,000,000 or less, the total cost of all additional work associated with any incident shall not exceed 5% of the Original Contract Amount or \$50,000, whichever is less.
 - (b) If the Original Contract Amount is more than \$5,000,000, the total cost of all additional work associated with any incident shall not exceed 1% of the Original Contract Amount or \$150,000, whichever is less.
- (7) **The terms of the Work Order shall provide for full and complete settlement of all issues described therein.**⁴

...

4.7.7 Contingency Supplemental Agreement

4.7.7.1 General

A **Contingency Supplemental Agreement** form authorizing commitment of funds for an amount not to exceed the limits defined above shall be executed for the encumbered funds designated for **unforeseen additional work** after the encumbrance has been certified by the Comptroller's Office except when funds are provided by a **Contingency Pay Item**

...

All terms specified on the **Contingency Supplemental Agreement Form** shall apply; no additional terms or disclaimers concerning costs of unforeseen additional work shall be accepted. **The terms of the Contingency Supplemental Agreement shall not be modified. IF AN AGREEMENT FOR PERFORMANCE OF UNFORESEEN ADDITIONAL WORK CANNOT BE OBTAINED BETWEEN THE DEPARTMENT AND THE CONTRACTOR WITHIN THE TERMS OF THE CONTINGENCY SUPPLEMENTAL AGREEMENT, THE STANDARD SUPPLEMENTAL AGREEMENT, FORM NO. 700-010-45, SHALL BE EXECUTED.**

...

4.7.7.3 Contract Time

No additional contract time shall accrue or be granted on a Contingency Supplemental Agreement.

4.7.8 Work Order

4.7.8.1 General

A **Work Order for Unforeseen Additional Work, Form 700-010-80, (Attachment 4-7-3)** shall be completely executed prior to allowing the Contractor to begin the unforeseen additional work. The **Work Order** shall not be executed until the **Contingency Supplemental Agreement** authorizing commitment of the funds has been executed, except when funds are provided by a **Contingency Pay Item**.

The intent of this procedure is to allow delegation of authority for execution of the **Work Order** to a responsible Department representative who can make timely decisions for completing the unforeseen additional work. Authority for execution of the **Work Order** may be delegated to the **Project Engineer** at the discretion of the District Secretary.

ON CEI PROJECTS, THE DEPARTMENT WILL BE IN RESPONSIBLE CHARGE OF THE PROJECT AT ALL TIMES. Authority for execution of the **Work Order** may be delegated to the Consultant Senior Project Engineer. But, the responsible Department Engineer must co-sign the **Work Order**. The Consultant Senior Project Engineer should sign the **Work Order** in the space shown for the Department, including his title, and the responsible Department Engineer should co-sign directly above, including his title.

⁴ Updated 12/2000 to include this paragraph.

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Documentation of delegation of authority by the District Secretary will be on file.

When unforeseen additional work is identified, a *Work Order* shall be executed to document a complete DESCRIPTION of the unforeseen additional work to be performed and the REASON why this work is necessary.

The *Work Order* shall designate whether or not the work described results from a Design Error or Omission.

When the *Work Order* results from a design error or omission by a design consultant, refer to *Identifying and Assigning Responsibility for Errors and/or Omissions by Design Consultants, Procedure No. 375-020-010*.

ALL INFORMATION REQUESTED ON THE *WORK ORDER* FORM SHALL BE SUPPLIED. **THE FORM SHALL NOT BE ALTERED.**

...

4.7.8.4 Costs

All costs for the unforeseen additional work shall be:

- (1) Negotiated and documented on the *Work Order for Unforeseen Additional Work* and attachments thereto, **including the basis for all negotiated costs, or;**
- (2) Based on material invoice costs and labor payroll costs including mark-ups shown in *Paragraph (2)* of the *Contingency Supplemental Agreement Work Sheets* itemizing the costs will be attached. **No disclaimers or clauses allowing the contractor to reserve his rights to request other costs shall be accepted.**

If an agreement on costs cannot be obtained as shown above, the additional work will be administered in accordance with Section 4.3. Work Orders shall not be used to pay claim settlements.⁵

The *Work Order* shall identify any Premium Cost associated with unforeseen additional work. Premium Cost is defined as additional cost which would not have been incurred if the work described therein had been included in the original contract (See paragraph 4.3.4). When Premium Cost is identified, reasons justifying FHWA participation shall be attached.

The total cost documented in any *Work Order* shall not exceed the limits defined above. The unforeseen additional work associated with any incident may be documented by more than one *Work Order*.

Example 1: When the work associated with one incident is to be performed in phases, a separate *Work Order* may be executed to document the description, reason, and costs of each phase of the work, respectively.

