

REGIONAL DISPUTES REVIEW BOARD RECOMMENDATION

November 28, 2009

Manuel A. Aguiar
Community Asphalt Corporation
Vice President/General Manager
14005 NW 186th Street
Hialeah, FL 33018

Enrique I. Tamayo, P.E.
Tamayo Engineering
Sr. Project Engineer
8101 Biscayne Boulevard Unit 417
Miami, FL 33138

RE: Financial Project Number 414623-1-52-01; Contract No. T6130; Miami-Dade County
SR 5 (US 1/Biscayne Blvd.) from SE 2nd Street to NE 5th Street – Milling and Resurfacing

Dear Sirs:

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

Issue: Is the 2004 or 2007 Standard Specification edition to be used on this contract for installation of Cross-Hole Sonic Logging Testing (CSL)?

Contractor's Position:

The dispute between CAC and the Department relates to which Standard Specification edition applies to the drilled shaft installation CAC's traffic signalization subcontractor performed.

In July 2008, CAC's subcontractor, Signal Service Industries, Inc. (SSI) submitted its Drilled Shaft Installation Plan. The Department's CEI firm rejected SSI's plan claiming that contract documents include 2006 Standard and 2007 Specifications, not the 2004, thus the Department maintains cross-hole-sonic logging is required.

Throughout the project, CAC and SSI said they objected to the Department's interpretation for two reasons. First, the project's Signalization Notes, which specifically govern SSI's drill shaft installation only mentions the 2004 edition of the Department's Standard Specifications. Second, the Department confirmed during the Pre-Signalization Meeting agenda that the 2004 Standard Specifications govern SSI's concrete foundation work.

CAC contends that the Board should rule that CAC is entitled to a contract adjustment pursuant to Standard Specification Article 4-3.4.

SSI relied upon the Signalization notes when preparing its bid as this information dictates SSI's scope of work. Note 4 of the signalization notes states:

“Governing Standard Specifications are: The Roadway and Traffic Design Standards of 2004, the Florida Department of Transportation Standard Specifications for Road and Bridge Construction and the Miami-Dade County Technical Special Provisions for Traffic signals.”

They contend that no other contract document exists that governs SSI's work (particularly drilled shaft installation work) other than Note 4. CAC contends that the 2004 Edition does not require Cross Hole Sonic Logging Testing as that first appeared in the 2007 edition.

If the Board agrees with CAC's interpretation that the signalization notes are clear and not ambiguous, there is no need to read further. Nevertheless, FDOT will likely argue that the "Key Sheet" governs to support FDOT's contention that the 2007 edition applies to SSI's drilled shaft installation work. Essentially, FDOT suggests an ambiguity exists which this board should reconcile. The Key sheet states:

"Governing Standards and Specifications; Florida Department of Transportation Design Standards dated 2006, and Standard Specifications for Road and Bridge Construction dated 2007, as amended by contract documents.

Contractor's Rebuttal Statement: The contractor did not provide a rebuttal.

Department's Position

It is the Department's position that the contract documents related to the construction contract T6130 require the installation of CSL tubes for installation as part of the drilled shaft foundations for the signalization mast arms. The Department's CEI Sr. Project Engineer, Enrique Tamayo, has communicated the Department's position to CAC and their subcontractor, Signal Services Industries (SSI) throughout the project. The initial communication was provided during review and rejection of the initial Drilled Shaft Installation Plan submitted by CAC and SSI.

The Department has reviewed the contract documents at various levels including the project level, Resident level and District level and reached the same conclusion which is that the contract documents do require the installation of cross-hole-sonic logging tubes in the mast arm drilled shaft foundations. The dispute first arose when CAC submitted SSI's drilled shaft installation plan on July 2, 2008, to the CEI Carnahan, Proctor & Cross/Tamayo Engineering, for review. Upon review, Enrique Tamayo identified that the plan did not address the installation of CSL tubes. Mr. Tamayo advised CAC in writing on July 17, 2008, that the plan was not accepted for failure to include the required language regarding the CSL tubes and other issues. CAC's project manager, Omel Ramirez, responded on July 18, 2008 by providing an email from SSI which SSI stated that a plan note referenced the 2004 Standard Specifications. Mr. Tamayo responded on July 18, 2008 that the subcontractor's interpretation of the Plan Note was **incorrect** and the CSL tubes were required to be installed.

