

**Regional DRB Hearing**

**Placeres Construction, Inc. vs. FDOT District Six**

**“ADA Improvements (Sidewalk) along State Road 922”**

FDOT Financial Project No. 429761-1-52-01

Contract No. E-6G64

County: Miami-Dade

***“Claim No. 2, Use of A-3 Material because of Wet Conditions”***

***July 11, 2014***

**9:30 AM**

**Members of the Regional Disputes Review Board:**

Kenneth E. Fusch, PE, Chairman.

James W. MacLaughlin, PE

James R. McNew

**Project Information:**

Type: Design, Bid, Build    Designer: C. H. Perez & Assoc.    CEI: Pinnacle Consulting

Date of Award: 2/15/2012    Contract Amount: \$185,432.76    Duration: 70 days

Scope of Work: ADA Sidewalk Improvements and Drainage Installation at Intersection

Location: NE 123<sup>rd</sup> Street from W. of North Bayshore Drive to E. of North Bayshore Drive

1<sup>st</sup> Day of Work: 5/21/2012    Last Day of Work on Project: 11/15/2012

Date of Default Action against Contractor by FDOT: 12/12/2012

**I.**

**ISSUE IN DISPUTE**

The issue in dispute as submitted to the Regional DRB is whether or not the Contractor (Placeres Construction, Inc., or PCI) is entitled to compensation for providing A-3 material as backfill when wet conditions were encountered during the installation of drainage structures and pipe.

**Contractor's Position:** PCI encountered wet conditions in locations where drainage structures and pipe were being installed. Since the Contractor was not able to achieve proper compaction in these areas, the CEI directed Placeres to import A-3 material when this situation was encountered in accordance with the contract specifications. The Department considered this work as *unforeseen*, and notified Placeres that he would be compensated for the costs of importing A-3 material.

However, the CEI then informed Placeres that dewatering must first be attempted in these areas. The Contractor objected to this direction since he believed it would take 90-120 days to obtain a dewatering permit. The project duration was only 70 days, and there was not sufficient time to obtain a permit. (See Placeres Construction Position Paper)

In summary, Placeres Construction maintains that it is entitled to compensation for the A-3 material since the wet conditions were *unforeseeable*, and because there was insufficient time to obtain a dewatering permit to solve the compaction problem by that method

**FDOT's Position:** Although the use of A-3 material was allowed by the specifications when wet conditions were encountered, an attempt to dewater must first be attempted by the Contractor. The use of imported A-3 material was considered by District Six to be for the Contractor's convenience. Thus, the Contractor's request for additional compensation was not approved..

The Department environmental representative advised that the normal time to obtain a dewatering permit was only one week. Therefore, the CEI considered the Contractor's decision to import A-3 material to be for the Contractor's convenience. Specifications Section 125-8.3.4 states in part, "The Department will not pay for select material that might be used by the Contractor for his own convenience instead of dewatering." (See District Six Position Paper)

In summary, District Six maintained that the use of A-3 material, rather than dewatering, was for the convenience of the Contractor. Therefore, PCI is not entitled to additional compensation.

**Regional DRB Responsibility:** As requested by the Contractor and the Department, the Regional Board convened a Hearing to make a recommendation regarding "entitlement" on the issue in dispute. The Board did not consider the matter of quantum in regard to this issue. Nothing said by the Board during the Hearing, or contained in this written recommendation, should be construed as an endorsement of the amount of compensation sought by the Contractor.

The Board's recommendation is based on its reading of the Position Papers submitted by the parties, and the information learned from the participants during discussions at the Hearing. The

Hearing was not recorded. A list of attendees was prepared for the Board's files

## **II. ASSESSMENT OF CONTRACTOR'S POSITION**

In addition to reviewing the Contractor's Position Paper for this issue, and discussing the facts of the matter with the Contractor at the Hearing, the Board reviewed the following sections of the 2010 FDOT Standard Specifications for Road and Bridge Construction:

Section 125-8.2.5, Compaction under Wet Conditions

Section 125-8.3.4, Backfill under Wet Conditions

Section 125-14.7, Removal and Replacement of Material Unsuitable for Backfill

### **Chronology of Significant Events:**

- 7/5/12 RFI #5 submitted by PCI (request direction for wet conditions at S-6 and S-7)
- 7/5/12 RFI #7 submitted by PCI (request directions for wet condition in pipe trench)
- 7/6/12 D6 replied to RFI #5 & #7 (refers PCI to Sections 125-8.2.5 and 125-8.3.4)
- 7/6/12 PCI ltr notified CEI that A-3 material will be used, but will request compensation.
- 7/6/12 CEI email to PCI discussed requirement to obtain dewatering permit.
- 7/11/12 Soil sample E0002V tested and found to be unsuitable for use as drainage backfill.
- 10/8/12 CEI notified PCI that no compensation for A-3 material since dewatering not done.
- 6/26/14 D6 Position Paper states that Department will reconsider payment for A-3 material.

**Conclusion:** The Board concurs that the Contractor is entitled to compensation for providing A-3 material for backfill when wet conditions were encountered. The fact that the existing on-site material was tested and found not suitable for use as backfill supports this conclusion. In addition, the Board is doubtful that the Contractor could have obtained a dewatering permit in one week. The Board believes that the use of A-3 material was not for the Contractor's convenience, but rather was the only reasonable solution.

**III.**

**ASSESSMENT OF THE FDOT POSITION**

In addition to reviewing the FDOT's Position Paper for this issue, and discussing the facts of the matter with District Six representatives at the Hearing, the Board reviewed the contract specifications listed in *Part II* above.

**Conclusion:** The Board does not support the information obtained by District Six that the dewatering permit could be obtained in one week. The fact that the on-site embankment material proved to be *unsuitable* for use as backfill material (high organic content), as well as the estimated time required to obtain a dewatering permit, brought the Board to the conclusion that the use of A-3 material was the most reasonable solution for the wet conditions encountered.

**IV.**

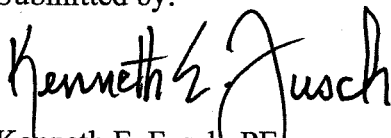
**RECOMMENDATION**

The Board finds that the Contractor is entitled to receive compensation for importing A-3 material to solve the problem of wet conditions when installing drainage structures and pipe. In addition, the Board recommends that the Contractor be compensated for the removal and disposal of unsuitable material associated with this work.

This Recommendation is the unanimous decision of the members of the 2014 Regional Disputes Review Board.

Submitted by:

Date of Recommendation:



Kenneth E. Fusch, PE  
Chairman, 2014 Regional Board

7/24/2014

Distribution:

Placeres Construction, Inc.  
FDOT District Six