

# DISPUTE REVIEW BOARD RECOMMENDATION

February 14, 2002

Mr. Tony Harvey  
Genesis Group  
2601 31st Street South  
St Petersburg, Florida 33712

Mr. Mike Knox  
Project Manager  
Hubbard Construction Company  
105 N. Falkenburg Road – Suite D  
Tampa, Florida 33619

RE: FPN: 258861 1 5201  
Federal Aid No.: 2757 346 I  
SPN 15190-3401  
Contract No.: 20489  
SR-93 (I-275) from East of Gandy Blvd. to East of Roosevelt Blvd.  
Pinellas County

Subject: **Claim Issue - Slab Replacement/Joint Sealing**

Dear Sirs:

The Owner, Florida Department of Transportation (Department), and Hubbard Construction Company requested a hearing to determine **entitlement for additional payment for joint sealing of concrete slab replacement** on the project. Should entitlement be established, the Parties were to negotiate the quantum of such entitlement.

Pertinent issues, correspondence and other information relating to the Department's and the Contractor's positions were forwarded to this Board for review and discussion at the hearing that was held on January 29, 2002.

## **CONTRACTOR'S POSITION:**

*Enclosed are our position papers including those of Lovin Construction Company which we submit on their behalf **concerning payment for joint sealing.***

*The total quantity for which we are requesting payment is 7082 meters which, at our contract unit price of \$6.75 per meter (pay item 23 50-70, Cleaning and Resealing Joints) totals \$47,803.50.*

*The total quantity above is comprised of two joint sealing "areas" connected with the concrete slab replacement. The first area includes 6737.5 meters around the perimeter of the replacement slab. The second area is comprised of 344.5 meters which includes the overcut areas created while saw cutting old concrete slabs for removal.*

***Lovin's justification primarily address the joints sealed around the slab perimeter.** Request for payment for joint seal in the slab overcut areas is based upon the reasoning that we originally quoted this work utilizing epoxy material in the overcut areas; costs to be included in pay item 2110-4 Removal of Existing Pavement. Subsequently this work was removed from Supplemental Agreement #3 (7-25-00) as the pay item in the contract of Epoxy Material 2400134 could be used to pay for this work. It was later decided joint seal material would be used in the overcut areas in lieu of epoxy material and compensated for under the Clean and Reseal Joints pay item 2350-70. Subsequent to that it was decided this sealing of overcuts was included in the slab replacement item rather than the Removal of Existing Pavement or Cleaning and Resealing of Joints pay items by the engineer.*

*We also wish to address joints sealing on a similar project in District 7; I-275 in Tampa FDOT # 10320-3546, FPI 258411-1-52-01 on which a DRB ruled. We do not feel this has bearing on our case as the plans on this project (sheet 50) state the required joint sealing is to be accomplished under slab replacement per note 14, phase 2.*

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## SUBCONTRACTOR'S POSITION:

*There is but one issue concerning Lovin Construction, Inc. and the Florida Department of Transportation to be presented to the Disputes Resolution Board on the above referenced project.*

*This issue concerns **what party is responsible for the sealing of the joints around the replacement slab. Our position is that Lovin Construction, Inc. is not responsible for sealing of these joints. There are pay items in the contract that cover this portion of the work and should be used accordingly.** We offer the following:*

1. *Under the Technical Special Provision for Concrete Pavement Slab Replacement for the subject project, a demonstration slab is required under Section 353-3.5. "The function of this demonstration is to show the Contractor's ability to furnish replacement slabs in conformance with the contract documents."*

*All the separate and/or individual items of work necessary to meet the contract documents are outlined and are to be demonstrated under this section. No demonstration of sealing of the joints is required. One should deduce from this that sealing of the joints is not part of the contract documents concerning concrete pavement slab replacement.*

*Since sealing of joints is recognized in the contract documents as a pay item, one could also surmise that sealing of joints is not an incidental item. **If assumed by the FDOT that sealing is incidental and included in the CPSR pay item, a demonstration should have been required.***

2. *Section 353-11 Joints of the TSP addresses the joints in and around the concrete slab replacements. Reference is made to Section 350-15 Joints in the 1999 Standards Specifications. Section 350 of the standard specification covers Portland Cement Concrete Pavement. **Under Section 350, pay items are listed for cleaning and resealing of joints. Joints existed around the concrete slab replacements prior to this portion of the existing pavement becoming concrete slab replacement.***

