

REGIONAL DISPUTES REVIEW BOARD RECOMMENDATION

December 30, 2008

Michael Valdes, Project Manager
Community Asphalt Corporation
14005 NW 186th Street
Miami, FL 33018

John Hart, P.E., CEI Sr. Project Engineer
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225 E Dania Bch Bld., Suite 224
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RE: SR A1A Hollywood Beach from Sheridan Street to Cambridge Street
FIN: 411432-1-52-01 Contract No. T4167, County: Broward
Additional Compensation for Loss of Production for the construction of 9" asphalt base phases 1B & 1C and request for compensation for the correction of surface defects in the structural asphalt, 228+20 thru 240+80 all lanes

Dear Sirs:

The Florida Department of Transportation (Department) and Community Asphalt Corporation (CAC) requested a hearing concerning the issues of:

1. Compensation for loss of production of 9" asphalt base phases 1B & 1C.
2. Request for compensation for the correction of surface defects in the structural asphalt from station 228+20 thru station 240+80, all lanes.

Summaries of FDOT's and CAC's positions and rebuttals were forwarded to the Regional Disputes Review Board (RDRB), and a hearing was held on December 16, 2008

ISSUE #1: "Is the contractor entitled to additional compensation for loss of productivity during the construction of 9" asphalt base, phases 1B & 1C of construction during the referenced project?"

Contractor's Position – Issue #1

CAC contends they have been impacted by the Major Design Flaws and Administrative failures. They include the following:

MOT Plan: a flawed typical section which included temporary travel lane, Phase 1A and a flawed typical section in phases 1B thru 3B.

Drainage: Unknown existing utilities and flawed drainage details.

Roadway: Existing limerock base was not at elevation as indicated in plan. Also, there was a failure to remove or properly consolidate underlying muck layer.

Lighting: Permit granted to AT&T to place duct bank system in direct conflict with proposed lighting. Light pole foundation detail was not constructible.

Administrative Failures:

1. Failure to provide a set of accurate plans for all conditions
2. Failure to accept that plans were flawed in a timely fashion.
3. Failure to perform due diligence in identifying potential conflicts with proposed construction.
4. Issuance of a permit authorizing installation of new utilities directly in conflict with proposed lighting system.
5. Breakdown in conflict resolution process.

CAC contends that the introduction of 16 manholes not depicted on the original plans resulted in a loss of production. These manholes were unidentified existing manholes, or conflict manholes introduced to mount unknown utility conflicts encountered during construction. There was a failure by the Department to provide a set of plans at the time of bid which indicated an accurate number of manholes, which in turn, would have allowed for a more accurate estimated production rate to be used by the Contractor at the time of bid.

As a result of the inaccuracies in the contract plans, the subsequent installation of the 9 conflict manholes, and the discovery of the 6 existing not depicted on the plans, the design MOT plan did not provide sufficient room for the installation of the asphalt base via industry standard means and methods (i.e. asphalt paver). Consequently, the asphalt base was installed in a non-typical manner, resulting in loss to CAC.

CAC points out that 400 tons/day were to be completed during the project (page 20 of 23 on CAC's position papers.)

CAC contends their quantities would have allowed them to produce a larger amount of asphalt base produced during contract time if the above issues were not encountered.

The Package provided by CAC included copies of Notice of Intent (NOI) to file a claim dated September 20, 2007; a pending supplemental agreement (SA) for \$46,071.48 and 15 days; a Typical Detail for drainage pipes and structures letter; Typical section sheet, anticipated conflict/newly installed Duct bank letter dated August 23, 2007; E-mails with light pole foundation Design; letters and e-mails in reference to CPM schedule; a request for additional compensation for OBG 15 Asphalt Base, letter dated October 02, 2008; plan sheets; NOI for asphalt repairs, letter dated November 10, 2008; general notes for MOT sheet and Critical Path Method (CPM) schedule; and Rebuttal statement on Issue #1 (Loss production on 9" asphalt base).

CAC Rebuttal Statement on Issue # 1

CAC furnished a rebuttal statement on December 11, 2008.

CAC identified an error in its original position papers, page 20 of 23. In this document CAC inadvertently utilized an unapproved and unofficial planning schedule and narrative, and derived incorrect activity durations for OBG 15 item, phase 1B & 1C. The production rates in Phase 1B

& 1C would be close to an average of 165.38 tons per shifts for those phases. CAC asked the Board to please disregard page 20 of 23 of the original submittal and replace it with page 3 of 13. CAC reaffirms its position that the anticipated production rate at the time of bid is in fact 400 tons per shift.

