

DRB RECOMMENDATION FOR HEARING ON MAY 12, 2003

Date: May 14, 2003

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Financial Project ID: 22040201052-01
FAP No. 0191030P
Contract No. 21556
County: Santa Rosa
Description: SR 87 from SR 30 to north of Five Oaks Road

Dispute No. 1 District 3
Hearing Date: May 12, 2003 Contractor: Anderson-Columbia Co., Inc.
Location of hearing: District 3 Operations Conference Room in Chipley, Fl.

DISPUTE:

The Department requested the Dispute Review Board (DRB) to rule on entitlement regarding impacts resulting from utility relocation.

CONTRACTOR'S POSITION:

The Special Provisions of the above referenced project; specifically Subarticle 8-7.1, established 200 calendar days for period of reduced productivity by the contractor's forced due to utility adjustment/relocation. As of the period ending May 4, 2003, Anderson Columbia Co. Inc. had requested 175 days of reduced productivity, resulting in 25 days remaining. Our forces are scheduled to work either six days or seven days a week for the remainder of the entire month of May 2003. The allocation of reduced productivity days is expected to expire on or about May 29, 2003.

It is the position Of Anderson Columbia Co., Inc. (Contractor) that upon the expiration of the 200 days of reduced productivity, the Contractor is entitled to all costs associated with delays caused by utility conflicts, which involve any on-site forces regardless if the project is under a directed state of partial suspension. The Contractor has taken extreme measures to accept a partial suspension and the economic impacts associated with it. We cannot expose ourselves to any addition financial risks by waiving our right to request additional compensation and contract time for future claims which are no fault of the contractor. The Special Provisions established 200 days for reduced productivity, we are prepared to absorb all increases in costs for the entire 200 day period, but reserve our right to claims as a result of utility conflicts and delays once the 200 day allocation has been consumed, regardless of other directives from the Department, including a partial suspension.

DEPARTMENT'S POSITION:

A dispute has arisen concerning the relocation utilities and the impact it does or does not have on the Contractor's proposed construction schedule. Contract time was set a maximum of 880 days and as a result of A + B bidding 725 days was established as the ORIGINAL CONTRACT TIME. The contract further provides specifications for an early completion incentive bonus. The maximum bonus was set at \$230,000 (100 days at \$2,300/day). The contractor has indicated, from the inception of the project, they fully intend to secure the maximum bonus. Utility relocation schedules, provided in the Contract Bid Documents, indicate a critical time

frame of 559 for BellSouth Telecommunications (BellSouth) (Attachment #2), Media Com (Attachment #3), and Gulf Power Co., Inc.'s (Gulf Power) (attachment #4) interdependent relocation activities (see Attachment #1).

The Florida Department of Transportation's (Department) position is that the time frame identified by the Utility Companies was provided in the Bid Documents. With this knowledge the contractor cut the time to 725 days, further reduction of 155 days. Additionally, to maximize early completion incentive bonus the Contractor has targeted a 625 completion. The Department maintains that in substantially reducing the contract time the Contractor must bear the responsibility for the current situation on the project. Additionally, the Contractor has failed to complete a Major dependent (prerequisite) activity identified on BellSouth's relocation schedule (placement of 1200 MM storm water drainage pipe between stations 112+00 and 118+50 (Lt)).

FINDINGS:

- Special Provisions, Computation of Contract Time, Subarticle 8-7.1 (page 22) states: "Contract Time for this project includes 200 calendar days for periods of reduced productivity by the Contractor's forces due to utility adjustments/relocation. These days of reduced productivity shall be reflected in the contractor's work progress schedule. No additional compensation will be made to the Contractor for periods of reduced productivity as defined above."
- Regardless of Contract time bid, there would only be 200 days of reduced productivity. Both Parties have agreed to approximately 175 days of reduced productivity. The parties developed a working definition of "reduced productivity day" for use in accounting.
- The Department's action giving the utilities 559 days of relocation time, and at the same time requesting the contractor to submit an A+B bid with early incentives of \$2,300 a day, created situations on the project that made the goals of the utility and contractor incompatible as far as project completion was concerned.
- Special Provisions, Utility adjustments, Subarticle 7-11.6.3 (page 15) beginning at paragraph 4: "More precise scheduling to accomplish utility work in the most expeditious manner that is feasible will be established at the preconstruction conference as provided in 8-3.5. The Utility Schedules, shall be used in conjunction with the utility adjustment sheets included in the roadway plans." Both parties agreed that there was a lack of cooperation from the utility companies both during the preconstruction conference and the partnering meeting to refine their approach to relocation operations.
- The Department agreed that the Contractor had worked, to the greatest extent possible, with the utility companies and had not hindered the utility companies relocation operations.

RECOMMENDATION:

- The board recommends that the Contractor is entitled to delay damages due to the utility companies delay beyond the 200 calendar days of reduced productivity.

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

I certify that I participated in all meetings of the Board regarding the dispute indicated *above* and concur with the findings and recommendations.

Respectfully Submitted:
Disputes Review Board
Charles Goodman, DRB Chairman
Jimmy Lairscey, DRB Member
Glenn Ivey, DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:


Charles Goodman, DRB Chairman

CC: Mr. Stan Swiatek