

DRB Hearing No. 2

May 14, 2019

GLF Construction Corporation vs. FDOT District 3

GLF Entitlement for Turbidity Monitoring

Project No.: FM 22044275201(Segment 7)

Contract: T3543

**Contract Description: Design-Build S.R. 87 from 2miles South of Yellow River Bridge
To C.R. 184 (4-lane and Bridge in Santa Rosa County**

Contractor: GLF Construction Corporation

Engineer of Record: Hatch Mott McDonald

Consultant Engineering & Inspection for the FDOT: Eisman & Russo, Consulting Engineers

Members of the Dispute Review Board (DRB)

Cynthia Snow White, Member

David Van Leuven, P.E., Member

Thomas P Shafer, P.E., Member, Chair

GFL's Position

GLF Construction Corporation (GLF) seeks additional compensation due to the Florida Department of Transportation's (FDOT) mandated direction that GLF perform Turbidity testing and reporting of the testing data to the CEI Consultant. The Department contends that the requirements of the following Project Special Provisions support the position that the Contractor is responsible for the Turbidity Testing (Exhibit 5).

PERMITS PROCURED BY THE DEPARTMENT.

(REV 8-7-01) (FA 4-14-05) (7-15)

SUBARTICLE 7-2.1 is expanded by the following:

All Permits procured by the Department are posted on the Department's website at the following URL address:

<ftp://ftp.dot.state.fl.us/permitsandorutilityworkschedules/> . Take responsibility to obtain this information and comply with all requirements posted on this website up through five calendar days before the opening of bids.

Comply with the provisions contained in these permits.

If the Department's web site cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4101.

Issue Timeline

GLF attended the mandatory pre-Bid meeting on August 10, 2015 (Exhibit 1). During this meeting, ENVIRONMENTAL SENSITIVITY was reviewed and discussed in detail. Specifically, the agenda contained topics “a.” through “y.” to be discussed and reviewed. Twenty-five (25) items were listed and discussed in detail related to the environmental requirements for the project. At no time were the requirements of turbidity monitoring discussed or reviewed with the bidding Contractors. The items covered endangered species, endangered species training of contractor employees, noise control, vessel traffic control plans, Eglin AFB dig permit requirements, limitations for pile driving, noise study assistance during the test pile program, and other topics. There was no review or discussion of the turbidity testing or the fact that the bidding contractors would be responsible for the Turbidity Testing Program. No agenda item was included, nor did anyone announce that the responsibility for collection, testing, and reporting of the Yellow River waters turbidity levels would be the responsibility of the bidding contractors.

On December 2, 2015 (Exhibit 2), the Pre-Construction Conference was held. During the conference, no mention of turbidity testing was made other than the statement made by the CEI on page 8 of the minutes. The statement made was “FDEP Permit states turbidity monitoring requirements (zero increase above background)”. No other discussion related to the turbidity testing or the responsibility of performing the collection and testing of the water samples was made.

On December 9, 2015 (Exhibit 3), a Pre-Construction Environmental Commitment Meeting was held to discuss the environmental concerns and permits for this project. During this meeting, GLF was informed by the CEI that collection and testing of the water samples from the Yellow River would be their responsibility as the Contractor for the Project. The reports would be developed and submitted as required by the permit.

On December 16, 2015 (Exhibit 4) GLF provided a written response to the CEI disputing the position that GLF was responsible for the Turbidity Monitoring Program. Specifically, GLF demonstrated that the specification being referenced as the binding document is identical to the Specification for the US 90 Yellow River project (FIN 42450815201), which GLF was currently constructing. On the US 90 Yellow River project (FIN 42450815201) project, the CEI Consultant performed the turbidity monitoring for the project as directed by the Department at the Pre-Construction Conference. Therefore, by review of the specifications during the bid development, GLF had no reason to include costs for collection, testing, and report development of turbidity samples.

On December 18, 2015 (Exhibit 5) the CEI reiterated that the Special Provisions require the contractor to “Comply with the provisions contained in the Permits”. The CEI directed GLF to “...make arrangements for turbidity monitoring, sampling, and reporting.”

On December 23, 2015 (Exhibit 6) GLF provided a written Notice of Intent to Claim all costs associated with the mandated direction that GLF would perform the Turbidity Testing Program (collect, test, and develop reports of turbidity samples from the Yellow River). GLF stated in the Claim Notice that “It is GLF Construction’s position that this directed work is additional that is not expressly provided for in the contract, for multiple reasons.”

GLF Approach to the Project Bidding

GLF approached the bid for the SR 87 Project based on the controlling parameters of the contract permits. At no time did GLF approach the bidding with the belief that GLF was the “Permittee” for the project, which the contract permits explicitly identify as the FDOT. The permits were reviewed, the plans were reviewed, and the Specifications were reviewed. Any known changes or specific requirements were adjusted in our bidding process. As already stated, GLF was currently constructing a bridge project across the Yellow River in Okaloosa County and the CEI was performing the Turbidity Testing and actual reporting to the Permitting agencies. The Special Provisions between the two projects had identical language and no mention was made for the contractor to perform turbidity testing and/or made by the FDOT at the mandatory Pre-Bid meeting.

Review of FDEP Permit

The FDEP Permit procured by the Department as the “Permittee” contains Specific Conditions, General Conditions, and General Conditions for Sovereignty Submerged Lands Authorization (Exhibit 7). Each of the Specific Conditions 1 through 23 and the General Conditions 1 through 8 are included below with comments as to how these conditions were handled during construction. It is readily apparent in these documents, GLF was never empowered to act as the “Permittee” for this project, nor was GLF required or allowed to interact directly with any permitting agency.

SPECIFIC CONDITIONS

1. No work can begin until the Department receives proof of legal easement authorization from Eglin Air Force Base to construct on their property.

The FDOT as the "Permittee" and permit holder for the project provided this information to the FDEP. At no time was GLF required to provide this information or has GLF interacted directly with the FDEP or Eglin AFB related to a legal easement authorization.

2. Best management practices (primarily turbidity screens) for erosion and turbidity control shall be installed prior to commencement of construction activities, and shall be maintained at all times during construction and operation of the permitted activity to prevent siltation and turbid discharges in excess of state water quality standards pursuant to Chapter 62-302, F.A.C. The permittee shall be responsible for ensuring that erosion and turbidity control devices and procedures are inspected and maintained daily during all phases of construction authorized by this permit until all areas that were disturbed during construction are sufficiently stabilized to prevent erosion, siltation, and turbid discharges. Monitoring for turbidity shall be conducted in accordance with Specific Conditions 18 through 23.

GLF installed all required erosion control devices in accordance with the erosion control details included in the project MOT plans. All of these devices are pay items for the contract. Accordingly, GLF included costs for materials, installation, inspection, and removal of these devices in our contract bid.

3. Prior to construction, the limits of the impacts authorized by this permit shall be clearly flagged and staked by the agent and/or contractor. All construction personnel shall be shown the locations of all wetland areas outside the construction area to prevent encroachment of equipment into these areas.

GLF staked and installed station boards on the project as required by the Standard Specifications 5-7.4. The project plans did not require or specify staking of the wetland limits as has been done on other projects. Cost for survey and project layout is included in the Mobilization pay item for the project.

4. The permittee shall schedule a pre-construction meeting with the Department's compliance assistance staff to help ensure all permit requirements, conditions, and specific conditions are met. This meeting shall take place before commencement of any of the activities authorized by this permit. Please call Kenny Dickey at (850) 595-0580 or Kenneth.Dickey@dep.state.fl.us to schedule a meeting.

On December 2, 2015 the Permittee scheduled and conducted a Pre-Construction Conference. This Conference was followed up with a Pre-Construction Environmental Commitment

Meeting on December 9, 2015 to discuss the environmental concerns and permits for this project. GLF did not schedule, interact, or coordinate with the permitting agencies as required by Specific Condition 4.

5. For emergencies involving a serious threat to the public health, safety, welfare, or environment, the emergency telephone contact number is **800-320-0519** (State Warning Point). The Department telephone number for reporting nonthreatening problems or system malfunctions is (850) 595-0663, day or night.

The FDOT as the "Permittee" and permit holder, working through the CEI Consultant has coordinated with the FDEP on this project. At no time has GLF been required to notify the FDEP or any other permitting agency about job site information.

6. The construction phase expires at 11:59 p.m. on the date indicated on the cover page of this permit. If construction of the stormwater management system authorized by this environmental resource permit has not been completed and continued use of the system formally transferred to the operating phase before the expiration date of the permit, or an authorized extension, then at least 60 days before such expiration date, the permittee shall apply for another individual stormwater permit, using the forms and accompanied by the fee required by rules in effect at that time.

The FDOT as the "Permittee" and permit holder, working through the CEI Consultant is responsible for tracking the completion of the project and providing notification to the FDEP that the stormwater management system is complete or to file for the appropriate extension. At no time has GLF been required to notify the FDEP or any other permitting agency about job site information.

7. If the approved permit drawings conflict with the Specific Conditions, then the Specific Conditions shall prevail.

8. All wetland areas or waterbodies which are outside the specific limits of construction authorized by this permit must be protected from erosion, siltation, scouring, and/or dewatering.

GLF installed all required erosion control devices in accordance with the erosion control details included in the project MOT plans. All of these devices are pay items for the contract. Accordingly, GLF included costs for materials, installation, inspection, and removal of these devices in our contract bid.

9. There shall be no storage or stockpiling of tools, materials (i.e., pilings, debris) within wetlands, along the shoreline within the littoral zone or elsewhere within waters of the state unless specifically approved in the permit. All cleared vegetation, excess lumber, scrap wood, trash, garbage and any other type of debris shall be removed from wetlands/waters of the state within 14 days of completion of the work authorized in this permit.

GLF installed all required erosion control devices in accordance with the erosion control details included in the project MOT plans. All of these devices are pay items for the contract. Accordingly, GLF included costs for materials, installation, inspection, and removal of these devices in our contract bid. GLF also included costs for the removal of all cleared vegetation, excess lumber, scrap wood, trash, garbage and any other type of debris in our Clearing & Grubbing pay item on the project.

10. All watercraft associated with the authorized construction activities shall only operate within waters of sufficient depth so as to preclude bottom scouring/prop dredging.

11. Any fill material used shall be clean fill and free of vegetative matter, trash, garbage, toxic or hazardous waste or any other unsuitable materials.

12. Substances in concentrations which injure, are chronically toxic to, or produce adverse physiological or behavioral response in humans, animals, or plants — none shall be present.

13. 19.009 units of wetland functional loss shall be mitigated in accordance with Section 373.4137, Florida Statutes.

14. The Stormwater Management Facility Maintenance Plan SR 87 Segments 4 & 7, as approved and enclosed with this permit, shall be implemented.

15. Construction of Pond 6, in Segment 4 to the south (Permit 57-0329719-002-EI), must be complete and As-Built Certified before the new roadway and bridge is opened to traffic.

16. The mailing address for submittal of forms for the “Construction Commencement Notice”, “As-Built Certification . . .”, “Request for Conversion of Stormwater Management Permit Construction Phase to Operation and Maintenance Phase”, or other correspondence is FDEP, SLERP, 160 W. Government Street, Pensacola, Florida, 32502.

The FDOT as the “Permittee” and permit holder, working through the CEI Consultant has coordinated with the FDEP on this project. At no time has GLF been required to notify the FDEP or any other permitting agency about job site information. GLF did not provide the “Construction Commencement Notice”, the “As-Built Certification”, the “Request for Conversion of Stormwater Management Permit Construction Phase to Operation and Maintenance Phase”, or any other forms or certifications required by the Permitting agency.

17 .Best management practices (primarily turbidity screens) for erosion and turbidity control shall be implemented and maintained at all times during construction and operation of the permitted activity to prevent siltation and turbid discharges in excess of State water standards pursuant to Chapter 62-302, F.A.C. The permittee shall be responsible for ensuring that erosion and turbidity control devices and procedures are inspected and maintained daily during all phases of construction authorized by this permit until all areas that were disturbed during construction are sufficiently stabilized to prevent erosion, siltation, and turbid discharges.

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The FDOT as the “Permittee” and permit holder, working through the CEI Consultant has coordinated with the FDEP on this project. At no time has GLF been required to notify the FDEP or any other permitting agency about job site information. GLF did not provide the “Construction Commencement Notice”, the “As-Built Certification”, the “Request for Conversion of Stormwater Management Permit Construction Phase to Operation and Maintenance Phase”, or any other forms or certifications required by the Permitting agency.

17. Best management practices (primarily turbidity screens) for erosion and turbidity control shall be implemented and maintained at all times during construction and operation of the permitted activity to prevent siltation and turbid discharges in excess of State water standards pursuant to Chapter 62-302, F.A.C. The permittee shall be responsible for ensuring that erosion and turbidity control devices and procedures are inspected and maintained daily during all phases of construction authorized by this permit until all areas that were disturbed during construction are sufficiently stabilized to prevent erosion, siltation, and turbid discharges.

GLF installed all required erosion control devices in accordance with the erosion control details included in the project MOT plans. All of these devices are pay items for the contract. Accordingly, GLF included costs for materials, installation, inspection, and removal of these devices in our contract bid.

18. Measurements must be acquired in adherence to the Department’s Standard Operating Procedure (SOP) for field turbidity, available at the website: <http://www.dep.state.il.us/water/sas/0a/docs/62-160/ft-1600-field-turbidity.pdf>. More specifically, the instruments used to measure turbidity shall be fully calibrated within one month prior to commencement of the project, and at least once a month thereafter during the project. Calibration shall be verified each morning prior to use, and after each time the instrument is turned on, using a turbidity “standard” that is different from the one used during calibration. Calibration procedures shall be recorded in a permanent logbook, and copies must be submitted with the data.

GLF, after submittal of our Claim Notification on December 23, 2015 began collection, testing, and reporting of turbidity sample results from the Yellow River as directed. GLF forwarded the reports to the FDEP but was required to list the CEI Consultant as the contact person(s) for any questions related to reports. (Exhibit 8)

construction activities are occurring at two different locations at the same time. These sites shall be established on a transect extending down current from the turbidity source. Samples shall be collected from surface, mid-depth and one foot above bottom. Mid-depth samples are sufficient in water that is less than five feet deep. Sampling will be restricted to the axis of the visible plume. Samples will be collected at the intersection of the mixing zone boundary and a line parallel with the water current and extending from the source of turbidity if a plume is not visible. Background samples shall be collected 100 feet upstream and outside of the turbidity curtain. These samples will be collected at surface, mid-depth, and one foot above bottom. Samples shall be collected with a Kemmerer, Van Dorn or a similar sampler that is designed to collect in situ water samples. Samples shall be analyzed immediately after collection with a turbidimeter that produces results in Nephelometric measurements. The field sample results shall be accurately recorded to the precision capabilities (decimal place) of the instrument. Field turbidimeter results shall be rounded to the next whole number (ex. 15.23 NTUs shall be recorded; however, the results shall be interpreted as 16.00 NTUs). If monitoring reveals turbidity levels above background, the permittee shall cease all work pursuant to Specific Condition 23.

GLF, after submittal of our Claim Notification on December 23, 2015 purchased the testing and sampling equipment as required by Condition 19 of the Permit. GLF forwarded the reports to the FDEP but was required to list the CEI Consultant as the contact person(s) for any questions related to reports. GLF did not notify or interact with the FDEP if actions were taken to modify the equipment to fit the job site.

19. Monitoring for turbidity shall be conducted for the duration of the project. Sampling will commence prior to, but no more than 24 hours before initiation of any dredging or filling activities.

