



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

DENVER J. STUTLER, JR.
SECRETARY

April 13, 2006

Mr. R.D. Buser
Chairman Regional DRB
201 Clearview Rd.
Chuluota, FL 32766

RE: FPN 209692-2-52-01
SR-134 (103rd Street) from SR-23 to I-295


SUBJECT: Hearing March 21, 2006
Regional Dispute Review Board Recommendation

Dear Sir:

The Department hereby accepts the Regional Dispute Review Board recommendation of no entitlement relative to the dispute for the thermoplastic material acquisition for the above referenced project.

The Department would like to take this opportunity to thank the board for your time and effort in reviewing these important issues.

Sincerely,


Carrie A. Stanbridge, P.E.
Resident Engineer

cc: William Downs, Board Member
Peter Markham, Board Member
Joel Spivey, Douglas Asphalt Company
Ray Grode, Douglas Asphalt Company
Allan Moyle, Jacksonville Construction Engineer
Shannon Mobley, FDOT Project Administrator

CAS/sm

April 7, 2006

Al Moyle
2198 Edison Ave, MS2803
Jacksonville, FL 32204-2619

Douglas Asphalt Company
101 North Peterson Ave, Suite 201
Douglas, GA 31534

FL DOT
RECEIVED

APR 10 2006

JACKSONVILLE
CONSTRUCTION

RE: RDRB Hearing – Contract Time Issues
SR-134 (103rd Street) from SR-23 to I-295
Financial Project No.: 209692-2-52-01
Federal Project No.: 2498-018-U
Contract No.: T2082
County: Duval

The Regional Dispute Review Board was asked to hear a dispute involving the assessment of thirty one days of liquidated damages for failure to complete the work within the allowable contract time. The hearing was held March 21, 2005 in the Jacksonville urban office.

Project Historical Data

The project required upgrading curb cut ramps and allowed the Contractor to select from three options when preparing his bid. The Contractor chose the stamping method, with other possibilities being thermoplastic mats or glue down mats. The Contractor installed 18 mats utilizing the stamping method prior to March 31, 2004. The Department's opinion was that fifty percent failed acceptance criteria. The Contractor requested Department Participation in changing to thermoplastic truncated domes on April 17, 2005 which was denied April 21, 2005. The Department agreed to participate in the additional cost May 5, 2005 by providing \$52,515.00 via change order which was issued May 15, 2005. There was no time requested or granted.

On August 16, 2005 the Contractor requested a change to a different material called Top Mark by Flint. The Contractor could install the Top Mark material almost immediately as no waiting period was required for concrete curing. The major impact on time was the procurement of material. The Contractor placed five separate orders, each of which experienced a period of time for manufacture and delivery.

Project acceptance occurred thirty one days after all contract time had expired which resulted in the Department assessment of Liquidated damages.

DEPARTMENTS POSITION

The Department maintains that the Contractor failed to pursue the work in a manner that would ensure completion within allotted contract time. The Contractor failed to meet the requirements of section 8-7.3.2 of the standard specifications and also executed bilateral agreements with no request for time.

The Contractor only utilized (8) days of the remaining (130) allowable contract days to pursue truncated mat work and (3) more days were needed after contract time expired.

Considerable contract work, aside from thermoplastic mats for ADA ramps was not completed prior to expiration of allowable contract time. Remaining contract work included striping, mowing, sodding, signal work, and rolling straightedge of friction course asphalt, general cleanup and remedial work list.

CONTRACTORS POSITION

The Contractor contends that they could not finish the contract work within the allowable duration due to procurement and installation of the truncated dome mats. The Contractor maintains the contract items were substantially complete prior to the expiration of allowable contract time.

The Contractor contends they were coerced to change from the stamping method to the thermoplastic truncated dome mats.

On March 31, 2005 the Contractor requested change to either a Glue Down Pad or a Thermoplastic Pad, which was denied April 21, 2005 and on May 5, 2005 agreement was reached to use the Thermoplastic Mat, a time span of 35 days.

The Contractor and Department presented their position statements in writing prior to the hearing and made oral presentations at the hearing. The Board feels that we have been given adequate information to make offer our recommendation.

BOARD FINDINGS

The contract time was exceeded by thirty one days and liquidated damages assessed. The parties recognized early in the contract that the Stamping method of forming the truncated domes required protection during the curing period in order for the domes to gain enough strength to resist breaking off when exposed to loading. A proposal was made to change the system March 31, 2005, denied April 21, 2005 and approved May 5, 2005, a period of (35) thirty five days. The Contractor did not ask for a time extension when the change was made. It is the Boards understanding that the parties were not aware that there would be a procurement problem. The Board is also aware that application of the material took very little time after the Contractor received it. The Board noted that inadequate effort in estimating the amount of material needed to complete the job was a

major factor in the contract time overrun.

The Board looked at the work timeline covering the period from September 27, 2005 through October 27, 2005 and notes that of the 31 days shown; only 10 had a job related task if you exclude the Contractors cleaning up his lay down yard. These 10 days included 3 punch list days, 2 Thermoplastic Mat days, 1 mowing day, 1 sod day, 3 striping days.

During the hearing the Department stated that the Contractor never asked for a time extension during the supplemental agreement process and section 8-7.3.2 clearly requires a written request within 10 days of the commencement of a delay, failure to do so waives the right for a time extension. Based on the Contractor not making a request in accordance with section 8-7.3.2 their rights are waived and the Board must rule no entitlement.

The Board believes that with a better sense of partnering these problems would have been minimized and we encourage the parties to take a realistic look at the now known facts involved in procuring the thermoplastic material and the actual amount of work that was left at the expiration of contract time. A very important feature to consider is that after the initial request by the Contractor to change to Thermoplastic truncated mats, a system that both parties admit is better for the job, it took (35) thirty five days for approval. It is important to consider that during the 35 day period the Contractor could not work on the curb mats.

Respectfully submitted by the Board, signed by
Chairman for all.

Chairman: RD Buser



Member: Bill Downs

Member: Peter Markham