

DISPUTE REVIEW BOARD RECOMMENDATION

December 31, 2009

Mr. Vernon Walker
Community Asphalt Corp.
7795 Hooper Road
Suite 101
West Palm Beach, FL 33411

Mr. Patrick Kennedy
Cardno TBE
11641 Kew Gardens Ave,
Palm Beach Gardens, Fl 33410

RE: S.R. 9 (I-95) from So.of PGA Blvd to So.of Donald Ross Rd.
F.P.ID 406870-1-52-01
Palm Beach County

Subject: Phase II Temporary Barrier Wall

Dear Sirs:

The Contractor requested a Dispute Review Board Hearing per the conditions set forth in the DRB Three Party Agreement in order to resolve an issue of entitlement for compensation.

Pertinent information and rebuttals relating to the parties positions were provided to the DRB prior to the hearing held on December 16, 2009 at the Palm Beach Operations Center. Both parties orally presented their positions during the hearing.

The following are quotes from the position papers.

Contractor's Position:

"Temporary Barrier Wall installed NB and SB along the I-95 median for Phase I construction must be removed so that milling and asphalt overbuild on the NB and SB mainline may be completed. Once the asphalt overbuild is completed, Temporary Barrier Wall can be installed for Phase II construction. Community Asphalt believes the Phase II Temporary Barrier Wall should be paid under the contract pay item for Temporary Barrier Wall (Furnish and Install). The Department disagrees and intends to pay for the Phase II Temporary Barrier Wall under the contract pay item for Temporary Barrier Wall (Relocate)."

"Traffic Control Plan (TCP) sheets 420 and 421 indicate the location of the

Temporary Barrier Wall in Phase I and Phase II. The Temporary Barrier Wall however cannot be relocated directly from the Phase I to the Phase II position in the same operation due to the asphalt overbuild that must be constructed prior to placing Temporary Concrete Barrier Wall in the Phase II location. The Phase I Temporary Barrier Wall must be removed at the end of Phase I. After the overbuild operation, new temporary barrier wall is to be installed in accordance with the Phase II TCP. This particular wall cannot simply be "relocated" and therefore should be considered and paid under the furnish and install pay item."

"It is the Contractor's position that this work constitutes payment of the Phase II Temporary Barrier Wall under the Temporary Barrier Wall (Furnish and Install) item provided in the Contract."

Department's Position:

"The Contractor has requested payment for the Phase II Temporary Barrier Wall relocation to be made under the Temporary Barrier Wall (Furnish and Install) instead of the Temporary Barrier Wall (Relocate) indicated in the Plans. While the Department contends that the Pay Items are correct and explicitly presented in the Contract Documents, Community Asphalt contends that "The Phase II Barrier Wall installation should be paid under the Furnish and Install item since it must be loaded and transported from a stockpile, and installed in the Phase II configuration at a later time." They further claim that the bid item for Relocate does not include transportation of the wall."

"The Department does not recognize any entitlement for additional compensation to the Contractor related to this issue as explained below."

"First of all, the Specifications related to this issue clearly support the Department's position. Supplemental Specification 102-11.9 states that "When called for, the Contract Unit price for Barrier Wall (Temporary/Relocate) will be full compensation for relocating the barrier." This statement is repeated in Supplemental Specification 102-13.9 under the Basis of Payment Section for this Pay Item. Unlike the Barrier Wall Temporary (F&I) which specifically outlines the work included in the Pay Item, the Barrier Wall Temporary (Relocate) Specification refers you to the Contract Plans for the work included by stating "When called for..." For further clarity, Supplemental Specification 5-2, Coordination of Contract Documents, states that "In addition to the work and materials specified in the Specifications as being included in any specific pay item, include in such pay items additional, incidental work, not specifically mentioned, when so shown in the Plans, or if indicated, or obvious and apparent, as being necessary for the proper completion of the work under such pay item and not stipulated as being covered under other pay items" and also gives the governing order of the Contract Documents, in which the Plans take precedence over the Specifications."

"In reference to the Contract Plans, the second paragraph of the letter from

(Temporary)(Relocate) will be full compensation for relocating the barrier.

Board Recommendation:

Based on the materials submitted and the presentations at the DRB Hearing, the Board recommends that there is no entitlement to additional costs associated with installation of the Phase II Temporary Barrier Wall.

The Board sincerely appreciates the cooperation of all parties and the information presented for review in making this recommendation.

Please remember that a response to the DRB and the other party of your acceptance or rejection of this recommendation is required within 15 days. Failure to respond constitutes acceptance of this recommendation.

I certify that I have participated in all of the meetings of this DRB regarding this issue and concur with the findings and recommendations.

Respectfully Submitted,

Dispute Review Board:
James V. Moulton, Chairman
Don Henderson, Member
John W. Nutbrown, Member

Signed for and with the concurrence of all members:

James V. Moulton, Chairman

cc: Don Henderson
John W. Nutbrown