

DISPUTE REVIEW BOARD RECOMMENDATIONS

August 12, 2012

Robert Tanksley
Project Manager
Costello Industries, Inc.

Greg Dutton, P.E.
Senior Project Engineer
CDM Smith

RE: SR9(I-95) FPN 213217-2-52-01
Contract No. T2359 FAP No. 09552831

SUBJECT: Hearing Conducted August 6, 2012

ISSUE: Payment for removal and replacement of existing concrete pavement

Dear Sirs,

The contractor, Costello Industries, Inc. (CII), asks the Dispute Review Board (DRB) "to find the Department's interpretation improper and to direct the Department to pay Costello for quantities of work based on the actual depth of removals and replacements as specified and required by the contract."

The Florida Department of Transportation (FDOT) and their consultant, CDM Smith (CDMS), takes the position that all the information contained in the contract documents, plans and specifications clearly point out that the pavement design thickness is 9 inches and that removal quantity is to be paid for in square yards as determined by horizontal measurements of length and width, regardless of depth and replacement quantities of replacement are to be paid for in cubic yards as determined by horizontal measurements of length and width and 9 inches deep (the design depth).

BOARD FINDINGS

The Board reviewed position papers submitted by CII and CDMS, as well as a rebuttal paper submitted by CDMS. A hearing of the issue was then conducted at the DOT Jacksonville Urban Office on August 6, 2012. Based on the information presented, the Board finds:

1. Florida Statute 337.11(2) states that the Department is to provide design plans that are "complete, accurate, and up to date prior to the advertisement of bids". It is therefore incumbent for the Department to provide plans that are accurate and biddable.
 2. No evidence of pre-boring or actual depth measurements were made prior to project
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design.

3. Typical sections and other documents in the design plans specify an existing concrete pavement thickness of 9 inches. No variance in the thickness is indicated in the plans or other documents.
4. DOT Standard Specifications 110-4 Removal of Concrete Pavement is to be determined by the quantity removed, in square yards, determined by actual measurements along the surface of the pavement before removal.
5. Concrete slab replacement quantities to be paid for will be the volume, in cubic yards, determined by field-measured horizontal dimensions and pavement design thickness, as specified in Section 353-11.
6. Pavement removal and replacement activities began on October 19, 2011 and there is evidence that beginning October 20, 2011 CII presented copies of the Patch Tracking Report, containing data showing locations, dimensions and other pertinent information including depth measurements, to the CPM Smith Inspector for his signature. After May 15, 2012, CDM Smith no longer signed the reports. Depths recorded on the reports indicated considerable variance from the plan thickness of 9 inches shown on the plan typical sections and allowed by the payment measurement Specifications.
7. CDM Smith has allowed payment for 10 slabs of greater than 9 inches, some up to 18 inches, which they determined to be atypical.

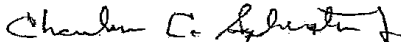
RECOMMENDATION OF THE BOARD

The Board finds that because of the variable depths of the existing pavement encountered throughout the work, that are materially different from the 9 inches shown in the plans, and that these differing depths (site conditions) were presented to the engineer, as evidenced by his acknowledgement on October 20, 2011 and later. In accordance with Section 4-3.7, the Contractor is entitled to an adjustment of pay quantities.

The Board appreciates the cooperation of all parties to this action. Please remember that acceptance or rejection of this recommendation is required within 15 days. Failure to respond within the time frame constitutes an acceptance by the non-responding parties.

I certify that I have participated in all meetings and discussions concerning the issues and concur with the findings and recommendation.

Dallas L. Wolford
Don Henderson
Charles C. Sylvester, Jr. P.E.
Signed for with concurrence of all Members


Charles C. Sylvester, Jr., P.E. Chairman, DRB