Example 2: When the work associated with one incident, or one phase of the work associated with one incident, is to be paid from funds committed in part by more than one *Contingency Supplemental Agreement*, or by a *Contingency Pay Item* and one or more than one *Contingency Supplemental Agreement*, a separate *Work Order* shall be executed to identify the *Contingency Pay Item* and each *Contingency Supplemental Agreement* committing each part of the funds, respectively. Each *Work Order* shall contain the **same total work description, reason, and total negotiated cost for the work described**, and the part of the total cost to be funded by the *Contingency Supplemental Agreement*, or *Contingency Pay Item* identified in the respective *Work Order*.

...

Since the lump sum cost of additional work described in a *Work Order* may be an estimated amount, the adjustment to the lump sum cost specified in the *Work Order* may be necessary. When the lump sum cost of additional work exceeds the estimated amount shown in the *Work Order*, another *Work Order* must be executed for the portion of the cost exceeding the estimated amount. When the lump sum cost of additional work is less than the estimated

⁵ Inserted last sentence 12/2000.

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amount shown in the **Work Order**, the excess amount shown in the **Work Order** automatically remains available in the Contingency Supplemental Agreement for use in future **Work Orders** on that project.

4.7.8.5 Contract Time

Additional contract time required for performing unforeseen additional work may be granted on a Work Order for Unforeseen Additional Work, or in a time extension letter. Time extensions will be determined based upon the effect of the unforeseen additional work on controlling items of work shown in the Contractor's approved work progress schedule. **The Work Order or letter shall document the reasons for all time extensions.** Signature authority for time extensions necessary for performance of unforeseen additional work may be delegated to the Resident Engineer or Project Engineer at the discretion of the District. Consultant Senior Project Engineers shall not be authorized as signatories for time extension.

4.7.9.2 Work Orders

- (1) When **Work Orders** have been executed committing all funds authorized by a **Contingency Supplemental Agreement**, or **Contingency Pay Item**, or at project completion, whichever occurs first, the **Work Orders** with attachments as designated shall be immediately distributed as follows:
 - (a) ...
- (2) Attachments indicated below shall be distributed with the **Work Orders** as indicated above.
 - (a) **Documentation forming the basis for all costs.**
 - (b) Copies of **all letters granting time extensions, including documentation forming the basis for all time extensions.**
- (3) The **Work Order** documents and attachments shall address the following in sufficient detail to **adequately explain the unforeseen additional work** to anyone not familiar with details of the project.
 - (a) What work was done.
 - (b) Why the work was necessary.
 - (c) Why the work qualified as unforeseen additional work.
 - (d) Why the costs and time extensions were considered reasonable.
 - (e) Work sheets itemizing the costs.

- All parties agree that there were many utility delays on the project.
- DRB Meeting minutes indicate that not all of the impacts had been presented to the FDOT:⁶

DRB Meeting: #04

Date: 26AUG99

Contractors Progress:

*Mr. Duke requested the schedule percent complete and a targeted completion date. Mr. Rook stated that the percent complete to date is 20%. Mr. Rook noted that the project is **approximately three (3) weeks behind schedule.***

Three Month Look Ahead

*Mr. Rook stated there is a problem with the old **12" transite water line.** A directional bore has been designed by the City of Kissimmee. There are several utilities in this location.*

Potential Problems:

Mr. Rook stated that a claim has been submitted for the directional bore.

*SCI asked if the utility **conflicts would be an on going issue on the project.** Mr. Rook stated **he suspected that utility conflicts would be present throughout the duration of the project.***

*Mr. Gillis stated that a letter would be sent **to Sprint concerning their lines that are in conflict with SCI's pipe installation.** Mr. Gillis noted that Sprint will be notified that their old lines should be placed out of service and the new lines be energized.*

⁶ A more complete DRB meeting summary is attached.

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Mr. Duke asked what issue was impacting the schedule the most. Mr. Rook noted that **the utility relocation schedule, weather and other minor conflicts are impacting the schedule.**

Mr. Gillis noted that the **water main installation in the location where the utility companies are in conflict will be the challenge.**

Mr. Gillis reviewed the following claims: a claim for pigging has been submitted, additional clearing and grubbing claim has been settled, additional valve and tee has been settled, a claim for directional bore has been made.

The City of Kissimmee expects a claim for the directional bore.

Schedule Update:

Mr. Duke asked if there were any delays at this time and if so, **was SCI getting the days to cover the work.** Mr. Rook noted that there **were no delays at this time.** Mr. Duke stated that delays should be monitored.

