

October 27, 2009

**To: Miller Electric Company
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I-75 RTMC and I-75 Corridor FMS and ITS Integration Project
414733-1-52-01; 416412-1-52-01; and 416413-1-52-01

ISSUE:

Is the Contractor entitled to additional time and compensation for the damage to the Fiber Optic line by another contractor

CONTRACTOR'S POSITION:

On April 27, 2007, Miller's subcontractor completed the bore under I-75 that was ultimately damaged and that is now the topic of this DRB hearing. The fiber optic cabling that was installed in one of these bore conduits passed the ODTR testing on 9/26/08 and 10/3/08 and the CCTV's (#52 & #53) associated with this work were tested and were fully functional. The FDOT made an "as-built" of this bore immediately after the bore was complete that showed the bore under the bridge structure and in conflict with the bridge widening. The FDOT failed to provide Miller Electric or anyone associated with the other project with a copy of the FDOT's as built prior to the date the damaged occurred.

On or about October 29, 2009, the ITS devices attached to this fiber stopped communicating back to the RTMC building. Upon arriving at the Corkscrew interchange to investigate, the pull boxes were opened and the fiber and electric between CCTV #52 and CCTV# 53 (the Corkscrew bore) were pulled back into the conduits, confirming that the conduits between these two ITS devices were hit. The FDOT was put on notice of this damage shortly thereafter. On November 25, 2008 Carmon Thompson with AIM stated, "...Although we believe that due diligence was performed by both projects' contractors (to keep this utility intact and undamaged), please keep in mind that these type directional bores do not always hold a straight line and need be off by a few feet (from where it is thought to be), to result in the current situation we are now in". In fact, it is nearly impossible to accurately locate this bore as it was approximately 27 feet deep at the middle.

Significantly, the JV plans were not approved by the FDOT until October 22, 2007, some five months after the Corkscrew bore was completed. Notwithstanding, the JV plans do not include the ITS conduits from the Miller/Transcore ITS plans that were

released for construction on March 5, 2007. Miller is not aware of any explanation for the failure to include the Corkscrew ITS bore in the JV plans, particularly given that the FDOT's as-built showed a conflict.

A similar conflict situation occurred with the TECO gas line that was in proximity to the bridge crossing. The FDOT had the TECO gas line relocated on March 27, 2008.

The facts are that the ITS conduits were close to the Corkscrew bridge widening project and the JV never located the conduits prior to their pile driving operations. In dispute of the FDOT issue statement which cites specification section 8-4.4 regarding coordination with other Contractors, the FDOT should have required that the ITS bore that was ultimately damaged be relocated, as was the TECO gas line.

For the foregoing reasons, Miller respectfully requests that the DRB determine the Department is required to pay for the damage to the bore at the Corkscrew Interchange, plus a compensable time extension through when the work was completed.

DEPARTMENT'S POSITION:

On October 29, 2008, MECO informed HNTB/AIM that the bore under I75 at CCTV #53 was hit by the bridge subcontractor during the installation of piles at the Corkscrew interchange. Included in MECO's notice was the fact that ITS facilities were located by MECO's own Superintendent, Steve Toyne. Metric Engineering (Metric), the CEI firm overseeing the Bridge Widening was immediately notified by HNTB/AIM of the situation and provided MECO's email. On October 20, 2008 Metric forwarded said email to the Joint Venture contractor, Anderson Columbia Inc. with the caveat that this was a coordination issue to be resolved between both prime contractors.

On November 5, 2008, Metric advised HNTB/AIM of Anderson Columbia, Inc./Ajax Paving, Inc., Joint Venture (JV)'s response addressing the situation. The JV responded that no one from MECO or the JV's subcontractor contacted them about the bore damage at this location. At this point, Metric, on behalf of the JV, questioned the locates of the ITS facilities coordinated through MECO. Both Metric and HNTB/AIM agreed inspection of damage and repairs should be handled between each contractor. Both CEI firms agreed to assist in facilitating any meetings between each contractor once MECO formally notified the JV of the damage.

