MEMORANDUM

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: THOMAS E. BOZE
Senior Associate County Counsel
Public Works Division

RE: **Brutoco Engineering & Construction, Inc. v. County of Los Angeles, et al.**
Los Angeles Superior Court Case No. BC 307255

DATE OF INCIDENT: January 2000

AUTHORITY REQUESTED: $274,167

COUNTY DEPARTMENT: Department of Public Works - Road

CLAIMS BOARD ACTION:

☐ Approve ☐ Disapprove ☑ Recommend to Board of Supervisors for Approval

_____, Chief Administrative Office
ROCKY ARMFIELD

_____, County Counsel
JOHN F. KRATTLI

_____, Auditor-Controller
MARIA M. OMS

on August 16, 2004

HOA.237740.1

SUMMARY

This is a recommendation to settle for $274,167, a lawsuit filed by Brutoco Engineering & Construction, Inc. ("Brutoco"), seeking in excess of $800,000 for breach of contract arising from a Department of Public Works ("DPW") construction contract.

LEGAL PRINCIPLE

A public entity is liable for costs incurred by a contractor as a result of changes in the work caused by the public entity. A public entity is also liable for costs incurred by a contractor as a result of delays in the completion of construction project work caused by the public entity.

SUMMARY OF FACTS

In January 2000, DPW entered into a contract with Brutoco for the Construction of Cash Contract 6907 (Port Access Demonstration Project), Alameda Street Phase III-A, Route 91 Freeway to Del Amo Boulevard (in the vicinity of Carson), Supervisorial District 2 (the "Project").

The Project involved the reconstruction and widening of roadway, construction of a roadway underpass beneath railroad trackage, and completion of a storm drain system, traffic signals, and street lighting in connection with the Alameda Corridor Project.

During the course of the construction, changes in the Project required Brutoco to perform tasks not shown on the plans and these changes and other events beyond Brutoco's control caused it to be delayed in the completion of the work, as follows:

1. Removal of Existing Track Materials: To meet the intent of the design, Brutoco was unexpectedly required to remove existing sections of railroad tracks discovered to be interfering with the construction of the Project.

2. Maintenance of Asphalt Concrete Detour: In order to ensure traffic safety, Brutoco was required to maintain an asphalt detour around the construction.

3. Implementation and Maintenance of a Water Management Plan: Due to storm water impacting the construction site, it was necessary for Brutoco to incur additional costs for storm water management efforts.

4. Pile Redesign: Unanticipated design changes requiring the pile anchor bars to be changed from concrete to steel bars caused Brutoco to incur additional costs and delayed completion of the work.

5. Utility Duct Relocation: Brutoco was delayed in completing the construction work by the relocation of a Metropolitan Transit Authority ("MTA") utility duct interfering with the work which was not properly disclosed on the Project drawings.

Brutoco alleges that it is owed $823,271 in addition to payments it has received to date, due to the changes in the Project and County-caused delays.

The original contract amount was $26,469,270. The Board of Supervisors has previously authorized $3,205,478 for approved change orders. With the addition of the amount of this settlement, the final contract amount would be $29,948,100.

DAMAGES

Brutoco's lawsuit seeks damages in excess of $823,271 for breach of contract. Brutoco also seeks interest and attorneys' fees.

STATUS OF CASE

Brutoco filed its complaint on December 5, 2003. The Court has set the case for a jury trial on March 22, 2005. The Court has been advised of the proposed settlement. The Court has set a status conference regarding the pending settlement for August 23, 2004.

EVALUATION

At trial, there will be no dispute that Brutoco was required to perform additional work beyond what the bid plans and specifications showed. As a result of this additional work and other unanticipated events, the completion of the work was delayed. A trial of this matter will focus on the costs of the changes and extra work and to what extent the delays resulted from Brutoco's inefficiencies. Although some of Brutoco's claims appear excessive, it will be able to present evidence of significant costs that it was required to incur due to project changes and delays.

DPW has performed an extensive investigation of Brutoco's claims, including acquiring the services of a construction claims consultant to review Brutoco's delay claims, and has determined that the settlement amount is favorable to the County.

We believe that a jury could find that Brutoco is entitled to additional payment due to the changes and delays to the Project substantially in excess of the proposed settlement amount.

To date, we have incurred in-house attorneys' fees of approximately $16,096. No costs have been incurred to date. We estimate that the costs to proceed through trial, including costs of experts, discovery, formal mediation, and preparation for trial could exceed $85,000.

Given the considerable risks and costs associated with a jury trial, we recommend that this case be settled for $274,167. The Department of Public Works concurs with this recommendation.