Mr. Duke asked SCI if the schedule has been **re-phased since the work has been re-phased.** Mr. Rook noted that **SCI is following the original schedule.** However, if the FDOT would like the schedule updated, SCI would submit a revised schedule. Mr. Gillis stated that SCI has been submitting CPM schedule updates.

Mr. Rook noted that in the CPM update is showing **114 days negative float.** Mr. Rook stated this **negative float is due to the utility conflicts.** SCI requires dates for work that is to be performed by the utility companies. Mr. Gillis feels that Sprint will impact SCI's schedule the most.

DRB Meeting: #09

Date: 29JUNE00

Opening Remarks of Chairman:

Mr. Duke reviewed the percent progress of the project. The percentage completion as of this date was **calculated from the original schedule.** Mr. Duke noted that there is would be a challenge for the contractor to maintain the schedule as it stands today.

Mr. Duke noted that the board is aware that the contractor has submitted a revised schedule and that this new schedule is being reviewed by the FDOT. The revised schedule states that the **revised completion date for the project is 2004.**

Contractor's Progress:

Mr. Duke asked if this project could have been completed without the JPA. Mr. Gillis stated that due to the type of work that has been done the involvement with the JPA has been an asset to the City of Kissimmee and to the project. The City of Kissimmee has done an outstanding job at working with the Department and the contractor. Mr. Gillis stated that there have been several work orders written for the JPA work. **Mr. Duke asked if the work orders and time have all been agreed upon.** Mr. Gillis noted that not all work orders have been agreed upon. Mr. Rook noted that there are **outstanding claims for impacts on the project.** These claims were acknowledged, but have been denied based on lack of information. It was noted that the **information needed to solve outstanding claims would be determined later.**

One-Month Look Ahead:

Mr. Duke asked if there have been any delays in the last month that have not been addressed since the last meeting? **Mr. Rook stated the there are utilities in the ditch line by Cracker Barrel.** The utility companies have been notified of the conflicts in this area.

Schedule Update:

Mr. Duke asked if the revised schedule would be reviewed and any problems be taken care of before the **next DRB meeting.** Both Mr. Rook and Mr. Gillis **stated yes they hope that the schedule would be reviewed and all problems addressed.**

Mr. Duke asked Mr. Rook when SCI **anticipated the completion of the project,** realizing that it is subject to change. Mr. Rook stated that **by the fall of 2001.**

Mr. Duke asked if there was any outstanding time to be granted? **Mr. Rook stated that there should be time granted for utility delays.** Mr. Ryan stated that **once impacts are realized the time issues for utility delays should be settled.**

DISPUTE REVIEW BOARD RECOMMENDATION

CEI's Remarks:

It was noted that the **Department is reviewing the schedule.**

There has been downtime and delays since the last DRB meeting, but they have been paid for.

Mr. Duke asked how GAI feels about the schedule. **Mr. Gillis noted that the schedule does not look good at this time.**

DRB Meeting: #10

Date: 20JUL00

Contractor's Challenges/Potential Problems:

Mr. Duke asked if any delays have occurred. **Mr. Rook noted that SCI has incurred delays while working on the retaining wall. Adelpia and Sprint were in conflict in the area of the retaining wall operations and SCI has had to move the crews to different locations.**

Mr. Rook noted that **a pipe crew was down when they came upon an unmarked conduit.** After a day of attempting to find out whom the conduit belonged to SCI cut it out of the way. No one complained about the conduit being cut.

Mr. Rook noted that the **gravity sewer line on the east end installation would be a challenge due to the utility conflicts in the area.**

Getting the schedule approved will also be a challenge.

The **water main is in conflict** with the line that is to be relocated by the City of Kissimmee.

Schedule Discussions:

Mr. Gillis noted that GAI has provided Peeri Pappas, FDOT, with comments regarding the schedule. GAI anticipates that the comments from the Department should be submitted shortly. Mr. Ryan noted that there will be some plan changes to SR 535 and this shall save some time. Mr. Ryan also noted that the **Department could not approve a schedule that is beyond the contract time.** SCI should request a time extension if they feel that the project could not be met. **There might be a six to eight month extension requested by SCI due to utility delays to the project.** The estimated contract completion time is May 2001, due to weather time extensions and automatic time suspensions. **The utility delays were discussed and SCI had notified GAI and FDOT that the utility delays have impacted SCI's work.** There has been no information provided at this time regarding the utility conflicts.

DRB Meeting: #11

Date: 19SEP00

Schedule Discussions:

Mr. Rook explained that **SCI has finally received the updated schedule from the utility companies and will incorporate this information into the revised CPM schedule.** Mr. Rook noted that the updated schedule were not as extensive as SCI would have preferred, but the Department told them to do the best they can with what information they do have and have the schedule submitted by September 25, 2000. Mr. Ryan told SCI that some of the items left for the utility companies to complete may be able to be done easier by working with SCI. SCI can let them know when they will be in the area and when the utility work needs to be completed by and the utility companies can come in and get it done at that time.

