

**From:** [Kristina DeMoya](#)  
**To:** [Frank Proch](#)  
**Cc:** [CRX62@aol.com](#); [johnhduke@alumni.vanderbilt.edu](#); [Robert A. "Skeeter" Parks](#)  
**Bcc:** ["Johnson, Calvin"](#)  
**Subject:** DRB Recommendation FPN 195705-1-52-01, Contract T-1078, SR 78, Issue #2, Request for Clarification  
**Date:** Tuesday, December 15, 2009 4:07:00 PM  
**Importance:** High

---

Mr. Proch,

On page 22 of the subject ruling, under the heading **DRB Recommendation**, paragraph two states, *"The Board's recommendation is constrained by the provisions of the contract and acknowledges that it is and has been aware of Specification 8-7, which is why the Board recommends, as stated in the original recommendation and this recommendation that the Contractor not be charged liquidated damages for the period of repair, as may be implemented by Partnering and negotiation of a final settlement:"*

The current recommendation then restates the following paragraph from the Board's July 21, 2007 recommendation as follows;

*"Further, it appears that due to the time taken to come to an agreement on the design issues and pipe repairs, and since the roadway has been substantially complete and is being used by the traveling public, concurrent delay and liquidated damages should not be charged for this period. Each Party should bear their own costs. This might possibly be arrived at through partnering of a final settlement between the parties."*

The two recommendations, the latest one being for *"...the period of repair..."* and the original one of 2007 being for *"...the time taken to come to an agreement on the design issues and pipe repairs..."* are inconsistent with respect to the exact period for which the *"Parties should bear their own costs"*.

Additionally, the recommendation of entitlement for the contractor's efforts to prove the pipe was acceptable (page 22, first paragraph) is also inconsistent with the Board's first ruling regarding for the parties to *"...bear their own costs..."*. Further, the fact remains that nothing on this project was ever actually *"...uncovered..."* nor was the work found to be in compliance with the Specifications. The fact that the Department in a sign of good faith chose to accept some deficiencies based on subsequent testing does not mean that they met Specifications, nor does it entitle the Contractor to any costs to *"...uncover..."* the work.

The Department is seeking a clarification on the current recommendations, as well as the contract provision(s) and/or evidence furnished by either party that the Board believes might validate such a recommendation.

In order for the Department to meet the original 15-day response timeframe for the acceptance/rejection of the recommendation of December 23, 2009, we are seeking the Board's response by close of business this Friday.

Please let me know if you have questions or comments.

Thank you,

Kristina C. de Moya, P.E.  
Sr. Project Engineer

3434 Hancock Bridge Parkway, #207  
Fort Myers, FL 33903  
OFF: (239) 656-6237  
MOB: (239) 872-0283  
[kcdemoya@allied-engineering.com](mailto:kcdemoya@allied-engineering.com)