

**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. 1, Replacement of Unsuitable Soil"***

***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 Disputes Review Board is whether or not the Contractor (Placeres Construction, Inc., or PCI) is entitled to compensation for the removal of unsuitable soils discovered on the project site and the replacement of these soils with limerock which was imported by the Contractor.

**Contractor's Position:** PCI discovered unsuitable soils on the project site at locations where drainage installation and other work was in progress. The Contractor was unable to use this material for backfill for drainage structures and pipe because it did not meet the contract specifications for this purpose (organic content was found to be 9.2% which exceeded the maximum allowable content).

Placeres was directed by the CEI to use limerock material which did meet the specifications, in lieu of the unsuitable soils. Since the limerock material was not available on site, Placeres imported the limerock from an approved source. In addition, the Contractor removed and disposed of the unsuitable soils. (See Placeres Construction Position Paper)

In summary, Placeres Construction maintains that it is entitled to compensation for both the removal of the unsuitable material and for the costs associated with importing limerock as a replacement material for backfill.

**FDOT's Position:** While District Six representatives felt the request for compensation had merit, they did not agree with the amount of compensation requested by the Contractor. The quantities did not meet the measurement methods outlined in the 2010 FDOT Specification Section 125-13. for this situation. (See District Six Position Paper)

In summary, District Six agrees that the Contractor is entitled to compensation for both the removal of the unsuitable material and the costs of importing the necessary limerock for use as backfill, however the Department does not agree on the amount of compensation due Placeres.

**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 the 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 125-4.4, Pipe Trench Excavation

Section 125-11, Site Restoration

Section 125-14.6, Removal and Replacement of Existing Pavement

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

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

- 7/11/12 Soil sample E0002V tested and found unsuitable for use as drainage backfill
- 7/13/12 PCI notified that soil sample test results found that on-site material was unsuitable
- 7/2 - 8/31 PCI imported approx 200 TN of limerock as replacement backfill
- 9/10/12 PCI requested compensation for imported limerock & removal of unsuitable soils
- 10/8/12 CEI notified PCI that D6 would compensate PCI, but did not agree on the amount

**Conclusion:** The Board concurs with the Contractor's position based on its understanding of the contract specifications and the soil test results.

## **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 concurs with the District Six position which was essentially the same position as the Contractor's.

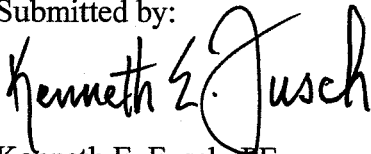
**IV.**

**RECOMMENDATION**

The Board finds that the Contractor is entitled to receive compensation for the removal of unsuitable soils and the replacement of an equivalent amount of limerock to be used as backfill for drainage structures and pipe on the project.

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

Submitted by:



Kenneth E. Fusch, PE  
Chairman, 2014 Regional Board

Date of Recommendation:

7/24/2014

Distribution:

Placeres Construction, Inc.  
FDOT District Six