Mr. Duke asked what the revised schedule was going to show SCI as completing the project. Mr. Duke **asked if SCI was behind on their schedule.** Mr. Rook **said yes.** Mr. Rook said the project would probably be complete by **December 2001 or January 2002.** Mr. Rook stated that **SCI is running about seven months behind.** Mr. Ryan said one of the things the Department will be looking for with this revised schedule is that if the completion date is past the revised completion date of May 28, 2001, **SCI will need to submit back up information addressing the time issues and the need of a time extension request so it can be reviewed otherwise the schedule will be rejected.**

Mr. Ryan said the Department has addressed all of the time issues that have been submitted to date. **Mr. Gillis agreed and stated that all of these time issues have been paid through money and/or time.**

Mr. Ryan mentioned that SCI will be finishing up with the groundwork shortly and they should be able to make up some time while working above ground. Mr. Smith said the roadwork such as paving, striping, curb, etc. will be completed around the original time.

DISPUTE REVIEW BOARD RECOMMENDATION

Mr. Duke asked **where SCI is with their work according to their original schedule. No one could answer this question because SCI has been working out of sequence with the phases.** Mr. Richardson asked what prompted SCI to work out of sequence with the phases. Mr. Ryan said **SCI encountered conflicts in Phase III** so they moved to **Phase IV where work was available** and their crews could keep working. Mr. Duke asked if when SCI moved to Phase IV to work instead of Phase III, did they increase their productivity versus what they would have done by working in the correct phase sequence. **Mr. Rook said anytime you move around to work you are not going to get the same results as you would if you set up in one spot for a while and worked.** Mr. Duke asked **if the time spent moving around was part of the time issues that have not been addressed as of yet.** Mr. Rook said yes a lot of it is. Mr. Ryan said that is the **type of information we will need in order to review your time extension for the seven months.**

Mr. Richardson asked SCI where they thought they would be if they had **worked the phases in the proper sequence.** Mr. Rook said, there is no way to really answer that, but his guess would be that they would still be in Phase III or maybe have started Phase IV, **but they would probably be further behind than they are now.** Mr. Rook said SCI had a numerous amount of conflicts in Phase III. Mr. Duke asked **if SCI had incorporated these conflicts, which SCI has encountered, into their revised schedule so that these impacts can be seen.** Mr. Rook said no.

Mr. Duke asked if SCI would have the revised CPM schedule ready on September 25, 2000. Mr. Rook said yes. Mr. Duke asked if he thought it was going to be approvable. **Mr. Rook said there would have to be a time extension.** Mr. Duke verified that **the schedule was not going to include the impacts that have occurred in the past.** Mr. Rook said that would be a **lot of work due to the amount of impacts** and SCI would need more time to incorporate those items.

CEI's Remarks:

Mr. Duke asked the Department where they saw SCI on the schedule as far as completion goes. Mr. Gillis said based on SCI's past performance, manpower and equipment that is on the project, it looks like the road work for all six lanes, with the exception of the friction course and final striping, will be complete around July 2001. The streetscape and all of the wind up work looks to be complete around December 2001 and with six weeks to place the friction course and final striping, **the entire project should be complete by the latter part of January 2002 or early February 2002.**

DRB Meeting: #12

Date: 05OCT00

Schedule Discussions:

Mr. Duke inquired about the schedule that SCI submitted but was rejected. **Mr. Rook said SCI submitted a revised schedule that showed a completion date of December 2002** with a progress **override date of February 2002.** Mr. Rook said he is presently looking at the schedule to see where he can cut down on some time and make it closer to what was projected, December 2001 or January 2002. Mr. Rook mentioned that the Department has withheld SCI's monthly payment for September 2000. Mr. Duke asked when Mr. Rook thought he would have another revised schedule to be submitted for approval. Mr. Rook said he was working on it and apparently the Department is trying to set up a meeting with Mr. Steve Smith, owner of Smith & Company, Inc. Mr. Buser asked SCI, based on the schedule that SCI currently has, how are you progressing on a weekly basis compared to the schedule. **Mr. Rook said he feels SCI is doing well compared to the durations on the schedule.** Mr. Buser asked if SCI was working on most of the items they thought they would be working on during this time frame and the manpower is where it is supposed to be. Mr. Rook said yes. **Mr. Watson said actually SCI is ahead in some critical path activities that were listed on the revised schedule.** Mr. Rook mentioned some of the utility companies that are currently working on the project still. Mr. Duke **asked if these utility companies were holding SCI up in any areas.** Mr. Rook said no, but it is showing in the schedule that these items should be complete and they are not, which pushes the retained logic back. Mr. Buser asked if this was what was making SCI schedule show longer durations. Mr. Rook said not totally, but it is part of it. Mr. Duke asked if when the schedule is done in progress override, are there activities that are progressing that should not be. Mr. Rook said when you break a project up into pieces, going station to station, there are going to be some sections where you will run into conflicts at some point or another. **Mr. Rook discussed the situation at Wild Bills and all of the problems they have run into and are still having in this area.** Mr. Duke asked if what SCI was saying was that the schedule is changing on a daily basis due to SCI's factors, the Department's factors or utility factors. Mr. Duke then asked if Mr. Rook thought the schedule that was submitted reflected what was actually going to take place on the job due to the different constraints and other issues. Mr. **Duke said it has come down to a time issue for SCI to really sit down and work out a schedule that the Department can review and thinks is worth reviewing.**