APPROVED:

RICHARD D. WEISS
Assistant County Counsel
Public Works Division

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DEPARTMENT OF PUBLIC WORKS

CORRECTIVE ACTION PLAN

Facility: Alameda Phase 3a

Name: Brutoco Engineering & Construction, Inc. v. County of Los Angeles
Case No: BC 307255

RISK MANAGEMENT ISSUES

	ISSUES
[x] Systems [ ] Personnel	This is an action filed by Brutoco against the County of Los Angeles for breach of contract in Los Angeles County Superior Court, Case Number BC 307255. On January 11, 2000, Public Works contracted with Brutoco to reconstruct and widen existing roadway, construct a roadway underpass beneath railroad tracks, construct a storm drain system, install traffic signals and install street lighting. The contract amount was $26,469,269.50. On February 10, 2000, Brutoco commenced work. Throughout the contract, Brutoco and Public Works exchanged numerous letters regarding proper reimbursement for changes in work. On April 11, 2002, the work was field accepted. Although several issues with the contractor were left unresolved, on August 20, 2002, the Board of Supervisors partially accepted the contract for a total of $29,474,747.67. Public Works intent was to return to the Board to request final acceptance once all outstanding issues were resolved. The contractor's outstanding claims included: 1) a claim for extra work for the removal of existing railroad tracks that interfered with construction; 2) a claim for extra work for the maintenance of an asphalt detour around the construction site; 3) a claim for extra work for additional storm water management efforts; 4) claims for extra work involving a Caltrans-required change to the design of the pile anchor bars; and 5) a claim for delays caused by the relocation of a MTA utility duct.

	With regard to the claim for extra work for the redesign of the pile anchor bars, at the time Caltrans required the change, Public Works unsuccessfully attempted to negotiate the price to be paid for this additional work with the contractor. Because a price could not be negotiated, the original bid item for the piles was deleted, and the work was paid on a time and materials basis. Public Works and Brutoco disagreed on which costs should be reimbursed and on the cost for the reduced productivity. As a result of the failure of the negotiations on these issues, on March 20, 2003, Brutoco submitted a claim for $823,270.63 to the County Clerk's Office. On May 8, 2003, Public Works prepared a draft proposal to Brutoco for the payment of $249,166.52 and waiver of $84,000 in liquidated damages to settle all outstanding issues. Brutoco accepted this offer with the exception of a claim for reduced productivity due to the redesign of the piles for which they claimed an additional $67,342.67. Public Works had previously agreed that this claim had merit and paid $122,126.28, but was not provided with documentation substantiating the additional requested compensation. However, subsequent negotiations resulted in an agreement to pay an additional $25,000 for a total settlement amount of $274,166. The proposed settlement will resolve all outstanding claims.

INVESTIGATIVE SUMMARY

DATE	INVESTIGATION
December 2001 thru May 2003	Public Works' investigation determined that the contractor incurred additional costs due to the unexpected necessity to remove existing railroad track, maintain a detour around construction, and for storm water management efforts. In addition, the contractor incurred extra costs due to changes in the project plans required by Caltrans' after award of the contract. Also, the contractor incurred additional costs due to the relocation of an MTA utility duct.

CORRECTION ACTIONS (PERSONNEL)

PERSONNEL INVOLVED	STATUS OF TIME OF EVENT	CURRENT STATUS	DISCIPLINARY ACTION TAKEN	DATE COMPLETED
Public Works		On-going	No personnel action was necessary.	

CORRECTIVE ACTIONS (SYSTEM)

SYSTEM	CORRECTIVE ACTION	DATE COMPLETED
Pile anchor bar redesign	After contract award, we entered into negotiations with Caltrans to maintain the overpass after construction. The plan changes were requested by Caltrans to meet federal design requirements and to ensure eligibility for federal funding for maintenance. Since this was a unique situation not likely to occur again, no specific action plan has been implemented.	
Removal of existing railroad track	The existing railroad track was to be removed by the Alameda Corridor Transportation Authority ("ACTA"). Since the project designers could not foresee that ACTA would fail to complete their work, this is not likely to occur again and no specific action plan has been implemented.	
Maintenance of a detour around construction	The contractor installed the temporary asphalt pavement for the detour in accordance with the plans and specifications. However, the contract does not explicitly require maintenance of the temporary pavement. In the future, the wording in the specifications will indicate that the temporary pavement is to be maintained.	
Additional storm water management efforts	This project was one phase of the Alameda Street Improvements projects. Because of the sequencing of these various contracts, the temporary measures needed to control storm	

	flowers were greater than expected when this phase was designed. Because the characteristics of these projects are not likely to occur on other projects, no specific action plan has been implemented.	
Relocation of MTA Utility Duct	The need to move the utility duct was identified prior to the start of construction. However, MTA and Public Works disputed who was responsible for the cost of relocating the duct. To settle the matter, we agreed to have MTA design the relocation and Public Works to pay for the relocation. This issue required extensive coordination between Public Works and the MTA which resulted in a 13 day delay of Brutoco's schedule. This delay was unique and could not have been prevented; therefore, no corrective action plan has been prepared.	

CHRONOLOGY OF EVENTS

DATES	EVENTS
January 11, 2001	The County of Los Angeles and Brutoco enter into contract for the construction of Alameda Phase 3a.
January 2001 through May 2004	Correspondence is exchanged between Brutoco & Public Works regarding a variety of change order issues.
April 11, 2002	Contractor completes work of contract.
August 20, 2002	Project is partially Board accepted.
March 20, 2003	Brutoco files a formal claim with County Clerk's Office.
May 2003	Public Works & Brutoco agree to a settlement amount for all but one issue.

May 2003 to May 2004	Settlement negotiations between Brutoco and County of Los Angeles with tentative settlement agreement reached.

JFG: