

April 13, 2000

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Mr. Enrique I. Espino, P.E.  
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Re: State Project No.: 97870-3313 District: Turnpike  
Contract No.: 19,727  
Description: Bird Road Toll Plaza Replacement Florida's Turnpike  
County: Dade

SUBJECT: Recommendation of Disputes Review Board  
Compensation for Temporary Slotted Drain Laterals and Removal of Temporary  
Slotted Drain Laterals between Stations 1775+00 and 1790+00.  
DISPUTE NO. 6 DOT TURNPIKE DISTRICT

The parties exchanged position papers, including documentation, on the issues in dispute here in advance of this hearing and at that time furnished copies to the Disputes Review Board .

The DRB held a hearing on April 3, 2000, to consider the positions of the parties to the contract in regard to the matter in dispute. Verbal testimony by the parties was received.

The DRB will consider both entitlement and quantum .

At the beginning of the hearing, subcontractor Atlantic Civil, Inc. submitted a rebuttal statement to the DOT Position Paper. The DRB ruled that this statement will not be accepted, because it was not submitted to the DRB members and DOT "not less than 10 calendar days prior to the date of the hearing" as required by the Operating Procedures for DRB adopted for use on this job..

### **DISPUTE**

The Contractor is seeking compensation for work done by Atlantic Civil, Inc. in constructing the Temporary Slotted Drain between Station 1775+00 and Station 1790+00 as shown on Sheet No. 218 of the plans.

There are two parts to this dispute, both of which the Contractor contends are extra work, because this work is beyond the scope of the work shown in the plans::

1. Construction of lateral pipes to discharge from the Temporary Slotted Drain to a swale to the West in accordance with direction provided by the Department.

2. Removal of the Temporary Slotted Drain laterals.

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## **DRB RECOMMENDATION**

**Re: COMPENSATION FOR SLOTTED DRAIN LATERALS**

In accordance with Atlantic Civil Change Order No. 00084 submitted in testimony by Atlantic Civil, Inc., the total amount of additional compensation alleged to be due is \$25,809.30. This includes prime contractor markup and prime contractor Bond and Liability Insurance.

### **CONTRACTOR'S POSITION**

On August 11, 1999, as we were preparing to install the Temporary Slotted Pipe between Station 1775+00 and Station 1790+00, as shown on Sheet 218 of the plans, we submitted a Request for Information to clarify the the location of this pipe and whether existing boxes shown that were apparently intended to be used as outfalls for the Temporary Slotted Pipe in fact existed. The Temporary Drainage Structures for MOT on Plan Sheet No. 177 does not show any temporary inlets to be constructed between Station 1775+00 and Station 1790+00 during Phase III MOT. Neither the Temporary Slotted Drain nor the laterals from this drain was quantified in the plans.

On September 27, 1999, we received information detailing the location and construction details for the temporary CMP laterals to serve as outfall pipes for the Temporary Slotted Drain. (Memo dated September 23, 1999 from Gary Roufa P. E., E. C. Driver & Associates to Bill Braniff, P. E., Resident Engineer, ICF Kaiser). Since these CMP laterals are not shown anywhere in the plans, we consider this to be extra work compensable under Subarticles 4-3.2 1. and 4-3.2.3 of the Standard Specifications.

Due to the delay in receiving specific directions from DOT in response to our Request for Information, installation of the CMP laterals became critical to Condotte's ability to acheive Milestone No. 2. This forced us to backfill the laterals with flowable fill instead of backfilling with soil and the associated compaction.

The scope of installation of the CMP laterals and, therefore the cost of such, is not the same as for installation of other 18" CMP on this project as contended by DOT. It is more expensive. We see no basis for a credit to DOT for boxes not constructed, because the plans do not indicate construction of such boxes. Also, the CMP used in construction of the laterals has no salvage value.

We do not seek compensation for construston and removal of the CMP pipe portion of the lateral at Station 1788+00.

The amount due for this extra work is detailed in Atlantic Civil Change Order No. 00084. The labor and equipment shown therein for constructing CMP laterals is based on the hours devoted to this operation as shown in DOT Daily Diary. The labor and equipment for removal of the laterals is a reasonable estimate. A 10% markup and 1.5% to cover bond/liability for the prime contractor is also due.