CAC disagrees with the Departments Technical special provisions (TSP) for the Sub-Surface Drainage Layer (SSDL), as to how to construct and what equipment methods were to be used.

CAC disagrees with the schedule of work that was completed during construction of the underdrain, SSDL and OBG 15. CAC conducted its due diligence, as required by its contract with the Department, and accelerated its work where possible in order to meet the anticipated completion date set forth in the approved baseline CPM.

CAC disagrees with the Department as to the number of manholes. CAC feels that 16 manholes were not depicted in the plans. Of the 16, 7 are unidentified utility manholes and 9 are conflict manholes.

CAC disagrees that the Supplemental Agreement for \$46,071.48 did not include the cost for delays to loss of production of the 9" asphalt base.

CAC does not agree as to why drainage system was moved East in many places. This move east affected production by moving manholes further into the work zone, therefore obstructing the work zone and preventing passage of paving equipment.

Department's Position – Issue #1 - Is the Contractor entitled to additional compensation for loss of productivity during construction of the 9" asphalt base, phases 1B & 1C of construction during the referenced project?

District CEI Residency Consultant Carnahan, Proctor and Cross, Inc., consultant for the Florida Department of Transportation states that CAC's request for additional time and monies is not warranted due to the following facts:

CAC stated that at the time of bid for Optional Base Group (OBG) 15, 9" asphalt base was to be 400/tons/day and that its actual production rate achieved was only 55 tons/day. The baseline schedule (approved/accepted 11/7/07 indicated that OBG 15 (9" asphalt base) would take 22 days to complete the plan quantity of 4110 square yards (SY) which represents a rate of 84 tons/day (4110 SY*900#/SY/2000/22days). The actual production rate through phase I & II has been confirmed to be 105.44 tons/day greater than the production rate indicated in the baseline Schedule.

The Department submitted the following items: asphalt base table with dates and quantities for the 22 days of asphalt; geo-grid/edge /pavement dates and quantities; baseline schedule; plan summary of drainage structures and plan sheets; drawn sheet showing widths and limits of phase

construction limits; traffic control plan sheets; temporary wall plan sheets; copies of pictures showing construction methods of edge drain; geo-grid; base construction and phase limits.

Department's Rebuttal Statement on Issue #1 (Loss production of 9" asphalt base):

The Department furnished a rebuttal statement dated December 11, 2008. Their rebuttal position is as shown below:

No written NOI per specification 5-12.2.1 was received in regards to production loss in placing 9" asphalt base.

No monthly Schedule updates were received from CAC since April 2008.

MOT

A field change was made the first week to change the temporary pavement limerock to asphalt base due to the workability in wet conditions and a claim was submitted which involved CAC striking a shallow Bell South Cable with their milling machine. The first is simple enough and needs no further explanation. The second event is as follows: CAC began work with a Baseline Schedule (unapproved at the time) that identified the temporary pavement as a non-critical activity. Once CAC struck and damaged Bell South cable the Departments CEI informed them that this was shown as a non-critical activity on the unapproved schedule. CAC then changed to the activity from non to critical activity on the next CPM Schedule.

Contractor's Position Statement

CAC 's claims of 16 additional manholes is incorrect. The Department verified the number of manholes by using CAC's survey and by taking a final count. Only 7 additional manholes had been introduced into phase I beyond that shown in the original plans.

Drainage

Sheet piles were not used. CAC's choice obviously was instrumental in accelerating the project to achieve the bonus but may have contributed to the differential settlement at the phase joints and was the reason that the adjacent pavement under the barrier wall became undermined during construction. CAC has correctly pointed out that it recommended additional de-mucking down to the underlying rock strata at all the drainage structures, but is incorrect in stating that the department changed its mind after observing pipe settlement. The Department agreed to the request with CAC and the work was completed to the cap rock.

Schedule issues

CAC claims Phase I should have taken 4.5 days to complete the OBG 15; however, the baseline schedule indicates 8 days for OBG 15, 16 days for geo-grid, 18 days for edge drain. All three (3) activities took 17 days total, well ahead of the scheduled 42 days.

CAC claims that their Phase II production was 410 Tons/day in the middle section which had no manholes. This is incorrect - the average of the 3 days was 271.51.

The Department's Summary of Rebuttal feels that CAC's critical path activity for base installation was never delayed or that the Department is responsible for surface deficiencies.

RDRB Findings on Issue #1 (Loss production on 9" asphalt base)

CAC and the Department had only 2 monthly schedule updates during the 16+ month project. Standard Specifications state that the contractor must furnish the Department a monthly update to determine loss/gains in the work. Both parties have responsibility to see that this is done monthly during the contract or until the Department's acceptance of the work, according to Article 8-3.2, page 79 of the Standard Specifications for Road and Bridge Construction, 2007. The letter by CAC dated September 20, 2007 pertains to MOT issues and not loss of production in placing 9" asphalt base.