On March 25, 2009, MECO submitted PCO #60 in the amount of \$57,068.96. While PCO #60 did not include a written description statement, it did include the cost to repair a fiber optic cable drop to CCTV #53 and its' associated conduit located on the north side of Corkscrew Road allegedly damaged by an pile driving crew during a pile driving operation at the North West end bent of the I-75 Bridge. On November 25, 2008 HNTB/AIM informed MECO that this was an issue between the pile driving contractor and MECO. However, to assist in gaining resolution to the issue, HNTB/AIM

would facilitate a meeting between MECO, the JV, Metric and the FDOT. During subsequent meetings between these same parties, HNTB/AIM continually reiterated to MECO that this was an issue outside of the I-75 ITS contract that needed to be resolved directly with the JV Contractor. MECO continued to insist that the FDOT was responsible for this damage and that FDOT (I-75 ITS Project) should pay the PCO.

This course of action continued until July 24, 2009 when the JV CEI sent us a Certified Affidavit from Mr. Michael Myers (ICA – JV Subcontractor for locates) that stated that; “He had been asked by the Miller field foreman to locate the fiber optic drop to CCTV #53 prior to the pile driving operation and he determined that it was not in conflict with their forthcoming construction activity”. This Affidavit was forwarded to MECO on June 25, 2009. Having been provided with this affidavit, MECO elected to continue with their insistence that FDOT (ITS Project) pay the PCO.

HNTB/AIM formally rejected PCO #60 on July 7, 2009 *on the basis that this project (I-75 ITS) has no responsibility associated with the damage to the conduit and fiber at Corkscrew Road.* MECO’s response of July 21, 2009 stated: *“As far as Miller is concerned, the FDOT is the FDOT no matter what project we are working on.”* Despite MECO’s misconception of *“...the FDOT is the FDOT no matter what project we are working on...”* both D-B Teams have the responsibility to resolve the matter between themselves as required by the contract documents for both projects, as shown in Exhibits 18, 19, and 20. The Department and its representatives have assisted the D-B Teams and have therefore discharged the Department’s responsibility in this matter.

One specific allegation made by MECO in their Issue Statement has to be addressed. The statement: *During the 6/11/09 progress meeting the FDOT confirmed that Miller was not responsible for the damage: “Steve asked for the status of the damage on Corkscrew. Gordon responded that the DOT and JV are working on this issue; it is internal between those 2. Steve asked between DOT and the Joint Venture, do they think that MECO is responsible for this? Gordon responded that his professional opinion on this project is “no.””*

Please see Gordon Ziecina’s response to this allegation in Exhibit 17, page 2 of 2, which states: *“My statement made during the 6/11/09 progress meeting that MECO was not responsible for the damage was made prior to receiving Mr. Myers affidavit stating the conduit was marked and determined to be outside the area affected by the pile driving operations. At the time of the 6/11/2009 meeting no one had produced a written record showing the conduit was located before the damage occurred as stated in Mr. Myers affidavit.”*

In response to MECO’s contention that initially HNTB did not believe that MECO was responsible for this damage, the Department’s position still remains as it has always been, regardless of who is at fault, MECO or the JV, responsibility is an issue between the two prime contractors and resolution lies therein. While the Department recognizes that the I-75 ITS project facilities were damaged, and that there is a dispute of responsibility

between the two D-B Teams, it is the responsibility of each D-B Contractor to comply with the applicable requirements of their respective contract documents.

Therefore, the Department requests the DRB to recommend that MECO is not entitled to additional time and/or compensation for damage to their facility by another contractor from the Department under the I-75 ITS Contract, E1E73.

BOARD FINDINGS:

Article 7-14, “Contractor’s Responsibility for Work” of the I-75 ITS project states: *Until the Department’s acceptance of the work, take charge and custody of the work, and take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, arising either from the execution or from the nonexecution of the work. Rebuild, repair, restore, and make good without additional expense to the Department.*” The Board finds that this language clearly places the responsibility for repairs to the work and the cost of same squarely on the Contractor.

It has long been Industry practice on Department projects that contractors repair damage and then pursue recovery from the party causing the damage. They pursue recovery without the Departments participation.

BOARD RECOMMENDATION:

The Board recommends that there is no entitlement for additional money or time to the Contractor from the Department.

Please remember that a response to the DRB and the other party of your acceptance or rejection of this recommendation is required in 15 days. Failure to respond constitutes an acceptance of this recommendation by that party.

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

Peter A. Markham	DRB Chairman
Michael Bone	DRB Member
Felix Peguero	DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS
DRB Chairman

