

## REGIONAL DISPUTES REVIEW BOARD RECOMMENDATION

June 3, 2004

Ricardo Delfino, Project Manager  
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Ft. Lauderdale, FL 33332

Howard Shaffren, P.E., Sr. Project Engr.  
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4612 North Hiatus Road  
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**RE: Financial Project Number 232352-1-52-01, Widening & Resurfacing  
Sawgrass Expressway from S. of Sunrise Blvd. To S. of Atlantic Blvd.,  
Contract No. 21559, Regional Disputes Review Board Recommendation on  
MasTec Request for Additional Compensation**

Dear Sirs:

The Florida Department of Transportation Turnpike Office (Department) and Bergeron Land Development (BLD) requested a hearing concerning entitlement for additional compensation for additional costs incurred by MasTec (MT) for locating and repairing existing roadway lighting. Summaries of FDOT's and Bergeron's positions were forwarded to the Regional Disputes Review Board (RDRB), and a hearing was held on May 25, 2004.

**ISSUE: "Is the contractor entitled to additional compensation for locating and repairing existing roadway lighting?"**

### **Contractor's Position**

Per Bergeron's sub-contractor, MasTec's (MT) letter dated May 18, 2004, MT contends that the excessive damage to existing mainline and highmast lighting circuits is the direct result of the FDOT Turnpike Authority's lack of response to locate requests and therefore MT requests compensation for locating and making repairs to the existing highway lighting.

### **Department's Position**

The following contract documents pertain to this issue:

- A. Supplemental Specifications, Subarticle 5-12.2 which states "...the Contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based...If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Contractor waives the claim for additional compensation..."

1. MT's initial notification of a claim was made in their letter dated February 16, 2004. This letter was sent to us under a Bergeron

Land Development, Inc. Fax dated March 8, 2004, which was received on March 9, 2004.

2. Per MT's letter, this claim is for work performed from March 2003 to November 2003.
3. The notice of claim was received 1 year after MT began work on claim related issues.

B. Plan Sheets:

a. Plan Sheet L-13

1. General note No. 4., last sentence which states "...location of existing roadway lighting to be the responsibility of the contractor."
2. General Note No. 27 states "Existing lighting equipment sources shall be verified by the Contractor prior to commencing demolition/removal work."
3. General Note No. 32 states "Conduit locations as shown on the plans are approximate..."
4. General Note No. 40 states "The contractor shall be responsible for maintaining power to all load centers and the maintenance of all existing and proposed lighting fixtures for the duration of the project..." "This maintenance of lighting effort will be paid for as part of the lump sum Pay Item No. 101-1, Mobilization, included in the roadway plans and CES for this project..."  
During this project and until final acceptance by the Engineer, no more than 10% of the lights should be out in any circuit or load center.

b. Plans Sheet 295

1. Traffic control plans Note No. 22 states "The contractor shall maintain existing lighting and install proposed lighting subject to the requirements in the Lighting plans, Sheet L-13".
2. Traffic Control Plans Note No. 23 which states "The Contractor shall maintain (at current level of illumination) the existing lighted signs, service panels, and lighting systems until the proposed systems are in service. This will include but not be limited to the routine maintenance of and/or any damage by the contractor and/or subcontractor to: luminaries, fuses, ballasts, poles, bases, or any incidental parts"...

c. Plan Sheets L-7 to L-12

1. Plans Sheets L7 to L-12 provide Pole Data. Typically this information provides information needed in order for the contractor to furnish and install the light poles. Details include location, circuit, arm length, wattage and mounting height. The NIC note on Plan Sheet L-8 is to clarify to the Contractor that these are existing light poles and that the contractor does not have to remove and replace them with new poles nor does the

contractor have to modify them (new luminaries are not required, etc.)

The NIC designation does not mean that maintenance of these items is not a contractual requirement. In accordance with Plan Sheet L-13, General Note No. 40, and Plan Sheet 295, Note 23, maintenance of all of the existing fixtures is a contractual requirement regardless of the cause of the outage.

