



Ohio Department of Transportation

1980 West Broad Street, P.O. Box 899, Columbus, Ohio 43216-0899

November 1, 2002

Lee Guzzo
Complete General Construction Company
1221 East Fifth Avenue
Columbus, Ohio 43219

RE: Athens County Project 3001-01, Claim 10-3001(01)-1001-04

Dear Contractor:

Reference is made to the Deputy Directors Board hearing on the referenced claim that was held October 25, 2002. This claim is for delay costs resulting from a District ordered suspension to avoid a hazardous condition of restricted driving lane during snow and ice conditions.

After careful review of the submitted documents and consideration of the testimony given at the hearing, the Board finds entitlement in the amount of **\$183,016**. Below is a breakdown item by item.

**Home Office Overhead for the Department Caused Delay
Award: \$105,910**

The Board has reviewed your claim for an extended period of 211 work days from October 19, 2001(begin suspension) to August 9, 2002 (project completion). The Board finds this extended period to be acceptable less delays due to Extra Work, Weather, and Non - Excusable Delays. The Non-Excusable Delays are delays in the schedule due to contractor inefficiencies.

211 days	Extended Period (work days)
- 39 days	Extra Work
-12 days	Weather
<u>-33 days</u>	<u>Non-Excusable Delays</u>
127 days	Revised Extended Period (work days)
178 days	Revised Extended Period (calendar days)

The Board has used your unaudited HOOH rate of \$595 a day in its calculation. This yielded the award of \$105,910 (178 days X \$595 / day).

**Superintendent (Salaried Foreman) Salary During Suspension
Award: \$52,284**

Project Engineer Salary During Suspension

Award: -0-

The Board finds that the Change Order Policy 512-004(P) which is part of the contract for project 3001(01) according to proposal note *Specification and Supplemental Specifications, Policies and Special Provisions Incorporated by Reference as if Rewritten Herein*: found on page 9 of the project proposal, governs this issue. The applicable section of this policy is found on page 8 of Appendix B (Part II. A. 1.). This allows for reimbursement of the superintendent's salary and fringes plus a 35.5% mark up and reimbursement of the payroll taxes without a mark up.

We calculate this for the 116 work and paid holidays between October 18, 2001 and March 18, 2002 as follows based on the salary, fringe, and payroll tax information you submitted to the Board and rounding to the nearest dollar:

$$(116 \text{ days}) (8 \text{ hrs/day}) \left[\frac{\text{Markup}}{(1.355)} \frac{\text{Wages\&Fringes}}{(\$29/\text{hr} + \$7/\text{hr})} + \frac{\text{Payroll Taxes}}{(.2606)} (\$29/\text{hr}) \right] = \$52,284$$

The Project Engineer's salary is not compensable because the Change Order Policy limits compensation for a delay to one superintendent for projects under \$16 million. The policy also prohibits direct compensation of salaries and expenses of company officers and staff that are over the project superintendent. These expenses are compensated under HOOH.

Maintaining Traffic Items

Your claim for compensation at owned equipment rates for traffic items on the project from the start of the suspension to the completion of the project, including time it was stored during the suspension and later used for original contract work, is not allowed by the policy. This is a claim for "Extended Equipment Usage" which is prohibited by Appendix B. Part II. A. 8. of the Change Order Policy. Also the Tenth Appellate Court and Supreme Court of Ohio rejected your Extended Equipment Usage claim in their decisions in *Complete General Construction Co. vs. Ohio Department of Transportation* No. 98AP-1619.

The Board finds that the traffic items claimed for compensation were not used during the suspension period but rather stored at the site. Accordingly, compensation under Appendix B. Part II. A. 5. is not applicable except as follows:

Barrier

Award: \$14,600

The Board finds that you are entitled to compensation for moving the concrete barrier into the winter storage in the median. The District founds these costs to be **\$14,600** based on their records of labor and equipment used to make this move.

Light Poles

Award: \$8,000

The Board finds that you are entitled to owned equipment rates for the temporary crossover lighting during the 5 month suspension, because these poles had to remain in place as if

they were being used. We accept your rate of \$1600 a month, however, you are not entitled to a mark up on these poles, luminaries, wiring, and related hardware items because you own them and were not renting them from a third party.

**Temporary Striping
Concur With District Settlement**

It is the understanding of the Board that the District will pay for the additional stripping required by the ordered suspension, at the contract unit prices for the required markings and that you have accepted this as proper compensation.

**Maintaining Traffic Control Items- Labor 2 Hrs. a Day
Award: -0-**

The District in their written submission to the Board stated that they have no project record of this claimed 2 hours of labor a day to inspect the traffic setup during the suspension nor do they have any certified payrolls showing this labor expense. Your submitted documents do not support this claimed labor cost. Accordingly, compensation is denied on this issue.

**Equipment Mobilization
Concur With District Settlement**

It is the understanding of the Board that the District has agreed to compensate you for these remobilization costs for phase 2, because the suspension prevented your move into phase 2 while you were on site.

**Office, Site Rental, Water, Electric, and Porta-Jon
Concur With District Settlement**

It is the understanding of the Board that your superintendent used the State Field office as his office and that they will compensate you for the extended presence of this office on the project by pro-rating the lump sum bid for this item on a monthly basis and that you have accepted this settlement. This settlement will also cover the office utilities.

It is the understanding of the Board that the District has agreed to compensate your company for the portion of the yearly lease that was not used and subsequently not compensated by the monthly compensation for the Field Office.

**Wage Increase
Concur With District Settlement**

It is the understanding of the Board that the District has agreed to compensate your company for the escalation in wages for original contract work that was pushed past the first of May 2002, by the suspension.

**Interest
Award: \$2,222**

The Board has calculated interest on the awarded amount according to 126.30 ORC using

the interest period allowed for Claim Processing specified in Appendix B. Part II. G.1.c. This period begins 30 days after the submission of your claim document July 31, 2002 and ends on the date of the Deputy Directors Board Decision.

Under the terms of your contract contained on pages 10 through 13 of the proposal for project 3001(01), you have the right to pursue a claim before the Director's Claim Board should you not accept the awards of the Deputy Directors Board as full settlement of your claim. If you chose to pursue a claim before the Director's Claim Board, then you must send me a letter stating your intent to file a claim within 30 calendar days of the Deputy Directors Board decision.

The Department will not agree to Alternative Dispute Resolution on this claim because the issues involved do not require an advanced level of technical knowledge to decide an equitable and fair award.

You may call me at 614-644-6588 with any procedural questions.

Respectfully,

Vernon Dunlap, PE
Claim Coordinator

c: C.Bishop, Claim File