

EXPLANATION OF CONSENT AGENDA ITEM E.2.c.(20) October 28, 2015

ITEM:

Consideration of approving an increase to purchase order P17558 to Wagner, Hohns & Inglis for additional support and forensic schedule analysis in support of ongoing claims negotiation with the Contractor for the Channel Widening project on the CCAFS property in an amount not to exceed \$79,200.00. (Crowe/Hicks)

EXPLANATION:

The Contractor for the 44' Channel Widening project that has been working in the CCAFS, GLF, is currently behind schedule by 262 days on the contract milestone related to excavating the channel bank to an elevation of -13 MLLW. The Contractor has claimed that this delay is entirely the fault of the Canaveral Port Authority and is claiming to be compensated an additional \$2,915,598.77. Port staff is in disagreement with a significant portion of this aggregate claim amount and has hired a forensic scheduler in Wagner, Hohns & Inglis (WHI) to assist in this claim resolution effort.

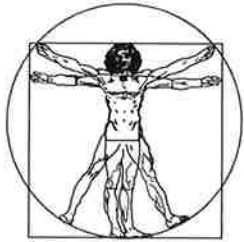
WHI has proven to be a knowledgeable and skilled consultant in the industry and Port staff is seeking to expand the scope and detail of the claims analysis.

Funding Review by Finance (Pat Poston): The total NTE amount of \$79,200 is included in the FY16 Capital Budget and no increase is required. [Budget item 2127 - WTB Channel entrance]

Staff Recommends Approval

Prepared by: Bill Crowe, P.E.





Wagner · Hohns · Inglis, Inc.

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August 28, 2015

Via E-mail

CC: Terry Hicks

Mr. Bill Crowe, P.E.

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Re: **Claim Review**

Phase 2

PRIVELEGED & CONFIDENTIAL

Mr. Crowe,

I have reviewed the information previously provided regarding the first package, CN 12-014A, of the Canaveral Harbor 44 Foot Channel Project [Project] in accordance with WHI's Phase 1 Proposal and have become familiar with the project and the areas of dispute. What follows is a summary of WHI's observations, open questions, and suggestions for future tasks that should be performed; all of which will assist you in moving forward with this dispute.

1. The initial schedule provided by the Contractor indicated that no seaside work was to take place for a couple months following the start of construction. As such, the late issuance of the second notice to proceed should not have immediately hampered the contractor's efforts. The contractor provided a notice of potential delay on April 16,

2014, indicating that it would be delayed starting in 5 days; or on April 21, 2014. The second NTP was issued by the CPA on April 21, 2014.

2. The Contract states that delays outside of the CPA's control are not compensable to the Contractor. This is actually consistent with industry standards. Thus, no dig days and the communication line suspension are not likely to be compensable to the Contractor. As the CPA was responsible for design, the compensability of the QD arc and gas line delays will depend upon how that information was uncovered contemporaneously. In any case the Contractor would be still be due relief from liquidated damages and would receive an extension of the contract milestones as appropriate for critical delays that are outside of the Contractor's control.
3. The CPA specifications for sheet piles require pre-punching for areas of rock. However, if this was to be anticipated as typical in most areas on this Project, it may not have been adequately conveyed. The contractor has an argument that the piles used were not suitable for the conditions encountered given the reasonably anticipated process of installation. The success or failure of the Contractor's argument will be influenced by expert opinions but is subjective based upon a fact finders belief as to the extent to which the Contractor assumed risk for this condition.
4. The daily reports seem to indicate that a small percentage of the Contractor's workforce was involved in the drilling and pile driving efforts. In addition, if "405" and "396" represent other contracts then it is possible that the Contractor's costs may be a perpetration of fraud.
5. The daily reports are not well laid out but do identify generally where work is occurring. They also reference a knife fight, termination of employees, broken equipment, workers leaving the site for other projects, the ongoing use of equipment for tasks that appear unrelated to the critical issues and activities identified, etc... WHI recommends that the daily reports be farmed for as-built information that confirms or refutes the timelines

presented by the Contractor, and for information about employees and equipment working on other contracts etc. (Recommended Task 1)

6. The analysis prepared by Oxley Brannon was referred to as an as-built critical path analysis. The theory behind an as-built critical path analysis is that the critical path of activities leading to Project completion can be identified after the project is over; then the delays that affected that sequence can be quantified. This analysis methodology abandons the Contractor's schedules in favor of a hindsight view of what happened on the Project. There are logical flaws in using this approach. That said, the Oxley Brannon analysis was prepared before the work and as-built were complete; back when the Contractor still expected that the last items of work would be tasks related to pile driving and its successors. It is now known that the last areas of work will be general excavation tasks which are unrelated to the pile delays. The result is that a new as-built critical path (if performed without undue bias) would be forced to run through the sequence of events that leads to the completion of general excavation. Thus, WHI recommends performing a similar global analysis, not so much as a position, but as a rebuttal to what was presented by Oxley Brannon (Recommended Task 2).
7. The Contractor prepared and updated its Project schedules. Initial observations are that the critical sequence for the Contractor's period of performance ran through excavation of the new north bank and subsequent riprap activities. However, the critical path through completion of excavation to -13 feet is identified as dependent upon the completion of the sheet piling as far back as July of 2014. It is not clear at this time exactly when the dredging/excavation seaward of the sheet piles was completed, though it appears some of this work was performed while piles were being driven. The actual timing of this work may dispute that the sheet pile delays were even a critical delay to the Contractor's ongoing efforts to reach the -13 feet milestone.