- C. ConsulTech asked that all detailed analysis of the particulars stated by MT in their submittals be reviewed. These included faxes and letters dated August 25, 26, and 28, 2003. Correspondence pertaining to maintenance of existing lighting faxes and letters dated from September 4, 2003 to December 1, 2003. Other faxes and letters were mentioned dated from February 16, 2004 through March 25, 2004. Additional correspondence from CTE pertaining to maintenance of existing lighting was found in faxes and letters from the period of March 26, 2004 through May 10, 2004.

**Rebuttal Statement:**

**CONTRACTOR:**

MT contends that they had contacted FDOT Turnpike, Mr. Larry Hayduk, per plan Note No. 3, Utility Contacts, as stated on Sheet No. L-13, regarding locates of existing highway lighting and it was his responsibility to contact others. MT also contends that they made repairs to high mast lighting that was not part of their contract per plan sheet L-22. MT also contends that the Department knew that he was doing additional work for outage on the highway lighting system from the deficiency letters through CPPR that he had received.

**DEPARTMENT:**

Based on Supplemental Specifications Sub-article 5-12.2, MT has waived their right to claim for any additional compensation since the notification of the claim was submitted one (1) year after they began what MT contends is “disputed” work.

Based on the referenced plan notes, the contractor is responsible for maintaining the existing lighting systems. The required work needed to maintain the existing lighting is not limited to only routine maintenance. If, as MT stated in some of their correspondence, damages to the lighting system, either existing or new, were caused by BLD and/or other subcontractors working for BLD on the above referenced project, MT should pursue their request for additional compensation from them.

### **RDRB Findings**

The RDRB asked for the following information:

1. Did the contractor submit a notice to file claim for additional work to be performed him outside of his obligations per the contract?

The response to the request that the RDRB made of the Department shows three additional letters prior to the notice of potential claim dated June 30, 2003 that repairs were being made, however, these documents did not include any information of an intent to file claim.

2. RDRB requested that the Department contact Larry Haydek, FDOT Turnpike and find out if he had records of phone calls from BLD or MT in regards to locates for roadway and high mast lighting. This information was to be furnished by Thursday, May 27, 2004.

ConsulTech talked to Rodney Little and Larry Hayduk from Turkey Lake FDOT Turnpike Office. Their phone log shows no calls from BLD, MT or any other subcontractor working for BLD on this contract from September 1, 2002 through May 26, 2004.

The RDRB would like to bring to the Department's attention that Sheet L-22 does have a statement on the lighting plans "NOT IN CONTRACT".

### **RDRB Recommendation**

The RDRB finds that there is **no entitlement** due the contractor (MT) because the contractor did not notify the Engineer in writing of an intent to file a claim prior to beginning the disputed work.

As stated in the 2000 Standard Specifications for Highway and Bridge Construction, Section 5-12.2 Notice of Claim, page 41, 5-12.2.1 Claims for Extra Work: *"When the contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the contract or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay. If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment and time, the contractor waives the claim for additional compensation or a time extension."*

It also appears from the plans and specifications that the Department was requiring the Contractor to comply with the contract as bid. There was no information presented by the Contractor in their position paper nor at the hearing to show that the Department was requiring work to be done that was not required in the contract documents.

The Board appreciates the cooperation by all parties involved and the information provided to make this recommendation. Please remember that failure to respond to the RDRB and the other party concerning your acceptance or rejection of the RDRB recommendation within 15 days will be considered acceptance of the recommendation.

I certify that I participated in the Hearings of the RDRB regarding the Dispute indicated above and concur with the findings and recommendations.

Respectfully Submitted,

**Regional Disputes Review Board**

Frank Proch, Regional Dispute Review Board Chairman

Don Henderson, Regional Dispute Review Board

Joe Capeletti, Regional Dispute Review Board

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RDRB Chairman

CC: Thomas Driscoll, FDOT Turnpike DCE  
Bill Sears, Project Manager  
John P. Coyne, Sr. Vice President, MasTec