**DRB RECOMMENDATION**

**Re: COMPENSATION FOR SLOTTED DRAIN LATERALS**

**DOT POSITION**

It is apparent that it is critical for there to be adequate outfall pipes from the Temporary Slotted Drain to prevent sheet flow of rain water from the Northbound lanes across the Southbound lanes. Sheet No. 218 of the plans shows construction of laterals from the Temporary Slotted Drain at Stations 1775+00 , 1776+40. 1780+60, 1783+70 1788+00 and 1790+00. At three of these locations construction of a temporary drainage structure over an existing pipe or a permanent pipe to be constructed under this contract is shown to provide an outfall for the Temporary Slotted Drain. A dashed line at Station 1788+00 indicates construction of a lateral. Temporary drainage structures were used to provide an outfall from Temporary Slotted Drain elsewhere on the project.

In their presentation to the DRB. Atlantic Civil admitted that the plans do in fact show a lateral to be constructed at Station 1788+00.

A plan note attached to the three outfall drainage structures reads: "Extend outfall pipe. Use inlet to keep water from paved area away from construction areas. Provide permanent cover and fill over inlets when inlet is not longer needed". This note indicates that laterals are be constructed from the Slotted Rain Pipe.

Notes on Plan Sheet No. 172 contain the following wording:

Provisions for the removal of storm water from the roadway during construction shall be the responsibility of the Contractor. ....Filling out of service in place piping, temporary pipe extensions, inlet covers and other temporary drainage features not covered in separate pay items shall be included under pay item No. 102-1 (Maintenance of Traffic) Lump Sum.

Any temporary drainage pipe, structures, etc. required for maintaining proper drainage during all phase of construction shall be furnished and installed by the contractor. Payments shall be included in Pay Item 102-1 Maintenance of Traffic (LS).

It is our position that construction of temporary laterals and connections to either existing pipes or newly constructed permanent pipes necessary to provide outfalls from the Temporary Slotted Drain are clearly shown in the plans. Also, the use of flowable fill to backfill CMP laterals was a construction expediency for Atlantic Civil which could have been avoided by their proper scheduling of work. DOT acted to minimize delays caused by the Contractor's misunderstanding of the plan details.

If the Board recommends that entitlement is due, in arriving at the cost of extra work, consideration should be given to the salvage value of the CMP removed, the value of temporary drainage structures not constructed and that use of flowable fill benefitted the Contractor in assisting them in meeting a Milestone.

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DRB RECOMMENDATION  
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**RECOMMENDATION**

The Disputes Review Board finds that the Contractor is entitled to compensation for construction and for removal of the temporary CMP laterals.

The Board recommends that compensation be made to the prime contractor in the amount of \$17,864.00 for all extra work including removal of the CMP laterals. This amounts includes the prime contractor's markup and bond and liability insurance cost.

**EXPLANATION**

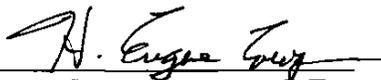
During the course of negotiations in regard to this dispute, Atlantic Civil submitted several iterations of how the costs for the alleged extra work should be determined. The final one is based on labor and equipment hours shown in the DOT Daily Diary with credit given for the lateral shown in the plans at Station 1788+00. In their presentation to the DRB, Atlantic Civil admitted that the plans do in fact show a lateral to be constructed at Station 1788+00.

After consideration of the information provided by the parties and conducting a field review of the completed installation of the Temporary Slotted Drain and laterals, the Board determined that there are enough constructability issues involved here to warrant payment for the construction and removal of the CMP laterals as extra work.

Lack of detail on Plan Sheet No. 218 and failure to list the laterals and corresponding temporary drainage structures in the tabulation of Temporary Drainage Structures for MOT on Plan Sheet No. 177 creates a deficiency in the contract documents. Also, the plan note on Plan Sheet No. 218 does not provide specific information in regard to construction of outfall laterals.

I certify that all members of the Disputes Review Board participated in all meetings of the Board regarding this dispute and that all DRB Members concur with the Recommendation and Explanation contained herein.

4/13/00  
Date

  
H. Eugene Cowger, P.E.  
DRB Chairman