

DISPUTES REVIEW BOARD RECOMMENDATION

April 18, 2002

Ms. Ronda S. Daniell
Assistant Resident Engineer
Florida Department of Transportation
1217 S.W. 10th Street
Ocala, Florida 34474

Ms. Cynthia Snow White
White Construction Company, Inc.
P.O. Drawer 790
Chiefland, Florida 32644

Mr. Kent Seltzer
Qualex Consulting Group
4311 W. Waters Ave., Suite 304
Tampa, Florida 33614

RE: SR-500 (US-27) from CR-326 to CR-225-A
Marion County
F.P.ID 238679-1-52-01 & 238678-1-52-01
SPN 36070-3501 & 36070-3503
Contract No. 20605

SCANNED

MAY 14 2002

Ocala Construction

RECEIVED

APR 22 2002

Ocala Construction

SUBJECT: Claim Issue No. 29, Off Duty Law Enforcement.

To Whom It May Concern:

The owner, Florida Department of Transportation (FDOT), requested a hearing to determine **entitlement** of White Construction Company, Inc. (WCCI) to **additional compensation and contract time for delays encountered "when off-duty law enforcement officers did not show-up for a scheduled traffic switch and paving operation"** on the above referenced project. Should entitlement for WCCI be established, the Dispute Review Board (DRB) is to determine the quantum of such entitlement.

Correspondence, and other information relating to FDOT's and WCCI's positions were provided the DRB prior to the Hearing for review and discussion at the hearing held on April 5, 2002.

CONTRACTOR'S POSITION:

If a Contractor successfully schedules off duty law enforcement officers to be onsite for a traffic shift and they fail to report to the project and fail to contact the Contractor, is the Contractor entitled to compensation and a time extension for delay?

The Department may grant an time extension of contract time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid (FDOT Spec 8-7.3.2). WCCI has worked with the same off duty coordinator for the past 5 + years and never encountered this problem before. This event could not have been anticipated and delayed the entire project by

postponing the traffic shift from the old roadway to the new roadway. **By making contact with the known scheduler for the Marion County area and that scheduler confirming that 2 officers were scheduled, WCCI complied with the requirements of the contract.**

DEPARTMENT'S POSITION:

The contractor submitted a claim for 1 day and \$9,133.16 (both direct and indirect costs) for a delay they encountered when they could not get off duty law enforcement for a paving operation. The plans require the use of off duty law enforcement for any lane closure. The scheduling and coordination and control of off duty law enforcement are entirely the responsibility of the contractor.

BOARD FINDINGS:

- The Special Provisions for this project on page 304 paragraph 102-2.7 states: *Law Enforcement Services: Where called for in Traffic Control Plan (TCP), the Contractor shall be required to provide uniformed off-duty law enforcement officers, including marked law enforcement vehicles, to assist in controlling and directing traffic in the work zone. The TCP will identify those situations where the officers will be utilized. Payment will be made to the Contractor only for those off-duty law enforcement officers called for in the TCP and authorized by the Engineer. Payment will be at the contract unit price per man-hour for the actual number of hours the officers are on the project site. Such price and payment shall constitute full compensation for the services of the off-duty law enforcement officer, including a marked law enforcement vehicle and other direct and indirect cost.*
- The Special Provisions for this project on page 290 **CONTROLLING WORK ITEMS** Article 1-14 Revised: *The activity or work item on the critical path having the least amount of total float. The controlling item of work will also be referred to as a Critical Activity.*
- Section 8-7.3.2 Contract Time Extensions: *The Department may grant an extension of contract time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid. Such extension of time may be allowed only for delays occurring during the contract time period or authorized extensions of the contract time period. When failure by the Department to fulfill an obligation under the contract in delays in the controlling construction operations, such delays will be considered as a basis for granting credit to the contract time. Extensions of contract time will not be granted for delays due to the fault or negligence of the contractor.*
- At the hearing neither party addressed how this delay impacted the schedule or if this was a critical activity.
- The specifications are mute concerning how off-duty law enforcement officers are to be classified in relation to the contract. They are not identified as subcontractors, suppliers or vendors. The contract establishes a pay item to reimburse the contractor for their cost but does not establish a line of authority.

- The Contractor did not request the off-duty law officers in the time frame suggested at the pre-construction conference. A 48 hour notice was requested by the coordinating officer where WCCI in this incident gave only 24 hours notice.
- The Department has excluded off-duty law enforcement officers from Section 8 paragraph 8-1.1 of the Standard Specifications for Road and Bridge Construction and do not require Department approval.

The Contractor is responsible for coordinating all phases of the work contained in the contract therefore must schedule the timely arrival of all subcontractors, equipment, materials, vendors and associated labor.

BOARD RECOMMENDATION:

Based on the materials supplied the Board and presentations to the Board during the Hearing the Board finds the Contractor is fully responsible to coordinate all phases of work to assure full compliance with the contract and complete the project within the specified time. Therefore the Board finds the Contractor has NO ENTITLEMENT to Claim Issue No. 29, Off Duty Law Enforcement Officers.

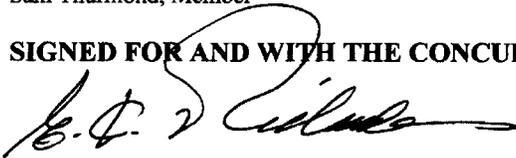
The Board appreciates the cooperation of all parties and the information presented for its review relative to this issue in making its recommendation.

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

I certify that I have participated in all the meetings of this DRB regarding this issue and concur with the findings and recommendations.

Respectfully Submitted,
Disputes Review Board
E.K. Richardson, Chairman
A.R. Cone, Member
Sam Thurmond, Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



E.K. Richardson, DRB Chairman