The significance of the preceding paragraph should not be missed. It is likely that the Contractor is not due any extended general conditions for delay; save to the extent

equipment and personnel were dedicated to the completion of the excavation milestone. This is because its period of performance (and the resultant damages) was not based upon delays to the excavation milestone, but instead the time it was required to remain mobilized on site. WHI will recommend performing a contemporaneous analysis of both the excavation and completion milestones to determine critical project delay, and then an independent assessment of the Contractor's and Owner's efforts to progress the work. (Recommended Task 3)

8. The costs presented by the Contractor seem exaggerated and lack the minimum back up typically required for a claim. It can be seen from the Contractor's previous change requests that the Contractor is capable of providing the type of backup that is typically required. It is not appropriate to use hourly rates for a month long period for loss of production, unless it can be demonstrated that the equipment was in fact used 10 hours per day (which it was not); nor is it reasonable to use operating costs from Blue Book on rented or warranted equipment. Similarly, it is not appropriate to calculate the hourly rate on 176 hrs per month, but then claim based on 220 hours per month.

WHI can strongly attack the costs presented as unreasonable and exaggerated. For example, the contractor is claiming over \$15K for 69 days of use of a 2011 F150 Crew Cab Pickup Truck. That equates to a yearly rate of over \$80K for a retail truck. WHI recommends a strong pushback on the attempts to perpetrate a fraudulent (or at best greatly exaggerated) claim against a government agency (Recommended Task 4)

The overall impression is that the Contractor has some issues which it might have entitlement. However, the Contractor has not attempted to incorporate its own failings or the terms of the Contract and the costs sought are not reasonable.

Estimated Labor Hours and Costs

Below is a list of Tasks that will most likely need to be performed, including a detailed scope and estimated hours to perform the tasks identified. The hourly estimates are based upon the performance of all the tasks as later tasks will be somewhat dependent on the findings of earlier tasks. The estimated costs are based on an average hourly rate of \$200/hour.

Task 1 – Partial As-built

Prepare a partial as-built record based upon the daily reports, meeting minutes, look-ahead schedules and pay applications. This task is estimated at 3-5 hours per month of daily reports over a period of 12 months (May 2014 – May 2015); a total of 36-60 hours.

Task 2 – As-Built Critical Path Analysis

Prepare a rudimentary as-built critical path analysis for the Project and prepare a write up and graphic similar to that presented by Oxley Brannon. This analysis would be a global in nature and is estimated to take 8-12 hours to perform assuming the direct assistance of CPA's project personnel; plus an additional 8-12 hours to gather and sort the supporting documents, pictures, and schedules used to define the as-built information. Preparation of the graphic is estimated to also take 12-16 hours. Preparation of the written report and the discussions on the new delays observed is expected to take an additional 12-16 hours for a total of 40-56 hours. Note that this task is reliant upon Task 1 but may be deleted without increasing the costs of later tasks.

Task 3 – Contemporaneous Delay / Causation Analysis

Perform a Contemporaneous Schedule Analysis and assess causation of critical delays over a 16 month Project period. Typically the schedule analysis portion takes about 8-16 hours per month of Project, and the assessment of causation takes 16-24 hours per month of Project. However, given the simplistic nature of the Contractor's schedules and the nature of the work, this task is estimated at 4 hours per Project month for the schedule analysis portion and 5-7 hours per Project month for the causation portion. As the Project period being analyzed is 16 months, this equates to a total of 144-176 hours.

Task 4 – Critique of Costs and Rebuttal

Prepare a critique of the costs presented by the Contractor and prepare a rebuttal estimate. The rebuttal estimate will analyze the Contractor’s costs under an assumption that all of the Contractor’s identified issues will prevail, and also under an assumption that only those delays identified by WHI as both excusable and compensable will prevail. This task shall include the assessment of idle manpower and equipment (loss of production) claimed by the Contractor. However, this assessment is otherwise strictly limited to delay related costs. This task is estimated to take 24-40 hours.

Task 5 – Prepare Expert Report

Prepare an expert report. WHI will define the steps and methodology used to perform each analysis and the process used to reach its opinions. WHI will explain in narrative format the results from the delay analysis and footnote each document, schedule, picture, daily report, meeting minutes, pay application, photo, etc. that was used in reaching its expert opinions. This task is estimated to take 48-64 hours.

ESTIMATED SCOPE and BUDGET		
Scope	Estimated Hours	Cost
Task 1 – Partial As-Built	36-60	\$7,200 - \$12,000
Task 2 – As-built Critical Path Analysis	40-56	\$8,000 - \$11,200
Task 3 – Delay/Causation Analysis	144-176	\$28,800 - \$35,200
Task 4 – Critique of Costs and Rebuttal	24-40	\$4,800 - \$8,000
Task 5 – Prepare Expert Report	48-64	\$9,600- \$12,800
TOTAL		\$58,400 - \$79,200

All fees will be billed hourly;

Bob Robinson P.E.	\$250/hr
Amon Ackley P.E.	\$200/hr
Bill Epstein E.I.T.	\$175/hr
Technical Admin	\$75/hr

Any balance on the budget will be returned to the CPA or allocated for future phases of work.

This proposal is for WHI to perform the specific tasks identified herein only. WHI will be working under CPA's direction and therefore reserves the right to seek additional compensation should the direction provided by the CPA result in a larger scope than could have been reasonably anticipated as of this writing.

Very truly yours,
Wagner Hohns Inglis, Inc.



Amon D Ackley, P.E.
Senior Consultant