

DISPUTE REVIEW BOARD DECISION

August 8, 1997

Faxed August 8, 1997

Mr. William S. Ciudad-Real, P.E.
MK/Centennial
6701 Muck Pond Road
Seffner, Florida 33584
FAX: 813/662-0302

Mr. Rammy Cone
Cone & Graham, Inc
P. O. Box 310167
Tampa, Florida 33680
FAX: 813/620-1602

Re: WPI No: 7143198
State Project No: 10190-3428/6428
F.A.P. No.: ACDPI-ACNH-0043-(6)(FO)
Contract: Interstate 4, Segment 2
Description: State Road 400 (I-4) from I-75 East to McIntosh Road
Counties: Hillsborough

Subject: I-4 Disputes Review Board - Issue #12
Finding of Fact Pertaining to Payment for Cost of Repairs Due to Traffic Accident on August 9, 1996

On August 06, 1997, at the request of MK/Centennial representing the Florida Department of Transportation (DOT) and the Contractor, Cone and Graham (Cone), the Disputes Review Board heard oral testimony relating to the subject claim on the referenced project. Written documentation had previously been furnished to the Board by both parties.

Issue: Just after 4:00 p.m. on August 09, 1996, a tractor trailer traveling eastbound in the inside lane jackknifed, destroying approximately 100 linear feet of temporary barrier wall and 400 square feet of Tensar temporary retaining wall. The barrier wall was replaced on August 10, 1996, and repairs to the Tensar temporary retaining wall were completed on August 14, 1996. On December 11, 1996, Cone submitted documentation and requested compensation for four accidents, including the one on August 9. The DOT denied the request stating in part that Cone had failed to notify the DOT in a timely manner of their intent to file a claim for this work in accordance with Section 5-12, Claims by Contractor, of the Standard Specifications.

Cone stated that they delayed filing a claim for repair costs since the DOT was in the process of evaluating its policy with regards to accident damages. They also noted that their letter, CC/MK-317 dated June 18, 1996, stated that payment was expected from DOT for any accident related work, including repair and replacement of maintenance of traffic items damaged by others.

Cone's letter, CC/MK -317, states, in part:

...

"First, we do not believe that accident related work, e.g., clean-up, establishment and maintenance of detours or other temporary traffic control measures, and repair or replacement of maintenance of traffic devices damaged by others, is within the scope of the contract with the Department.

Second, we will comply with written Department directives to render assistance following traffic accidents with a full reservation of our rights to seek recovery from the Department of additional costs incurred. If the exigencies of a particular accident make it impracticable for the Department to provide such a written directive before the extra work is performed, a written confirmation should follow. To the extent The Cone Corporation undertakes such extra work, it will do so based on Department written directives and without waiving our right to seek indemnification or other costs incurred with a full reservation of our rights to seek recovery from the Department of additional costs incurred with a full reservation of our rights to seek indemnification or otherwise

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recovering from the Department for any loss, claim, demand or expense arising directly or indirectly out of the extra work performed."

Section 5-12. Claims by Contractor. states:

"Where the Contractor deems that extra compensation is due him for work or materials not clearly covered in the contract or not ordered by the Engineer, the Contractor shall notify the Engineer in writing of his intention to make claim for extra compensation, before he begins the work on which he bases the claim. If such notification is not given, and the Engineer is not afforded proper opportunity for keeping strict account of actual cost, then the Contractor thereby agrees to waive the claim for such extra compensation..."

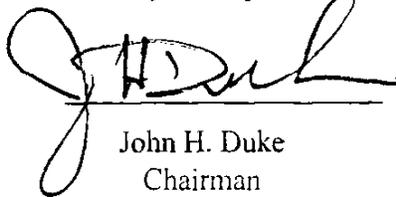
Cone's letter mentioned above refers primarily to traffic services rendered at accident sites, for which cost they have received some reimbursement from the DOT. The cost of repairs to the work, which are not extensive or catastrophic, have historically been the responsibility of the Contractor in accordance with Section 7-14. Contractor's Responsibility for Work, of the Standard Specifications.

Under the particular set of circumstances that occurred in this instance, it appears that the DOT was correct in rejecting the Contractor's request for reimbursement for cost of repairs.

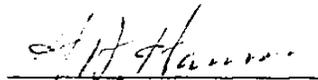
The Board, therefore, finds in favor of the Department.

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.

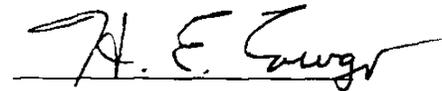
I-4 Project Disputes Review Board



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