

## DISPUTE REVIEW BOARD RECOMMENDATION

September 22, 2016

Michael McCammon, P.E.  
Ocala Operations Engineer  
Florida Department Transportation  
627 NW 30<sup>th</sup> Ave  
Ocala, FL 34475

Foster Bachschmidt  
Vice President, COO  
D.A.B. Constructors, Inc.  
P.O. Box 1589  
Inglis, FL 34449

REF: SR 40 from CR 328 to SW 80<sup>th</sup> Ave  
Marion County, FPID No. 238719-1-52-01  
Contract No. T5486  
Hearing No. 1: Delays attributable to Plan Error Subsoil Excavation

Subject: Disputes Review Board Recommendation

Gentleman,

D.A.B. Constructors, Inc. (DAB) and the Florida Department of Transportation (FDOT) have requested a Dispute Review Board Hearing of “**entitlement**” on the above referenced project as a result of subsoil excavation overrun. The project consist of improvements to SR 40 from CR 328 to SW 80<sup>th</sup> Ave. in Marion County, from two lanes to four lanes divided rural and included, stormwater ponds, ditch improvements, signalization upgrades and utility relocation. Both parties were unable to come to an equitable agreement on cost and time and have filed position papers.

**ISSUE:** Due to *Plan Error* in unsuitable subsurface soil found in the roadway, embankment and subgrade activities the excavation was extended beyond the limits of the design cross sections. This additional work impacted roadway earthwork activities during Phase 1 and Phase 2 of the project. While the parties agreed on payment of the additional excavation on bid unit price, the contractor requested time extension for the work. With ref. to Phase 1 operations, there was an agreement on time and money, however on Phase 2; the parties disagree on the number of delay days and its eligibility to be compensable.

**CONTRACTORS POSITION:**

***The following statement is paraphrased from the contractor's position paper and subsequent rebuttal to FDOT's position.***

The issue in dispute arises from D.A.B.'s (DAB) claim of delay's encountered as a result of plan error in the amount of Unsuitable Subsoil Excavation causing a 41% overrun of excavation. The unsuitable soils were removed as required by the contract by extending subsoil excavation areas beyond the limits depicted in the cross sections. This additional work impacted roadway earthwork activities during Phase 1 and Phase 2 of the project.

The Department acknowledged the additional work through payment of the overrunning quantities of subsoil excavation and embankment at the contract unit prices on the monthly progress estimates. DAB submitted a Time Extension Request for Phase 1 excavation, which the Department and Contractor reached an agreeable settlement. However, in Phase 2, DAB has filed a claim for an extension of time of 55 compensable days, which the Department has only granted in a Unilateral Payment of 46 non-compensable days.

DAB request the DRB to grant **entitlement** to a compensable time extension of 55 days for impacts in Phase 2 related to the encounter of unforeseen subsoil excavation throughout the limits of the project based upon the facts presented by all parties.

**FDOT POSITION:**

***The following statement is paraphrased from the Department's position papers and subsequent rebuttal to the CONTRACTOR's position.***

The Department agrees that there was a Plan Error in the quantity of unsuitable subsoil excavation as shown on the plans. The Department's understanding of the claim is that DAB had requested two time extensions related to the excavation of subsoil in Phase 1 and Phase 2. The Department acknowledged the Phase 1 claim and awarded compensable time extension in accordance with contract specifications. However with respect to the 55 days requested in Phase 2, the department, through an unilateral agreement, has only recognized 46 non-compensable days based on actual CPM compiled days and the fact that the contractor did not meet the Special Provision criteria for Compensable time.

**FINDING OF FACTS:**

1. Both parties agree that there was a plan error in subsoil excavation resulting in an overrun of approximately 41 per cent.
2. The contractor agreed to remove the unsuitable material at the contract unit price with understanding there would be a time extension.
3. DAB filed NOI #4 for intent to file claim for extra work in Phase 2 as a result of unsuitable material overrun.
4. Contractor added additional equipment and crew to accelerate the work in Phase 2.
5. On November 2, 2015, DAB submitted a request for 55 days of compensable time extension for Phase 2 of the work.
6. On 6-24-16 the Department issued a unilateral agreement that included 46 days of non-compensable time to the contract.

**DRB RECOMMENDATION:**

After review of all the data furnished, the position papers, rebuttals, hearing discussions and review of the Contract Specifications and documents, the Board finds that there is no additional entitlement due for subsoil excavation.

**RATIONAL:**

The time extension calculations described in detail within the Department's Position Paper, specifically page H-5 shows projected days of 30 original CPM duration and actual 85 days indicating 55 days overrun. Using the calendar on H-27 for the duration of 30 July to 21 October 2015 there were two holidays for Labor Day weekend and a combination of 9 weather and recovery days resulting in the 46 work days extension. The contractor's claim did not meet the requirements of Special Provisions 8-7.3.2 and 8-3.2.6 for compensable time.

**CONCLUSION:**

The Board sincerely appreciates the cooperation of all parties and the information presented for the review in order to make the recommendation. The Disputes Review Board's recommendation should not prevent or preclude the parties from negotiating an equitable solution (should it be appropriate) to any issue pursuant to the partnering agreement.

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 by that party.

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

Respectfully Submitted  
Dispute Review Board  
Robert P. Bayless, Chairman  
Phil Hammaker  
Clara Scott

Robert P. Bayless, P.E. Chairman

CC: Ronda Daniell, FDOT  
Nicole Aiton, FDOT  
Will Gelner, DAB Constructors, Inc.