At the hearing it was stated that CAC had received 62 days of the 64 days of bonus time. The only reason that the additional 2 days were not granted during this period was the Sign Contractor was late in placing signs.

Only two (2) updated schedules were received by the Department during the length of the project. No revised schedule was submitted by CAC to show the loss of production in placing 9" asphalt base.

The Department paid or is in the process of paying CAC for all extra work by Supplemental Agreements and work Orders.

A Notice of Intent (NOI) was received on September 20, 2007 for delays in underground conflict with the proposed temporary MOT lane sequence 1 of the project.

RDRB Recommendation on Issue #1 (Is the Contractor entitled to additional compensation for loss of production during construction of the 9" asphalt base, phases 1B & 1C of construction of the referenced project)

Based on the information provided, the Board finds **No entitlement** for loss of production in placing the 9" asphalt base by CAC.

Only 2 monthly schedule updates were done by CAC. No revised CPM Schedule was submitted to show that additional manholes caused the delays.

The NOI dated September 20, 2007 was for the MOT change and the Bell South cable conflict; nothing was mentioned in the letter for the loss of production rate of 9" asphalt base.

ISSUE #2 – “Contractor’s request for compensation for the correction of surface defects in the structural asphalt 228+20 thru 240+80, all lanes.”

Contractor’s Position – Issue #2 (Correction of new asphalt surface, via milling & resurfacing, with surface cross slope and straightedge deficiencies.

CAC contends that the failure of the Department to properly address the underlying muck layer resulted in differential settlement that eventually created pronounced deficiencies in the road surface. The introduction of 16 manholes to the construction area of over 1260 linear feet of roadway resulted in 30 total manholes. The number of manholes, coupled by the space constraints in the flawed MOT typical section, resulted in an inability to accurately control both the longitudinal and transversal templates of the new road.

CAC Rebuttal Statement- Issue # 2

CAC contends that the introduction of 16 manholes not accounted for at the time of bid substantially reduced the work space of an already small work zone.

The surface deficiencies that developed were not along the trench-line; they were in the 2’ strip that the MOT plan forces the Contractor to build in Phase 2 to match the crown. This resulted in the Contractor being forced to build in a manner not conducive to a quality product.

Department’s Position – Issue #2

The Department disagrees with CAC’s assertion that surface deficiencies were the fault of the Department, due to changes or errors in the MOT plans.

Rebuttal Statement – Issue #2

The Department’s CEI Carnahan, Proctor and Cross, Inc., states that the roadway was not de-mucked, the design called for an extensive geo-grid system to be utilized which stretches across the entire roadway. The geo-grid design is commonly used to prevent roadway settlement whenever reconstruction is done in areas of unsuitable muck. The Department has seen no evidence that the roadway is experiencing differential settlement or that this geo-grid system is falling to perform as designed.

RDRB Findings - Issue #2

The RDRB asked if settlement plates were place to monitor any future settlement in the new A1A pavement. The Department answered “No, they were not.” The Department did add that the only noticeable settlement was at a curb inlet with a low grade defect. Outside of that, no

further settlement has been noticed on the project to add to surface deficiencies. The Department feels that the geo-grid is doing its job as designed.

CAC pointed out and was very concerned that due to muck left in place and not being excavated in the roadway areas, pavement failures will occur in the future. This may even have caused failures in the structural asphalt and a need for deficiencies corrections.

RDRB Recommendations - Issue #2

The RDRB finds that **No entitlement** is due to the Contractor for correcting deficiencies in the structural asphalt.

The Contractor is required per section 330-12 Surface Requirements, page 254, in the 2007 Standard Specifications for Road and Bridge Construction, Florida Department of Transportation to fix deficiencies at his own expense.

The Board appreciates the cooperation by all parties involved and the information provided to make this recommendation. The RDRB also recognized that this was a very difficult project to build and appreciates the cooperation and professional work ethics shown by both parties.

Please remember that failure to respond to the RDRB and the other party concerning your acceptance or rejection of the RDRB recommendation within 15 days will be considered acceptance of the recommendation.

I certify that I participated in the Hearings of the RDRB regarding the Disputes indicated above and concur with the findings and recommendations.

Respectfully submitted,

Regional Disputes Review Board

Frank E. Proch, Regional Dispute Review Board Chairman
Don Henderson, Regional Dispute Review Board
Joe Capeletti, Regional Dispute Review Board

RDRB Chairman

cc: James Jeffers, FDOT
Manuel Aguiar, CAC