DISPUTE REVIEW BOARD RECOMMENDATION

Mr. Duke asked if SCI had submitted any letters or documentation requesting a time extension from the point of the original contract day to the date listed on the revised schedule. Mr. Rook said nothing has been submitted.

CEI's Remarks:

Mr. Gillis said the Department has made themselves clear in several meetings that the revised schedule had to reflect how the contractor was going to construct the work in the amount of time allotted in the contract and if he was not going to do this, a request for a quantifiable time extension, including back up documentation, needed to be submitted. SCI was told the schedule would not be approved if this was not submitted. The Department has been waiting on this revised schedule for five months now. Mr. Gillis said the Department has had it with the **delays on receiving a reasonable schedule** and is ready to take action in order to build the job on time. Mr. Gillis mentioned that SCI only has 22 men working on site currently. Mr. Gillis said the schedule that SCI submitted was broken into eight sections instead of the phases, which was allowed because the Department told SCI to schedule the work according to how they wanted to complete it. Mr. Gillis said the problem with the schedule is that even with the override projection, the job will not be completed until December 2001 or January 2001 (sic) and this is unacceptable as well. The Department is going to hold all subsequent pay estimates until they receive an acceptable schedule, which can be approved. The withholding of the monthly payments is part of the special provisions. Mr. Gillis said the Department is trying to set up a meeting on October 17, 2000 at 2:00 pm to be held at the Orlando Construction Offices with Mr. Smith and a representative of SCI's surety company. The representatives from the Department include Mike Snyder, George Gilhooley and Steve Wigle.

Mr. Duke said basically the Department is not saying that SCI is not due time, but the Department needs SCI to quantify the time and give them a schedule that accurately reflects the time required to complete the project. Also documentation that shows the impacts that have affected the progress of the project. Mr. Duke asked what if there is time that is over and above the impacts made by the third parties that cannot be made up. Mr. Ryan said the schedule would be rejected if it was not justifiable. Mr. Gillis said if it was something in the range of thirty days, the Department could work with that. Mr. Gillis said the Department is trying to get SCI's attention and shown them how important it is to submit a schedule that reflects the work that is in progress and a request for a time extension. **The schedule will need to reflect the impacts to date.**

Mr. Gillis said SCI will probably be completed with the roadway construction around May 2001.

Mr. Ryan said that there was not one set up at this point. Mr. Buser asked if maybe an item on the agenda could be a list of critical items that must be done and discuss if with SCI. Mr. Ryan said the problem is that **the people needed to attend from SCI do not attend, usually and an item will be discussed and we think it is resolved,** but when Mr. Rook takes the decision back to his higher ups, it is not acceptable and we are back to where we started. Mr. Gillis said if there were more communication between the Department and SCI, things would run smoother

Mr. Rook added that there are **more impacts affecting the job still.**

DRB Meeting: #13

Date: 08NOV00

Contractor's Challenges/Potential Problems:

Mr. Duke asked if SCI was working according to their schedule and if the schedule was holding up. Mr. Duke also asked SCI if any delays had occurred since the last DRB meeting. Mr. Rook said SCI encountered **some delays in the first part of October 2000** while trying to finish up the Phase III storm. Mr. Rook said there were a **couple of conflicts with the City of Kissimmee's existing water line.** Mr. Rook said SCI had a few minor problems with the storm at Poinciana, which involved Kissimmee Utility Authority, in the first part of November 2000.