Turbidity sampling sites shall be located approximately 25 feet downstream and outside of the turbidity curtain at a point closest to any active construction activities at the center of any visible plume (if a plume is present). One sample for each construction area is required if construction activities are occurring at two different locations at the same time. These sites shall be established on a transect extending down current from the turbidity source. Samples shall be collected from surface, mid-depth and one foot above bottom. Mid-depth samples are sufficient in water that is less than five feet deep. Sampling will be restricted to the axis of the visible plume. Samples will be collected at the intersection of the mixing zone boundary and a line parallel with the water current and extending from the source of turbidity if a plume is not visible. Background samples shall be collected 100 feet upstream and outside of the turbidity curtain. These samples will be collected at surface, mid-depth, and one foot above bottom. Samples shall be collected with a Kemmerer, Van Dorn or a similar sampler that is designed to collect in situ water samples. Samples shall be analyzed immediately after collection with a turbidimeter that produces results in Nephelometric measurements. The field sample results shall be accurately recorded to the precision capabilities (decimal place) of the instrument. Field turbidimeter results shall be rounded to the next whole number (ex. 15.23 NTUs shall be recorded; however, the results shall be interpreted as 16.00 NTUs). If monitoring reveals turbidity levels above background, the permittee shall cease all work pursuant to Specific Condition 23.

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reports. GLF did not notify or interact with the FDEP if actions were taken to modify the equipment to fit the job site.

20. Turbidity monitoring reports shall be submitted to the Department each Monday following project commencement; reports shall include the permittee name and permit number. When submitting this information to the Department, please include, at the top of each page or as a cover page to the submittal: "This information is being provided in partial fulfillment of the monitoring requirements in Permit No. 57-0329719-001-EI." Failure to submit reports in a timely manner constitutes a violation of the permit and may be grounds for revocation. Reports may be submitted by email to Andrew.Joslvn@dep.state.il.us.

GLF, after submittal of our Claim Notification on December 23, 2015 began collection, testing, and reporting of turbidity sample results from the Yellow River to the CEI Consultant. GLF forwarded the reports to the FDEP but was required to list the CEI Consultant as the contact person(s) for any questions related to reports.

21. Monitoring data shall contain the following information:

- a. Permit number;
- b. Dates of sampling and analysis;
- c. A statement describing the methods used in collection and analysis of the samples;

A map showing the sampling locations, along with indicating the latitude and longitude.

of the Quality Assurance/Quality Control log; and

- e. A statement by the individual responsible for the implementation of the sampling program concerning the authenticity, precision and accuracy of the data.

d. Copies

GLF, after submittal of our Claim Notification on December 23, 2015 began submittal of the turbidity testing results on a form provided to GLF by the Permittee. GLF utilized this form and included contact personnel from the CEI (CEI Consultant Project Administrator and the Senior Project Engineer) for any questions related to the Reports.

22. Monitoring reports shall also include the following information for each sample that is taken:

- a. Time of day samples taken;
- b. Depth of water body;
- c. Depth of sample;
- d. Tidal stage and direction of flow; and
- e. Antecedent weather conditions, including wind direction and velocity.

GLF, after submittal of our Claim Notification on December 23, 2015 began submittal of the turbidity testing results on a form provided to GLF by the Permittee.

23. If monitoring reveals turbidity above background levels, the permittee shall take the following measures:

a. Immediately cease all work contributing to the water quality violation. Work which may contribute to the violation shall not resume until corrective measures have been taken and turbidity levels have returned to acceptable levels; and

b. Stabilize exposed soils contributing to the violation. Modify work procedures responsible for the violation, install additional turbidity containment devices, repair non-functioning turbidity containment devices; and

c. Increase monitoring frequency to every 2 hours until turbidity levels downstream are at background levels. Interim samples collected following the violation (s) shall be collected in the same manner and locations as the routine monitoring. Operations may not resume until the turbidity levels have returned to background levels.

d. The violation(s) shall be immediately reported to the Department. The report shall include the description of the corrective actions being taken or proposed to be taken. The report shall be made to the Department as soon as normal business hours resume if violation(s) are noted after normal business hours, on holidays, or on weekends. A copy of the monitoring data sheets, which indicate violation(s), shall be forwarded immediately to the Department. Reports and data may be submitted by email to Andrew.Joslyn@dep.state.il.us.

Failure to report violation(s) or to follow correct procedures before resuming work shall constitute grounds for permit revocation and may subject the permittee to formal enforcement action.

GLF, after submittal of our Claim Notification on December 23, 2015 submitted the turbidity testing results on a form provided to GLF by the Permittee. We are not aware of how the forms were used or processed after submittal.

GENERAL CONDITIONS FOR INDIVIDUAL PERMITS

The following general conditions are binding on all individual permits issued under chapter 62-330, F.A.C., except where the conditions are not applicable to the authorized activity, or where the conditions must be modified to accommodate project-specific conditions.

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this permit. Any deviations must be authorized in a permit modification in accordance with Rule 62-330.315, F.A.C. Any deviations that are not so authorized may subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S.

This general condition is obviously written to the FDOT as the “Permittee” and permit holder for the project. The FDEP is putting the FDOT on notice that the FDOT is required to implement the work in strict accordance with the permit or the FDEP will take enforcement action against the FDOT.

2. A complete copy of this permit shall be kept at the work site of the permitted activity during the construction phase and shall be available for review at the work site upon request by the Agency staff. The permittee shall require the contractor to review the complete permit prior to beginning construction.

