

October 8, 2012

Colorado Department of Transportation  
Region 6, South Engineering  
2000 South Holly Street  
Denver, Colorado 80222

New Design Construction  
2350 East 70<sup>th</sup> Avenue  
Denver, Colorado 80229

Attention: Jerome K. Estes, Professional Engineer, Colorado Department of Transportation  
Steven S. McWilliams, President, New Design Construction

Subject: DRB Recommendation for the Dispute between the Colorado Department of Transportation (CDOT) and New Design Construction (NDC) on the CDOT project STA 177A-077-17734, SH 177 University Concrete Repair

A Dispute Review Board (DRB) hearing was conducted in the Colorado Department of Transportation's Denver office at 2000 South Holly Street on Friday September 7, 2012.

Present at the DRB hearing were:

- Jerome K. Estes, Professional Engineer, CDOT
- Rick Erjavec, Resident Engineer, CDOT
- George V. Warda, Project Engineer, CDOT
- Paul Jesaitis, Program Engineer, CDOT
- Richard J. Pagan, Assistant Project Engineer, RJ Pagan & Associates (CDOT)
- Steven S. McWilliams, President, NDC
- Stan Odenbaugh, Vice President, NDC
- Richard Sver, Vice President, NDC
- Jeff Buckle, Superintendent, NDC
- Raymond Henn, DRB

#### Overview of the Dispute

The construction on the project is complete.

Colorado Department of Transportation (CDOT) and New Design Construction (NDC) are in dispute over the following items:

- 1.) 20.5 Days of Liquidated Damages at \$2,363.00 per day
- 2.) 77 Days of overhead costs for contract extension at \$332.82 per day
- 3.) Traffic control costs not paid by CDOT consisting of:
  - a. Flagging - 184.5 Hours at \$20.50 per hour

- b. Traffic Control Inspection (TCI) 4 Days at \$350.00 per day
- c. Traffic Control Management (TCM) 16 Days at \$543.00 per day
- d. Added time costs for Traffic control devices not paid by CDOT. 1 Lump Sum at \$2,358.62 per lump sum negotiated with Alert plus allowed markup.

DRB Recommendation Requested by Both Parties

The parties requested both merit and quantum.

It was stated by the parties at the DRB hearing that both parties were in agreement as to the issue of overpayment of stockpile material and therefore no recommendation is required from the DRB on the matter.

DRB Recommendations

The DRB finds no merit in the contractor's, New Design Construction, claim. Therefore the 20.5 days of Liquidated Damages at \$2,363.00 per day stands. Additionally the DRB finds no entitlement for the contractor on the issues of the 77 days of overhead costs or traffic control costs.

Reasoning for the DRB's Recommendations

- The contract is clear and unambiguous in the fact it is a "calendar day" contract.
- When asked specifically by the DRB during the DRB hearing, CDOT's Project Engineer Mr. Warda affirmed that CDOT had taken into consideration issues such as weather, weekend restrictions, project phasing, concrete curing time, etc. when developing the total calendar days required.
- The contractor did not, in the opinion of the DRB, provide any back up other than his opinion that CDOT did not take into consideration issues such as weather, weekend restrictions, project phasing, concrete curing time, etc. during the development of the construction schedule.
- The contractor has a duty and the responsibility to confirm to his satisfaction, during the bidding phase and certainly before signing the contract, that there is adequate time allotted in the contract to complete the project.
- The DRB could not find any inconsistencies on the part of CDOT with its time count regarding working day contract vs. calendar day contract.
- The DRB did not consider CDOT allegations of "...a lack of urgency to complete the project..." on the part of the contractor.
- The fact that the schedule and contract time were a standing agenda item at the weekly meetings, and that CDOT and the contractor discussed and signed the weekly time counts. With the contractor signing 46 of 51 of the time counts without comments or rejection.



Raymond W. Henn  
Disputes Review Board