

DISPUTES REVIEW BOARD RECOMMENDATION

27 December, 2004

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Ref: SR-45 (Nebraska Avenue) From Hillsborough Avenue to Sligh Avenue. Contract No: T7041, Financial Project No: 403713-1-52-01. Disputes Review Board hearing regarding lane closure restrictions.

Dear Sirs:

The Florida Department of Transportation and Barrier Wall of South Florida requested a hearing concerning the above referenced issue.

CONTRACTOR'S POSITION

We will state the Contractors position by referencing and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Contractor.

The Contractors position paper has the following statements and references to document their claim for entitlement.

“The Department has taken the position that the note contained on Plan Sheet No. 74, note 1 is solely intended to preclude the closure of existing lanes of traffic between 6:00 AM and 11:00 PM is part of the Contract, however, consistent with subsequent information provided and to be discussed further, Carolina Consulting Corp. (CCC) is following the TCP Typical Sections for Phases I, II and III as indicated on Plan Sheet Nos. 76 through 78. CCC’s position is substantiated by the following information further provided for in the Contract Documents:

Contract Document Review. Plan Sheet No. 76 is titled “**TCP Phase I Typical Sections and Notes**”. This sheet covers the work to be completed in Phase I of the project. This plan sheet lists the activities, stations and the sequence of work to be completed. Similarly, Plan Sheet 77 is the same for Phase II and Plan Sheet No. 78 for Phase III work, all of the activities, stations and sequences are detailed for each sequence

and all are covered by a typical section depicting the work zone. All of the three TCP sheets show maintenance of traffic set-ups for that phase. Since the plan sheet typical sections show a permanent set-up to control traffic during the specific construction phases CCC's assumption would be that the notes pertained to any additional lanes beyond what is shown as the permanent phase set-up as drawn. As with other FDOT projects, typical sections are provided to assist contractors in preparing a reasonable bid. In reviewing the plans, no information was provided in the way of lane closure restrictions on TCP Typical Sections for Phases I, II and III as indicated on Plan Sheet Nos. 76 through 78. It could not have been anticipated that lane closures in general could only be conducted between 11:00 PM and 6:00 AM. CCC could only assume that these typical sections applied to all of the work specified in these phases.

If the Department wishes to rely solely upon Note 1 on Plan Sheet No. 74 then CCC would question how to interpret Note 30 on this same sheet, Plan Sheet No. 74 which reads "LANE CLOSURE RESTRICTIONS, AS SHOWN IN GENERAL NOTE 1 OF THE TRAFFIC CONTROL PLANS, SHALL APPLY TO THE INSTALLATION OF PIPES AND IRRIGATION CONDUIT WHEN UTILIZING THE OPEN CUT METHOD". This note does not address all of the other work activities that require lane closures".

At the Hearing the Contractor restated that note 30 on the TCP (sheet #74) was for lane closure restriction for pipes and irrigation installation only when using the open cut construction method.

DEPARTMENT'S POSITION

We will state the Departments position by referencing and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Department.

The Department requests that the RDRB make a recommendation regarding entitlement to the Contractor if the Department restricts lane closures such that no lane(s) may be closed during the hours of 6:00 AM to 11:00 PM for NB and SB on S.R. 45 (Nebraska Ave.) except during the weekend Milestones laid out in Special Provision 8-13.1 "No Excuse Bonus" Payment and Waiver of Contractor Claims.

"The Department's position is that the TCP General Notes (Contract Plan sheet 74) are very clear and unambiguous.

The applicable TCP General Notes from Contract Plan Sheet #74 are as follows:

TCP General Note #1 states, “Lane closure restrictions for S.R. 45 have been established as follows: No lane(s) may be closed during the hours of 6:00 AM to 11:00 PM for NB and SB.”

TCP General Note #2 states, “Lane closure restrictions for S.R. 45 cross drain work only (S.R. 45 TCP phase 1) has been established as follows: work period is from Friday (11:00 P.M.) to Monday (6:30 A.M.). The contractor shall complete all drainage crossings as shown in the phase 1 in consecutive weekends prior to proceeding to an alternate phase.”

TCP General Note #4 states, “A discussion of lane closer operations will be made part of all preconstruction conferences. The contractor will be required to submit a written plan which details each activity involved in the lane closure. The plan shall include back-up plans for activities critical to re-opening the lanes to traffic. The back-up plan shall include back-up for subcontractor operations as well as the prime contractors.”