GLF posted a copy of the FDEP Permit within the Project Jobsite Bulletin Board as required.

3. Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be installed immediately prior to, and be maintained during and after construction as needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation June 2007)*, and the *Florida Stormwater Erosion and Sedimentation Control Inspector’s Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008)*, which are both incorporated by reference in subparagraph 62-330.050(9)(b)5., F.A.C., unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the permit.

GLF installed all required erosion control devices in accordance with the erosion control details included in the project MOT plans. All of these devices are pay items for the contract. Accordingly, GLF included costs for materials, installation, inspection, and removal of these devices in our contract bid.

4. At least 48 hours prior to beginning the authorized activities, the permittee shall submit to the Agency a fully executed Form 62-330.350(1), “Construction Commencement Notice,” [October 1, 2013], which is incorporated by reference in paragraph 62-330.350(1)(d), F.A.C., indicating the expected start and completion dates. A copy of this form may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C. If available, an Agency website that fulfills this notification requirement may be used in lieu of the form.

The FDOT as the “Permittee” and permit holder, working through the CEI Consultant has coordinated with the FDEP on this project. At no time has GLF been required to submit notifications to the FDEP or any other permitting agency. GLF did not provide the “Construction Commencement Notice “as stipulated in General Condition 4.

5. Unless the permit is transferred under Rule 62-330.340, F.A.C., or transferred to an operating entity under Rule 62-330.310, F.A.C., the permittee is liable to comply with the plans, terms and conditions of the permit for the life of the project or activity.

This general condition is written to the FDOT as the "Permittee" and permit holder for the project. The FDEP is putting the FDOT on notice that the FDOT is required to comply with the permit or the FDEP will take enforcement action against the FDOT.

6. Within 30 days after completing construction of the entire project, or any independent portion of the project, the permittee shall provide the following to the Agency, as applicable:
- a. For an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex — "Construction Completion and Inspection Certification for Activities Associated with a Private Single-Family Dwelling Unit" [Form 62-330.310(3)]; or
 - b. For all other activities — "As-Built Certification and Request for Conversion to Operational Phase" [Form 62-330.310(1)].
 - c. If available, an Agency website that fulfills this certification requirement may be used in lieu of the form.

At no time has GLF been required to submit notifications to the FDEP or any other permitting agency. GLF will not be required to submit the "As-Built Certification and Request for Conversion to Operational Phase" as stipulated in General Condition 6.

7. If the final operation and maintenance entity is a third party:
- a. Prior to sales of any lot or unit served by the activity and within one year of permit issuance, or within 30 days of as-built certification, whichever comes first, the permittee shall submit, as applicable, a copy of the operation and maintenance documents (see sections 12.3 thru 12.3.3 of Volume I) as filed with the Department of State, Division of Corporations and a copy of any easement, plat, or deed restriction needed to operate or maintain the project, as recorded with the Clerk of the Court in the County in which the activity is located.
 - b. Within 30 days of submittal of the as-built certification, the permittee shall submit "Request for Transfer of Environmental Resource Permit to the Perpetual Operation Entity" [Form 62-330.310(2)] to transfer the permit to the operation and maintenance entity, along with the documentation requested in the form. If available, an Agency website that fulfills this transfer requirement may be used in lieu of the form.

At no time has GLF been required to submit notifications to the FDEP or any other permitting agency. GLF will not be required to submit the "Request for Transfer of Environmental Resource Permit to the Perpetual Operation Entity" as stipulated in General Condition 7.

8. The permittee shall notify the Agency in writing of changes required by any other regulatory agency that require changes to the permitted activity, and any required modification of this permit must be obtained prior to implementing the changes.

The FDOT as the “Permittee” and permit holder, working through the CEI Consultant has coordinated with the FDEP on this project. At no time has GLF been required to submit notifications to the FDEP or any other permitting agency. GLF has not provided any notifications to the FDEP as stipulated in General Condition 8.

Conclusion

GLF is entitled to additional compensation due to the following:

1. GLF, nor any other bidding Contractor, was provided with any information in the project documents prior to the bid date that the Contractor was completely responsible for the turbidity monitoring program.
2. Nowhere in the project documents are the Permitting agencies notified that the Contractor will have all responsibilities as the “Permittee” and take ownership of all facets of the permits with the permitting agencies during construction. The turbidity monitoring program was mandated by the FDEP to the FDOT. The FDOT should have notified the bidding Contractors of the specific responsibility for the turbidity monitoring program.
3. GLF had no rational purpose or reasoning during the formulation of the project bid to assume the responsibility as the “Permittee” to include costs in the bid for the turbidity monitoring program. The FDOT did not include any pay items or plan notes detailing that the Contractor would be responsible for the turbidity monitoring program. The language in the FDEP permit documentation regarding turbidity monitoring was completely identical to an on-going GLF US 90 Yellow River project (FIN 42450815201) project. The party responsible for the turbidity monitoring on the US 90 Yellow River project was the FDOT (CEI).
4. The FDEP Permit listed 23 Specific Environmental Requirements for the permittee (FDOT). The FDOT had more than ample opportunity to notify the bidding Contractors that the Turbidity Monitoring Program would be their responsibility. The FDOT covered 25 items in the Pre-Bid Meeting related to environmental compliance. GLF fails to understand why the direction was given, after the bids were submitted, that the turbidity monitoring program would be their responsibility.
5. GLF requests that the DRB rule in favor of full entitlement of the costs incurred by GLF for the Turbidity Monitoring Program as submitted in our Certified REA of January 22, 2019 (Exhibit 9)

