

Gordon Street Bridge- Delay Claim

On March 27, 2019, Comanche Construction sent a 'Notice of Delay' Letter to the City of Dalton Public Works Department. The delay letter was in regard to the delay experienced due to Norfolk Southern (N.S.) and its onsite representative, STV, Inc., because of an unexpected submittal review process during construction that required Comanche to stop working after they were approved to begin construction.

Comanche Construction was delayed, awaiting N.S. approval, for a total of 4.5 days. The dates of the delay were half a day on 3/27, and full days on 3/28, 3/29, 3/30, and 3/31. N.S. provided approval for the requested submittals on Friday, 3/29, but were not able to provide a flagger until Monday, 4/1.

The City of Dalton Public Works Department had a meeting with Comanche on June 4, 2019, in regards to the delay incurred by Comanche Construction due to the submittal review process established by N.S. once the project had already began. Both parties, the City and Comanche agreed to adjust the 4.5 days down to 3 days for the delay claim, due to Comanche being able to complete some work on other areas of the bridge during the overall date range. The dates corresponding with this were Friday (3/29), Saturday (3/30) and Monday (4/1).

Comanche could not send people home from the job because they were ready to work and anticipated the approval of the submittals on Thursday (3/28) and Friday (3/29), and once approval was received they were expecting a flagger to be on site Monday (4/1). With this being the case, sending people home would have been more costly for the company and impede them getting the work completed once the submittals were approved and the flagger was on site.

Comanche Construction is requesting financial reimbursement by the City for the delay caused by N.S. The expenses requested for reimbursement are Hotel/ Per Diem costs, Labor costs and Equipment costs for the 3 days. Due to the nature of the claim, both parties agree to look at a 'typical day' for each expense and multiply it by 3 to come up with a fair amount for payment through a process of due diligence.

The labor on a 'typical day' was determined by the individuals on the job, the amount of hours worked and then broken out by the rates for each individual by the hour (including taxes and benefits). Breakdown shown on the spread sheet and verified by time sheets and certified payrolls. The 'typical day' labor was then multiplied by 3. Daily labor total was **\$3,233.59**.

\$3,233.59 x 3 = \$9,700.77

The hotel rate was per receipt and determined by 10 rooms per day at the rate of \$61.00 per room. The total for the hotel per day was **\$610.00**. There were 14 individuals documented on the job. The per diem policy for the company is \$35.00 per day. The total for the 14 individuals on the jobs 'Per Diem' was **\$490.00**.

(\$610.00 + \$490.00) x 3 = \$3,300.00

The last item evaluated was the equipment on the job and the rates for each item. Rentals were evaluated by per day rates and receipts were provided. Comanche Construction owned equipment was

evaluated per blue book rates by the hour. There spreadsheet provided for the equipment shows the equipment and the description. Total for the equipment cost per day was **\$1,696.96**.

\$1,696.96 x 3 = \$5,090.88

The total for labor, hotel/ per diem and equipment requested for reimbursement is **\$18,091.65**.

\$9,700.77 + \$3,300.00 + \$1,696.96 = \$18,091.65

Summary of Delay Claim Evaluation and Process (GDOT)

- Delays caused by right of way problems, as in our case, are not breach in contract, but may be grounds for a delay claim (105.13.B.3)
- Items that may be recoverable are (105.13.B.6):
 - Direct hourly rates to the employee including benefits, taxes, insurance, welfare and other labor burdens
 - Documented additional material costs
 - Equipment costs
 - Cost of extended jobsite overhead
- 'Rental Rate Blue Book' is used to evaluate equipment rates, and it has to be documented with a rental records and detailed descriptions. (150.13.B.7)
- Notice of Potential Delay Claim: If a Contractor believes that they may be entitled to additional compensation, the Contractor must notify the Owner, in our case, in writing of the intent to claim the additional compensation. The Owner has no liability for delays that occur more than one (1) week prior to filing the written notice. (105.13.B.9.a)
- Detailed records after the notice of the claim have to be kept by both parties (105.13.B.10)
- Contents of the claim are in the notice of claim letter and include details, dates, descriptions, and information on the 'how, what, when, where and who' of the claim. The claims must be made in good faith and accurately reflect what the Contractor believes is the Owners liability. (105.13.C-D)
- In regard to auditing, supporting documentation for to the claim include (105.13.E):
 - Daily reports and time sheets
 - Payroll register
 - Equipment rates and records
 - Lodging and Per Diem documentation
- If the claim is in compliance with all the above and is denied in part, or in whole, the Contractor may send a written request to the Owner within thirty (30) days after decision is made (in writing) to request mediation. Mediation has to happen before it can be taken any further as either a breach of contract or a lawsuit. The expense of mediation is to be split equally between the two parties. (105.13.F)