TCP General Note #5 states, “No lane closure will be allowed without assurance that the prime and subcontractors have planned the operations to achieve re-opening according to the contract. An example...”

TCP General Note #22 states, “The contractor shall be aware the project is in close proximity to a residential development. Due to the lane closure analysis, most work will be done in the evening hours. Tailgate noise and backup signals shall be kept to a minimum. Vibratory rollers shall not be used on this project. Lighting shall not disturb the privacy of the residents.

TCP General Note #30 states, “Lane closer restrictions, as shown in general note #1 of the traffic control plans, shall apply to the installation of pipes and irrigation conduit when utilizing the open cut method.”

In Summary, the Department contends that there is no entitlement to the Contractor when the Department enforces the General TCP Notes for lane closure limitations found on Plan Sheet 74”.

In the hearing held on 15 Dec. 2004 the Department stated that the intent of **TCP General Note #30** was for irrigation pipe only and did not apply to the overall project. The Department said that this note did not relieve the Contractor from adhering to the lane closures as given in **TCP General Note 1**.

The Department stated that the general policy in District 7 was to restrict day time lane closures on these type projects. They restated that the intent of the Traffic Control Plan notes were to provide that the lane closures would be at night with the exception being the milestone day closures.

DISPUTES REVIEW BOARD FINDINGS

Note 1 of the TCP is very clear on the lane restrictions for the project.

“Lane closure restrictions for S.R. 45 have been established as follows: No lane(s) may be closed during the hours of 6:00 AM to 11:00 PM for NB and SB.”

Note 30 of the TCP is very clear on lane closure restrictions.

“Lane closer restrictions, as shown in general note #1 of the traffic control plans, shall apply to the installation of pipes and irrigation conduit when utilizing the open cut method.”

Note 1 is an all encompassing note for the project while Note 30 specifies pipes and irrigation work. Note 30 does not relieve the Note 1 requirement for lane closures.

The Board believes that the Department is correct in their statement that the intent of the designer was to restrict day time lane closure. However the intent of the designer needs to be clearly stated in the notes or drawings in order for a contractor to make a valid assumption of cost. The notes (numbers 1 and 9) provided in the TCP Sheet 74 are not clear as to the intent.

The Board believes that there is a general policy in the District to restrict day time lane closure on projects such as this. This general policy needs to be written and be incorporated into the contract documents for it to be enforceable and to allow a contractor the information to base a bid on.

Note 9 states that milling and resurfacing activities may take place during the day and night. If these operations do occur during the day then lane closures would be required.

*Note 9. The Contractor shall limit the length of milling operations to no more than can be resurfaced with structural course, crack reduction membrane, and overbuild course within the same **day**/night operations.*

There are no notes on sheets 77 and 78 of the TCP that restrict lane closures. The only restriction is found in note 2 in Phase II A & B and in Phase III A & B. This note states that “*each segment shall be completed and re-opened to traffic prior to beginning construction on another segment. See TCP General Notes Sheet, Note 9.*” Note 9 of the TCP indicate that day/night work is anticipated for the milling/resurfacing activities.

A contractor, in preparing a bid, could make the assumption that the milling and resurfacing are exempt from the lane closure restrictions based on Note 9.

DISPUTES REVIEW BOARD RECOMMENDATION

The Board is governed in our decision making process by the plans, specifications (standard, supplemental, technical, special), and the contract. Therefore our recommendation is based on the above documents.

The Board has reviewed all the information provided by the Department and Barrier Wall of South Florida (Carolina Consulting Corporation) in their position papers and the Hearing.

The Board recommends entitlement to the Contractor if the Department restricts lane such that no lane(s) may be closed during the hours of 6AM and 11PM except for the weekend Milestones as specified in the plans and Special Provisions. Entitlement is due if there are damages demonstrated by the contractor. This recommendation only applies to the milling and resurfacing portion of this contract as indicated in Note 9 of the TCP.

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

The Board unanimously reached the recommendation and reminds the parties that it is only a recommendation. If the Board has not heard from either party within 15 days of receiving this recommendation, the recommendation will be considered accepted by both parties.

Submitted by the Disputes Review Board

Don Henderson, Chairman Keith Richardson, Member Robert Lavette,
Member

Signed for and with concurrence of all members

Don Henderson, PE