Mr. Duke asked SCI if there was anything they would like to make the DRB Board aware of. Mr. Rook said the Department released SCI's payment for September 2000 **when they submitted the time extension along with the back up, but they are still holding SCI's October payment.**

Schedule Discussion:

Mr. Duke asked SCI where they stood with their work schedule. Mr. Rook said SCI submitted their revised baseline submittal addressing the comments made by the Department on November 02, 2000. SCI has also submitted a time extension request for **189 days along with the backup information.** Mr. Rook said this extension would extend the contract to approximately December 13, 2001. Mr. Duke asked if SCI's schedule reflected these 189 days. Mr. Rook said yes.

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CEI's Remarks:

Mr. Gillis said SCI did submit a revised schedule, which is currently under review and being updated with the final work up by the Department. Mr. Duke asked what Mr. Gillis meant by "final work up". Mr. Gillis said, finding the problems within the schedule and having them addressed. Mr. Gillis said even though SCI has submitted a time extension request, the **schedule is still being shown as being completed way beyond the date that the contract allows.**

Mr. Gillis said he is not sure if the Department is going to release the October 2000 payment. Mr. Gillis said he has a meeting tomorrow, November 09, 2000, with Steve Wigle and he will be presenting GAI-SE's evaluation of SCI's time extension request. This evaluation along with the schedule that SCI has submitted will determine whether or not the October 2000 payment will be released or not. Mr. Duke asked if Mr. Gillis was at liberty to say what GAI-SE's recommendations are. **Mr. Gillis said with what GAI-SE has had to review and with going through all of the supporting documentation, there has been little time found that has not been accounted for and that can be considered.** Mr. Gillis said they feel like they have either paid for the time or have denied the requests. Mr. Gillis said he did not know how this evaluation would affect the outcome of the release of the October payment. This decision will be left up to Mike Snyder.

Mr. Duke said it was the Board's impression, at the last meeting, that it was recognized between both parties that the **foreseeable time for the project to be completed was around December 2001.** Mr. Gillis said GAI-SE based their statement on SCI's past performance. Mr. Gillis said he does not want to give the impression that the Department has accepted this fact. Mr. Duke said the Board recognizes this. Mr. Gillis said with SCI's current manpower, equipment and commitment for finishing the job, SCI probably will not finish until then.

Mr. Gillis said there was a meeting between the Department and Stephen Smith where commitment to finishing the job was discussed. Mr. Gillis said and yet another schedule was turned in with a completion date of February 2002. Mr. Rook said that one of the Department's comments that SCI addressed in the schedule was the tying in of Phase V construction, which is the last lift of structural and the friction course into the critical path and that is what extended the completion date. Mr. Watson said there was also a problem with the way SCI was sequencing their work. For instance, SCI had the **friction course being placed prior to finishing sod and irrigation.** Mr. Watson said per the specifications that cannot be done. Mr. Rook said you are right. Mr. Gillis said items like these are what have pushed the schedule out further. Mr. Gillis said he thinks the improper sequencing may be one of the reasons for rejecting this revised schedule. **Mr. Rook said it seems like the only date the Department wants to see is May 2001.** Mr. Gillis said that exactly around what we want to hear. **Mr. Rook said he doesn't understand how the Department thinks a job like this one, with all of the utilities underground and the problems that arise from that, could be expected to finish on time.** Mr. Ryan said the Department has granted time for utility delays. **Mr. Rook said those were days granted for down time, not for unproductive time where SCI had to jump around to find work available.** Mr. Ryan said looking at the time extension request provided by SCI, there were 458 days of which SCI said were justifiable, but they were only asking for 189 days. Mr. Ryan said when the review of the time extension started we had to find out if the days in question had already been paid for by work order, if the work was even on the critical path and if any of the days requested were weather days. Mr. Ryan said **another problem we are having is where SCI is saying they have 200 days that are justifiable but are only asking for 20 of the 200 days.** Which 20 days? Mr. Ryan said also some of the issues may be tied into the claims that are to be presented to the DRB. All in all SCI was not specific enough in their backup for the days requested. Mr. Ryan said the **Department has addressed every issue.** Rather the time was granted or denied. Mr. Ryan said he believes the Department has been prompt and fair with their decisions. Mr. Ryan and Mr. Gillis both stated that when **one of SCI's crew that was working on the critical path went down, they were given the day even though they could have sent that crew elsewhere to work and still be productive.** We feel that even though the one crew went down, the whole job was not impacted by it, but the day was granted. **Mr. Duke said there seems to be a slight gap between the time that SCI thinks they are due compared to the time the Department thinks is due.** Mr. Gillis said that is to be expected, but we are trying to break it down. Mr. Gillis said he is sure that once he turns in GAI-SE's evaluation of the time extension and the results are forwarded to SCI, that they can sit down and go over the outstanding items. Mr. Gillis said we are trying to get these time issues solved as quickly as possible because the time factor is going to be very, very critical for this job. **Mr. Buser asked if there was enough time to be granted to take SCI through June 2001.** Mr. Gillis said yes. There will probably be more weather days to be granted. Mr. Gillis said the Department has been very liberal with the weather days so far. Mr. Gillis said it is easy to explain that the weather has impacted the job a certain amount of days, because the public can relate to that. Mr. Buser asked GAI-SE if when they based