FDOT District 3 Position

The Florida Department of Transportation (the Department) awarded Contract T3543 (Contract) to GLF Construction Corporation (GLF) on October 20, 2015. The Contract was executed on November 03, 2015 with the Notice to Proceed dated December 04, 2015. The Contract was in the amount of \$29,686,176.89 and included 830 Contract days to construct this traditional Bid Build project in accordance with the Contract Documents. The Contract incorporated the July 2015 Edition of the FDOT Standard Specifications and the 2015 Edition of the Design Standards, as amended by Contract Documents.

STATEMENT OF ISSUE

Is GLF due entitlement resulting from turbidity monitoring in accordance with FDEP PERMIT No.: 57-0329719-001-EI on the above referenced Contract?

adjacent to holes bored at the site of the work, approximately at the locations indicated.

The Contractor shall examine boring data, where available, and make his own interpretation of the subsoil investigations and other preliminary data, and shall base his bid on his own opinion of the conditions likely to be encountered.

The bidder's submission of a proposal is prima facie evidence that the bidder has made an examination as described in this Article.

GLF's Request for DRB Hearing

On March 27, 2019 GLF requested a Disputes Review Board (DRB) Hearing regarding NOI #1 Turbidity Monitoring to receive an entitlement recommendation from the DRB concerning the following dispute:

"Entitlement to additional compensation for the costs incurred by GLF in complying with the Department's direction that GLF collect samples and perform turbidity testing of waters from the Yellow River."

The NOI-1 DRB Hearing is scheduled for 10:00 AM CST Tuesday May 14th, 2019 at the FDOT District 3 Office in Chipley. Per the DRB Operating Procedures;

- Position papers are due fifteen (15) calendar days prior = April 29th, 2019
- Rebuttal Papers & List of attendees 5 calendar days prior = May 9th, 2019

DEPARTMENT'S POSITION

Through this Position Paper and the numbered list below, the Department will prove that it is the Contractor's contractual responsibility to comply with the provisions contained in the permits.

1. Special Provisions 2-4 Examination of Contract Documents and Site of Work

- Copied directly below

2-4 Examination of Plans, Specifications, Special Provisions and Site of Work.

Examine the Contract Documents and the site of the proposed work carefully before submitting a proposal for the work contemplated. Investigate the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished and as to the requirements of all Contract Documents.

The Department does not guarantee the details pertaining to borings, as shown in the Plans, to be more than a general indication of the materials likely to be found

adjacent to holes bored at the site of the work, approximately at the locations indicated. The Contractor shall examine boring data, where available, and make his own interpretation of the subsoil investigations and other preliminary data, and shall base his bid on his own opinion of the conditions likely to be encountered. The bidder's submission of a proposal is prima facie evidence that the bidder has made an examination as described in this Article.

GLF's submission of Proposal T3543 on the September 30, 2015 Letting is prima facie evidence that GLF has made an examination as described in Special Provisions Article 2-4. Prima facie is defined as "plain or clear; self-evident; obvious". GLF and the Department executed Contract T3543 on November 3, 2015.

2. Special Provisions Subarticle 7-2.1 Permits Procured by the Department

· Copied directly below

PERMITS PROCURED BY THE DEPARTMENT.

(REV 8-7-01) (FA 4-14-05) (7-15)

SUBARTICLE 7-2.1 is expanded by the following:

All Permits procured by the Department are posted on the Department's website at the following URL address: <ftp://ftp.dot.state.fl.us/permitsandorutilityworkschedules/> .

Take responsibility to obtain this information and comply with all requirements posted on this website up through five calendar days before the opening of bids.

Comply with the provisions contained in these permits.

If the Department's web site cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4101.

FDEP PERMIT No.: 57-0329719-001-EI was posted on the Department's website up through five calendar days before the opening of the bids. Hence the Contractor is required to comply with the provisions contained in Contract T3543's FDEP PERMIT.

3. July 2015 Standard Specifications Subarticle 7-2.1 Permits and Licenses

· Partially copied below

7-2 Permits and Licenses

7-2.1 General:paragraphs 4 and 5 copied below

In carrying out the work in the Contract, when under the jurisdiction of any environmental regulatory agency, comply with all regulations issued by such agencies and with all general, special, and particular conditions relating to construction activities of all permits issued to the Department as though such conditions were issued to the Contractor. Post all permit placards in a protected location at the worksite.

In case of a discrepancy between any permit condition and other Contract Documents, the more stringent condition shall prevail.

July 2015 Standard Specifications are part of Contract T3543, hence the Contractor is required to comply with all regulations issued by such agencies and with all general, special, and particular conditions relating to construction activities of all permits issued to the Department as though such conditions were issued to the Contractor

4. FDEP PERMIT No.: 57-0329719-001-EI Specific Conditions - Turbidity

· Copied below

SPECIFIC CONDITIONS – TURBIDITY

17. Best management practices (primarily turbidity screens) for erosion and turbidity control shall be implemented and maintained at all times during construction and operation of the permitted activity to prevent siltation and turbid discharges in excess of State water standards pursuant to Chapter 62-302, F.A.C. The permittee shall be responsible for ensuring that erosion and turbidity control devices and procedures are inspected and maintained daily during all phases of construction authorized by this permit until all areas that were disturbed during construction are sufficiently stabilized to prevent erosion, siltation, and turbid discharges.

