

June 13, 2000

Mr. Frank Cassino
Metric Engineering, Inc.
4227 W. Pensacola St.
Tallahassee, FL. 32304

Mr. Jerry Burris
Mitchell Brothers, Inc.
1300 Aeon Church Rd.
Tallahassee, FL. 32304

Re: FN 219782-1-52-01, SR 366 (Pensacola St. Realignment)
Dispute Review Board Recommendation
High Voltage Transmission Pole Conflict
Third District
Issue # 1, Claim No. 2

Dear Sirs:

The Florida Department of Transportation (Department) and Mitchell Brothers, Inc. (MBI) requested a hearing concerning a utility conflict involving the presence of a high voltage transmission pole located in extreme close proximity to a proposed storm sewer. Summaries of the Department's and MBI's positions were forwarded to the Disputes Review Board (DRB), and a hearing was held on June 1, 2000.

ISSUE: Should the contractor be granted time and compensation associated with delays caused by a conflict between the proposed storm sewer and the high voltage transmission line located at Station 52+20 of Stadium Dr.?

Contractor's Position

On November 11, 1999 MBI filed a claim with the Department in the amount of \$165,159.25 and requested 32 days be added to the contract time. MBI alleges equipment was idle and requested overhead (project and home office) and Maintenance of Traffic (MOT) payments relating to the 32 day delay.

Department's Position

Mitchell Brothers informed the Department on December 7, 1998 of an existing conflict with a City transmission pole and proposed storm drainage at Station 52+50, which is in the run between S-25 and S-26. At this time no pipe work had begun and the Contractor worked other areas while the conflict was resolved. The FDOT entered the notice into their claim tracking system and asked the Contractor to furnish additional information in order to evaluate.

The Department readily admits the location of the high voltage transmission pole conflicted with the proposed storm sewer. There is no admission of delay to the completion of this project. Our position is clearly supported by the project diary, which clearly shows that the Contractor worked continuously on drainage operations from the onset of the work which began on December 14, after bringing in drainage structures and pipe, until completion of the work through the area of conflict.

In Summary, the project records clearly demonstrate there was no disruption to the pipe laying operations. There was a transmission pole conflict discovered December 7, 1998, however, the Contractor was able to begin his pipe laying operations and continue uninterrupted until completion, at a rate that seemed to be as productive as his crews were capable of achieving. The FDOT believed a solution for the high voltage transmission pole conflict was achieved on December 10, 1998 after an on site meeting, also during the December 14, 1998 project utility meeting the Contractor stated all utility conflicts had been addressed.

The Contractors approved work schedule does not show any drainage work in December of 1998, in fact, drainage is scheduled to begin January 4, 1999, which is, contract day 40.

The Department's position is based on the actual work accomplished as per the project records during the alleged delay and the Contractor's own approved schedule. Neither supports any delay. It is our position that the claim has no merit.

DRB Findings

- The Department admits that there was a conflict.
- The Contractors approved work schedule does not show any drainage work in December of 1998. However, the weekly work plans submitted by the contractor do indicate that storm sewer was a controlling item of work.
- The Department's Daily Reports indicate that the contractor's pipe crew was working in other areas and the contractor readily admitted this during oral arguments.
- There was never a second pipe crew on the project.
- MBI's representative admitted that the delay was probably not incurred over the entire 30 day period but could not establish a more accurate time frame for the Board.
- The contractor furnished no daily reports to refute the Department's position.
- The contractor did work out of sequence since he could not begin work at the downstream end of the pipe run and proceed in an orderly fashion to the upstream end of the work.

DRB Recommendation

The Board finds some entitlement to the Contractor's position. However, given the absence of any daily reports from the contractor identifying the alleged magnitude of the delay it is difficult to assess any damages. The contractor offered little evidence that he was delayed or incurred additional cost.

The Board realizes MBI performed work out of sequence and that this would cause a minimal delay. Therefore the Board recommends as follows:

1. The Department should grant the contractor an Extension of Time of 1 day to cover the time for MBI to remobilize to the site of the utility conflict from areas of other work.
2. The Department and the Contractor should enter into negotiations to discuss compensation for costs incurred for this day of delay. This should include any additional MOT costs, remobilization costs, Project Overhead, and Home Office Overhead.

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 DRB and the other party concerning your acceptance or rejection of the DRB recommendation within 15 days will be considered acceptance of the recommendation.

I certify that I participated in all of the meetings of the DRB regarding the Dispute indicated above and concur with the findings and recommendations.

Respectfully Submitted,

Disputes Review Board

Rammy Cone, DRB Chairman

Jim Vest, DRB Member

John Coxwell, DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



DRB Chairman

CC: Tom Shaffer, FDOT
Jerry Burris, Mitchell Brothers, Incorporated