On August 4, 2008, CAC resubmitted the revised Drilled Shaft Installation Plan including the reference to the required CSL tubes. Mr. Tamayo communicated to Mr. Ramirez that the Plan was approved on August 6, 2008. On the progress meeting held on 9/11/08, Yazmani Caballero of SSI stated that there was the pending issue of payment for installation of the CSL tubes. During this meeting, Mr. Tamayo advised Mr. Caballero that the FDOT disagrees with SSI's position that compensation is due for the installation of the CSL tubes and all requests regarding this issue should be forwarded to Mr. Ramirez of CAC for review and further processing including forwarding to Mr. Tamayo for review and consideration.

The next mention of the issue came during the Progress Meeting held on October 16, 2008 when Mr. Tamayo stated that he has not received any further documentation regarding this issue. Later that day, Mr. Ramirez forwarded an email from SSI with attachments identifying an additional cost of \$66,726.00 for installation of CSL tubes in 20 drilled shaft foundations. Mr. Tamayo responded to Mr. Ramirez

through email where he stated that his position regarding this matter had not changed. Mr. Tamayo stated that the note in question, Note #4, Sheet T-3 of the contract plans, does not support SSI's position that the applicable Standard Specifications for Road and Bridge Construction is the year 2004. Mr. Tamayo also wrote in the email that the key sheet of the contract plans and the contract documents both identify the applicable standard specifications for road and bridge construction as 2007.

The Department's position is that the request for additional compensation is not accepted as the applicable 2007 Standard Specifications for this project require the installation of CSL tubes for drilled shaft foundations.

1. Sheet No. 1 of the Specifications Package for Project ID 414623-1-52-01, identifies:
 - The 2007 Edition of the Florida Department of Transportation Standard Specifications are revised as follows:
2. Sheet No. 1 of the Contract Plans for Financial Project ID 4146523-1-5-201 defines:
 - Governing Standards and Specifications: Florida Department of Transportation, Design Standards dated 2006 and Standard Specifications for Road and Bridge Construction Dated 2007, as amended by Contract documents."
3. Sheet T-3 of the contract plans for FPN 414623-1-52-01, Signalization Notes, Note #4
 - "Governing Standard Specifications are: The Roadway and Traffic Design Standards of 2004, the Florida Department of Transportation Standard Specification for Road and Bridge Construction and the Miami-Dade County Technical Special Provisions for Traffic Signals."
4. Standard Specification for Road and Bridge Construction, 2007 Edition, Specification 455-15.1.2, Drilled Shaft Installation Plan, Note #12
 - "Details of any required cross-hole-sonic logging (CSL) tubes, test equipment, procedures and proposed CSL specialty engineer to perform, log analyze and report the test results.
5. Standard Specification for Road and Bridge Construction, 2007 Edition, Specification 455-16.4, Cross-hole sonic logging (CSL) tubes, provides the details for installation of the CSL tubes.
6. FDOT procedures with respect to CSL testing require that a minimum, the contractor test one of the initial drilled shafts installed. If the test results are positive and acceptable to the FDOT Material's Office, the rest of the testing requirements may be waived depending on the review of the Drilled Shaft Logs. If the test is negative and unacceptable to the FDOT Materials office, further shafts maybe required to be tested. On this particular project, FDOT materials office personnel reviewed the Drilled Shaft Logs for the first five (5) drilled shafts installed on the project. Based off the review of the logs themselves, the materials office approved grouting of the CSL tubes without CSL testing. For subsequent drilled shafts (15) the Sr. Project Engineer and FDOT project Manager reviewed the drilled shaft logs and based on the verification of the data in the logs and confirmation of compliance of drilled shaft construction by CEI personnel,

all drilled shafts were accepted without CSL testing. **In summary, no actual CSL testing was required nor performed by the contractor or the Materials Office on this project.**

Contractor's Rebuttal Statement: None was presented to the Board in writing.