18. Measurements must be acquired in adherence to the Department's Standard Operating Procedure (SOP) for field turbidity, available at the website: <http://www.dep.state.fl.us/water/sas/qa/docs/62-160/ft-1600-field-turbidity.pdf> . More specifically, the instruments used to measure turbidity shall be fully calibrated within one month prior to commencement of the project, and at least once a month thereafter during the project. Calibration shall be verified each morning prior to use, and after each time the instrument is turned on, using a turbidity "standard" that is different from the one used during calibration. Calibration procedures shall be recorded in a permanent logbook, and copies must be submitted with the data.

19. Monitoring for turbidity shall be conducted for the duration of the project. Sampling will commence prior to, but no more than 24 hours before initiation of any dredging or filling activities. Turbidity sampling sites shall be located approximately 25 feet downstream and outside of the turbidity curtain at a point closest to any active construction activities at the center of any visible plume (if a plume is present). One sample for each construction area is required if construction activities are occurring at two different locations be established on a transect extending down current from the turbidity source.

Samples shall be collected from surface, mid-depth and one foot above bottom. Mid-depth samples are sufficient in water that is less than five feet deep. Sampling will be restricted to the axis of the visible plume. Samples will be collected at the intersection of the mixing zone boundary and a line parallel with the water current and extending from the source of turbidity if a plume is not visible.

Background samples shall be collected 100 feet upstream and outside of the turbidity curtain. These samples will be collected at surface, mid-depth, and one foot above bottom.

Samples shall be collected with a Kemmerer, Van Dorn or a similar sampler that is designed to collect in situ water samples. Samples shall be analyzed immediately after collection with a turbidimeter that produces results in Nephelometric measurements. The field sample results shall be accurately recorded to the precision capabilities (decimal place) of the instrument. Field turbidimeter results shall be rounded to the next whole number (ex. 15.23 NTUs shall be recorded; however, the results shall be interpreted as 16.00 NTUs). If monitoring reveals turbidity levels above background, the permittee shall cease all work pursuant to

Specific Condition 23.

20. Turbidity monitoring reports shall be submitted to the Department each Monday following project commencement; reports shall include the permittee name and permit number. When submitting this information to the Department, please include, at the top of each page or as a cover page to the submittal: "This information is being provided in partial fulfillment of the monitoring requirements in Permit No. 57-0329719-001-EI." Failure to submit reports in a timely manner constitutes a violation of the permit and may be grounds for revocation. Reports may be submitted by email to Andrew.Joslyn@dep.state.fl.us.

21. Monitoring data shall contain the following information:

- a. Permit number;
- b. Dates of sampling and analysis;
- c. A statement describing the methods used in collection and analysis of the samples;
- d. A map showing the sampling locations, along with indicating the latitude and longitude;
- e. Copies of the Quality Assurance/Quality Control log; and
- f. A statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision and accuracy of the data.

22. Monitoring reports shall also include the following information for each sample that is taken:

- a. Time of day samples taken;
- b. Depth of water body;
- c. Depth of sample;
- d. Tidal stage and direction of flow; and
- e. Antecedent weather conditions, including wind direction and velocity.

23. If monitoring reveals turbidity above background levels, the permittee shall take the following measures:

- a. Immediately cease all work contributing to the water quality violation. Work which may contribute to the violation shall not resume until corrective measures have been taken and turbidity levels have returned to acceptable levels; and
- b. Stabilize exposed soils contributing to the violation. Modify work procedures responsible for the violation, install additional turbidity containment devices, repair non-functioning turbidity containment devices; and
- c. Increase monitoring frequency to every 2 hours until turbidity levels downstream are at background levels. Interim samples collected following the violation (s) shall be collected in the same manner and locations as the routine monitoring. Operations may not resume until the turbidity levels have returned to background levels.
- d. The violation(s) shall be immediately reported to the Department. The report

shall include the description of the corrective actions being taken or proposed to be taken. The report shall be made to the Department as soon as normal business hours resume if violation(s) are noted after normal business hours, on holidays, or on weekends. A copy of the monitoring data sheets, which indicate violation(s), shall be forwarded immediately to the Department. Reports and data may be submitted by email to Andrew.Joslyn@dep.state.fl.us . Failure to report violation(s) or to follow correct procedures before resuming work shall constitute grounds for permit revocation and may subject the permittee to formal enforcement action.

Per Contract T3543, the Contractor is required to comply with FDEP PERMIT No.:

57-0329719-001-EI's Specific Conditions – Turbidity (Items 17-23 copied above).

SUMMARY

The Department's position is that GLF is not due entitlement resulting from complying with the Specific Conditions – Turbidity within FDEP PERMIT No.: 57-0329719-001-EI. Compliance with the provisions of the permits is a Contractual requirement, and should not be considered "Extra Work".

DESIRED RULING

The Department respectfully asks the Board to find no entitlement as it pertains to this issue.

DRB Findings and Recommendation

The Dispute Review Board (DRB) read the position papers and the rebuttal papers and listened to the testimony given at the hearing by both the Florida Department of Transportation, represented by Eisman & Russo Consulting Engineers and the contractor, GLF Construction Corporation.