DISPUTE REVIEW BOARD RECOMMENDATION

the projected completion date on SCI's past production, did they factor in the possibility of a quicker work pace once out of the ground. Mr. Gillis said no we did not. SCI has brought in a second grade crew, which is helping out a lot. Now that the majority of the storm work is done, the grade crews can continue at a steady pace. **Mr. Duke verified that SCI has documented 458 incident days. Mr. Rook said those are straight delay days when an activity was stopped for a certain conflict and when the activity was resumed.** When you put those in the schedule, not all of them are critical. Mr. Rook said SCI felt they were impacted over 200 days, based on the schedule, and we felt that going into Phase III and IV, they could make up some time and we still feel that way. Mr. Duke asked where SCI would be today if they would have stayed in sequence to their baseline schedule. Mr. Rook said he doesn't know. Mr. Rook talked about some of the problems SCI has had in the different phases.

Mr. Ryan said where we stand right now with the time extension is the Department feels they have **granted everything that was requested and there is not enough information to show where we haven't.** Mr. Duke asked if SCI's revised schedule included the weather days. Mr. Rook said yes it does.

DRB Meeting: #14

Date: 04JAN01

Contractor's Challenges/Potential Problems:

Mr. Duke **asked if any problems had arisen over the past two months. Mr. Rook said no.**

Mr. Duke asked if anything happened **to cause any delays over the past two months.** Mr. Rook said no and that everything has been going good.

Schedule Discussions:

Mr. Duke said **at the previous DRB meeting, SCI had submitted a schedule asking for a 189 day extension.** Mr. Duke asked what the status was currently. **Mr. Rook said SCI submitted what they thought was an accelerated schedule, showing a completion date for the remaining contract time.** Mr. Rook said once this schedule was submitted, the FDOT released the pay estimates that were being withheld from SCI. Mr. Duke asked what was the completion date that SCI's schedule shows. Mr. Rook said **June 05, 2001.** Mr. Rook said he did not know if the schedule had been approved yet. Mr. Ryan said SCI would be getting approval on the schedule. Mr. Duke asked in what regards is the schedule being approved? Mr. Ryan said GAI-SE needed to write the FDOT a letter stating that they thought the schedule would work. Mr. Gillis said GAI-SE believes that the schedule submitted by SCI is workable, but it will be a tough schedule to follow. Mr. Gillis said if SCI falls behind even a little bit, it would have a great impact. Mr. Gillis said GAI-SE has accepted the schedule. Mr. Ryan said the **FDOT wanted to get all of the concerns about the schedule, because SCI did make it very clear that they felt they were being ordered to accelerate the job.** Mr. Buser asked if this schedule was predicated on the possible overbuild at Poinciana. Mr. Ryan said no it is not because Poinciana is still an open issue, but it would help SCI out if it were approved.

DRB Meeting: #15

Date: 02MAR01

Contractor's Challenges/Potential Problems:

Mr. Duke asked if the Department aggravated SCI in any way since the last DRB meeting. Mr. Rook said there are differing opinions between the Department and SCI on the issue concerning a ditch bottom inlet that was set, S-12. Mr. Duke asked what was the issue. Mr. Rook said the issue is that the DBI is not set in its planned location. **SCI's contention is that the structure is set where it could be set due to the fact that a waterline had to be realigned. Mr. Rook said he thinks that GAI-SE's contention is that the waterline was placed in the wrong area.**

Mr. Duke asked if any delays **occurred that were not within SCI's control.** Mr. Rook said **Florida Power** decided to come out and relocate some of their utilities when they found out that SCI was pouring rat slabs for the bus stops around some of their poles and guy wires on the southeast corner of Holiday Trail. SCI was set up to pour the slab when Florida Power backed their truck up over the stakes, mesh and form boards. Florida Power did get their pole and wires moved, but created a mess. Mr. Duke asked if this created a delay for the project. Mr. Rook said it did slow down the activity, but it was not a critical path item.

DISPUTE REVIEW BOARD RECOMMENDATION

Schedule Discussions:

Mr. Duke noticed that the Contractor had gained a **couple of days since the last DRB meeting, showing a revised completion date of June 11, 2001**. Mr. Duke asked when SCI was going to have the job completed. Mr. Rook asked Mr. Duke if he meant when SCI was going to be completely off the job. Mr. Duke said first, **a date for substantial completion and then a date for final completion**. Mr. Rook said SCI should be substantially complete **by August 2001** and should be off the job by **September 2001**.