Department's Rebuttal Statement:

CAC states that "First, the project's signalization notes, which specifically govern SSI's drill shaft installation work only mentions the 2004 edition of FDOT's Standard Specifications." Be advised that Note 4 of Sheet T-3 of the contract plans specifically refers to "**THE ROADWAY AND TRAFFIC DESIGN STANDARDS OF 2004, not the STANDARD SPECIFICATIONS.**" Also, the governing authority of contract documents or hierarchy is as follows and in this order:

- a. Special Provisions
- b. Technical Special Provisions
- c. Plans
- d. Design Standards
- e. Developmental Specifications
- f. Supplemental Specifications
- g. Standard Specifications

CAC states that SSI relied upon the signalization notes when preparing its bid as this information dictates SSI' scope of work... It is CAC's responsibility to ensure that the project is bid in compliance with all contract documents and in accordance with the hierarchy of documentation as established by the FDOT Standard Specifications. All Contract documents are applicable.

As stated and referenced in the FDOT's position paper dated October 26, 2009, page 1 of the Specifications Package and Sheet 1 of the Contract plans specifically identify the governing Standard Specifications as the 2007 edition.

Requested Additional Information:

The Board requested information as to whether the FDOT told CAC/SSI which documents govern the contract. The FDOT produced an email dated July 18, 2008 clarifying the plan note that refers to the 2004 Roadway Design Standards, not the Standard Specifications. After both parties agree, this document was presented to the Board at the hearing.

RDRB Findings:

CAC based their claim on Note #4 of the Signalization Plans that the governing specifications would be the 2004 edition of the Standard Specifications.

Also, at the Pre-signalization meeting, the meeting agenda shows Item #6 Traffic Signals Construction, that the governing standards for installation of concrete foundations are FDOT Specifications 2004 Section 400, 415, 455 which would not require the use of cross-sonic logging tubes in the mast arm footers.

The Department based the need for the CSL tubes from contract specification package, which states that the 2007 edition of the Florida Department of Transportation Standard Specifications will be the governing specification for this contract. Also the contract plans key sheet #1 states that the governing

standards and specifications are the Florida Department of Transportation Design Standards dated 2006, and Standard Specifications for Road and Bridge Construction dated 2007, as amended by contract documents.

RDRB Recommendation:

The RDRB finds that no entitlement is due to CAC/SSI for cross-hole sonic logging tubes placed in the mast arm footers. The recommendation is based on the Specification Packet for this project and key map page #1, which clearly states "The 2007 Edition of the Florida Department of Transportation Standard Specifications are to be used." Per Note #4 of the Signalization Plans, reference is made to the "**Roadway and Traffic Design Standards of 2004**, the Florida Department of Transportation Standard Specification for Road and Bridge Construction and the Miami-Dade County Technical Special Provisions for Traffic Signals." The Roadway and Traffic Design Standards are not the same as the Standard Specifications.

The Contract Plan sheet #1 states that the governing specifications will be Standard Specifications for Road and Bridge Construction dated 2007.

The Pre-signalization agenda from the meeting on August 11, 2008, indicated that the 2004 Standard Specifications were to be used. This incorrect information was a result of the consultant using an old form from previous years which had the old specification edition noted. However, while it was unfortunate that this was noted on the agenda incorrectly, the agenda was not the governing document and the contractor should not have relied on this information.

Please remember that a response to the RDRB and the other party of your acceptance or rejection of this recommendation is required within 15 days. Failure to respond constitutes an acceptance of this recommendation by non-responding party.

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

Respectfully submitted,
Regional Disputes Review Board

Frank E. Proch, Regional Disputes Review Board Chairman
J. W. Nutbrown, Regional Disputes Review Board Member
Joe Capeletti, Regional Disputes Review Board Member

CC: Ivan Hay, P.E. FDOT
Mark Croft, P.E. FDOT
Amanda Shotton, P.E. FDOT
Omel Ramirez, CAC
Gabriel De Armas, SSI