After a careful examination and a discussion of the evidence presented by both parties, FDOT and GFL, the DRB has determined the following:

FDOT has based their position on:

July 2015 Standard Specifications Subarticle 7-2.1 Permits and Licenses

7-2 Permits and Licenses

7-2.1 General:paragraphs 4 and 5 copied below

“ In carrying out the work in the Contract, when under the jurisdiction of any environmental regulatory agency, comply with all regulations issued by such agencies and with all general, special, and particular conditions relating to construction activities of all permits issued to the Department as though such conditions were issued to the Contractor. Post all permit placards in a protected location at the work.”

GLF had examined all documents required for bidding and was familiar with the wording for FDEP Permit No.: 57-0329719-001-EI. Testimony indicated that the administrative

requirements of the permit were retained by FDOT as the permittee and the construction requirements were performed by GLF. ; at no time was this permit transferred to GLF as required in paragraph 5 of the General Conditions of the FDEP Permit. It was also shown that that the construction items required by the permit were covered by pay items, with the exception of Turbidity Monitoring. In a concurrent contract (T3416) between FDOT Dist. 3 and GLF the FDEP permit was similar in wording, with regards to turbidity monitoring, to FDEP Permit No.:57-0329719-001-EI. In that contract GLF was never instructed to perform turbidity monitoring which, in fact, was performed by the CEI for the Department. Since turbidity monitoring was never discussed prior to bidding or specifically directed to be performed by GLF by the Contract Documents, the Board has determined that GLF could reasonably assume that the monitoring would be performed by Department CEI. This assumption is supported by the fact that pay items were allowed for all other permit construction requirements with the exception of turbidity monitoring.

The Board finds that the contractor, GLF, is entitled to compensation for Turbidity Monitoring.

The DRB recommendation is the majority decision of the Dispute Review Board Members. A minority opinion is attached.

Respectfully submitted with the consent of all DRB members,

Tom Shafer, P.E.
/T.P.Shafer/

Chairperson

DISSENTING OPINION

Special Provisions 2-4

Special Provisions 2-4 Examination of Plans, Specifications, Special Provisions and Site of Work

The Contractor states that they did not ask about turbidity monitoring at Pre-Bid Conference because the specifications were identical to the specifications for another project which was currently under construction by them.

The Contractor's submission of a Proposal for T3443 is evidence that he has reviewed the proposal.

Minority DRB Member Interpretation:

The Contractor should have examined all contract documents thoroughly and ask questions or raise concerns at mandatory Pre-Bid Conference. Contractor is responsible for obtaining

information about contents of permits for each project on its own merit and ask questions before they submit a bid on a project.

The bidder's submission of a proposal is evidence that the bidder has made an examination of contract documents as outlined in Special Provisions Article 2.4.

Special Provisions Subarticle 7-2.1

The Contractor states that he was not provided with any information in the project documents prior to bid that the Contractor was responsible for turbidity monitoring.

Contractor indicated that he was not notified that the Contractor will have responsibilities for all facets of the permits during construction.

Contractor indicated that FDEP permit listed 23 Specific Environmental Requirements for the permittee(FDOT).

Minority DRB Member Interpretation:

All permits processed by the Department are posted on Department website for the Contractor to review and ask questions prior to bidding.

The Contractor is responsible for obtaining information about the contents of the permit for each project they that submit bids.

Contractor should review all permit requirements prior to submission of a bid and when in doubt about certain provisions ask questions for clarification.

In carrying out work in this contract when under the jurisdiction of any environmental regulatory agency, comply with all regulations issued by such agencies and with all general, special, and particular conditions relating to construction activities of all permits issued to the Department as though such conditions were issued to the Contractor.

FDEP Permit No. 57-0329719-001 Special Conditions –

Turbidity

The Contractor indicates that he had no rational purpose or reasoning during formation of the project bid to assume responsibility to include costs for turbidity monitoring.

The Contractor indicated that on the US 90 project T3416 the CEI Consultant performed the turbidity monitoring for the project as directed by the Department at the Pre-Construction Conference for that project.

Minority DRB Member Interpretation:

Contractor has to comply with Special Provisions of FDEP Permit No. 57-0329719-001 which clearly spells out that turbidity testing will be done on this project.

The Contractor's statement is not supported by the Pre-Construction meeting minutes for contract T-3416. Contractor should not base his assumptions on another totally separate contract.

Contractor assumed this contract and permit requirements were the same as the other contract without verifying.

GLF letter dated 12/16/15

Contractor stated that the Department was establishing precedent and it was assumed by GLF at the time of bid for T3543 that the CEI will take responsibility for all turbidity functions.

Contractor position that turbidity monitoring is additional work that is not expressly provided for in the contract.

Minority DRB Member Interpretation:

It is position of the Minority DRB member that the contractor clearly states that they assumed at the time of bid for T 3543 that CEI will take responsibility for all turbidity monitoring.

Contractor did not ask one question about turbidity monitoring during Pre-bid Conference.

Contractor cannot assume that every project the Department authorized for construction will be the same. Every project has to stand on its own and has unique permit requirements.

Minority DRB Member Recommendation

Minority DRB Member believes that the Contractor is NOT ENTITLED to additional compensation for this issue.