CEI's Remarks:

Mr. Gillis said he agrees that the job has started to look better over the past two months and things are beginning to come together. He also agrees with Mr. Rook that if SCI and their subcontractors keep the pace they are at now and the weather holds out, **the job should be finished around September 2001**. Mr. Duke verified that SCI and GAI-SE agreed upon a completion date within **30 days of each other**. GAI-SE and SCI said yes.

DRB Meeting: #16

Date: 12APR01

Contractor's Challenges/Potential Problems:

Mr. Duke asked if the project was in SCI's control this past month and if anything happened to hold up any of the activities. Mr. Rook mentioned the **recent problem they ran into with the City of Kissimmee while trying to locate a water main**. Overall, Mr. Rook said there have only been **minor problems with different grades, which have been ironed out rather quickly**.

Mr. Duke asked if there were any outstanding RFIs or Shop Drawings. **Mr. Rook said there is an issue with the shop drawings for the handrail**, which will be an upcoming activity within the next month or so.

Schedule Discussions:

Mr. Duke asked how the schedule was looking at this point. **Mr. Rook said SCI is showing to be behind by approximately 20 to 30 days**. Mr. Rook said SCI would be submitting a schedule update this month after the monthly cut off. Mr. Duke asked which activities were on the critical path at the present time or within the next month. Mr. Rook said for now the east end construction is critical and once that is completed SCI foresees the roadwork at the bridge to be the next item on the critical path.

Mr. Duke asked SCI when they thought the project would be completed. **Mr. Rook said September 2001**. Mr. Duke mentioned that at the last meeting the completion of the project was listed as August 2001 for substantial completion and September 2001 would be the final completion date. Mr. Duke asked if this still held to be an accurate estimate. Mr. Rook said yes. Mr. Duke asked if these dates for completion reflected the 20 to 30 days that SCI is behind. Mr. Rook said yes. Mr. Rook said the only thing that is a little unclear at this point is the punch out work that will be needed, but is hard to quantify.

Mr. Duke if **June 17, 2001 was the contract date for the completion of the project**. The answer was yes.

CEI's Remarks:

Mr. Duke asked if there was enough time in the schedule allocated for each of the activities. Mr. Rook said **when SCI first submitted their CPM schedule each activity did have a longer duration, but in order for SCI to meet the date being mandated by the FDOT, the durations were cut**. This is where SCI's contention of being accelerated comes into play. Mr. Gillis said it was not the time mandated by the FDOT, but the time mandated by the contract. This is where the disagreement begins. Mr. Duke asked SCI how the durations were affected by showing the completion of the job by the contract date. **SCI feels the durations of the remaining work were cut in half**.

Mr. Gillis said **GAI-SE feels September 2001 will be the final completion date** for the project. He explained some of the problems that have been occurring with the landscaping and said this might be what holds up the progress of the completion. Mr. Gillis doesn't feel that any other activity will pose a problem. Mr. Gillis asked if SCI agreed with this. SCI said the landscaping is their biggest concern.

Mr. Duke asked **if SCI had a time extension coming**. Mr. Rook said **SCI is working on the utility claim and should be submitting it shortly**. There will be a time extension request within the claim.

DISPUTE REVIEW BOARD RECOMMENDATION

- The Engineer acknowledges that:

*Although entitled a "Request", SCI's presentation represents a claim for additional money and time. It is, in fact, a claim for time and damages due to alleged cumulative **impacts on the job.***

BOARD RECOMMENDATION:

Without a reservation on the Work Order by the Contractor, the Work Order is complete settlement for all issues contained and documented therein. The Work Order contained the documentation/basis for all negotiated cost and time extensions. From the project files and testimony the parties were aware that a request for compensation for utility delays would be forthcoming.

Based on the materials supplied to the Board and presentations to the Board at the DRB hearing, the Board **recommends that the Contractor be paid for any compensable delays that were not documented on the work orders and/or supplemental agreements. This may include time and cost impacts to other dependent phases of construction on the project not included in the Work Order documentation.**

This 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 DRB and the other party of your acceptance or rejection of this recommendation is required within 15 days. Failure to respond constitutes an acceptance of this recommendation by both parties.

I certify that I have participated in all of the meetings of this DRB regarding this issue and concur with the findings and recommendations.

Respectfully Submitted,

Disputes Review Board

John H. Duke, Sr.; DRB Chairman

Bobby D. Buser, P.E.; DRB Member

E. K. Richardson, P.E.; DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



John H. Duke, Sr.; DRB Chairman

Attachment: DRB Meeting Excerpts