*Also under Section 353-11, the following is stated. "Where applicable, joint sealing materials will be an approved product on the QPL and will be placed in accordance with the manufacturer's instruction." **Nowhere in the TSP, the standard specifications, or the plans is it required that the joints be sealed and paid for under the pay item for concrete slab replacement.** Therefore, joint sealing would not be considered "applicable."*

3. *Intent. It is our opinion that the **sealing of these joints is covered elsewhere and could also have been determined at the time of bid.** To further substantiate our claim that sealing of these joints is covered elsewhere. Item 2350-72 pay quantities covered sealing all the existing joints and did not differentiate joints between existing slabs and concrete slab replacement; i.e., no deductions were taken from plan quantities. **Monies were included in the contract to cover sealing of the joints around the slab replacements.***

4. *Progression of Events.*

- a) *Lovin Construction, Inc. started slab replacement in April 2000.*
- b) *Lovin Construction, Inc. completed slab replacement in October 2000.*
- c) *Genesis Group's letter of October 4, 2001 concerning sealing and what pay item each is covered under.*
- d) *Weekly Meeting No. 85.*
- e) *Lovin Construction, Inc.'s letter of October 9, 2001.*
- f) *Genesis Group's letter of October 11, 2001.*
- g) *Lovin Construction, Inc.'s letter of October 15, 2001.*
- h) *Genesis Group's letter of October 23, 2001.*
- i) *Meeting with FDOT on November 29, 2001.*

5. *Other factors supporting our position are:*

- a) ***In 1993, a major slab removal and sealing project was performed in District 7 on I-4 and I-275. Ajax Paving Industries was the prime contractor, Costello Industries was the joint sealing contractor, and M.L. Boyer was the slab removal and replacement contractor. The joints around the slabs replaced were sealed by the sealing contractor and paid for under the cleaning and sealing items.***

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- b) *Sealing of the joints never became an issue until we were basically complete with the slab removal and the sealing contractor was to begin work. At that time, we were informed that the costs to seal joints around the replaced slabs would be our responsibility. Full compensation, less retainage, had been paid for our work. One would assume our work item was complete based on pay, performance of our work, and lack of any communication concerning any further work on our item.*
- c) *Under Section 353-11 Joints, instructions are given on how to develop the joints and also to follow all other requirements of 350-15 Joints.*

*Under Section 350-15.7 Sealing Joints and Cracks, the first paragraph states, "**Seal joints in new pavement before allowing any traffic or construction equipment on the pavement.** Complete sealing within 72 hours (weather permitting) of sawing." **The replacement slabs are not considered new pavement.** Sealing of the joints did not take place. Under Section 350-15, there are specifications covering existing joints which are on the perimeter of the replacement slabs. Also under Section 350-20 Basis of Payment there are pay items which are included in the contract to cover sealing of these joints.*

*We feel the Technical Special Provision, the Standard Specification, the pay items in the contract, the sequence of events, and previous work in the district substantiate our position.*

*We appreciate your help in this matter and look forward to a favorable decision.*

### **DEPARTMENT'S POSITION:**

#### ***Issue:***

*The matter in dispute is in regards to the payment for the joint seals around the existing slabs replaced during the slab rehabilitation phase. The Contractor believes that the sealing of the joints around the replaced slabs should be paid for under pay item No. 2350-72, Clean & Reseal Joints. **It is the Department's interpretation that the sealing of the joints around the replaced slabs is included in pay item No. 2353-70, Concrete Pavement Slab Replacement.***

#### ***Status:***

*After meetings and much correspondence in regards to this matter this issue is unresolved. The escalation matrix established at the beginning of the project was followed. At the last meeting regarding this issue both parties, the Department and the Contractor, agreed to refer this matter to the Disputes Review Board.*

#### ***Summary of Department's Position:***

*The Department's position is that compensation for sealing of the joints around the replaced slabs is included in pay item No. 2353-70, Concrete Pavement Slab Replacement. The basis for our position is outlined below:*

1. *The second sentence of the first paragraph of section 353-13 (Basis of Payment) of the Technical Special Provisions (TSP) for Concrete Pavement Slab Replacement States: "Such price and payment will be full compensation for all work specified in this TSP and will **include all joint construction**, including tie bars and dowels, furnishing and testing of test specimens, and all necessary incidentals."*
2. *The third sentence of the first paragraph of Section 353-11 (Joints) of the TSP for Concrete Pavement Slab Replacement states: "**Follow all other requirements of 350-15 Joints.**"*
3. *Section 350-15 of the Standard Specifications Dated 1999 includes Sub-Section 350-15.1 General, which states: "Construct joints at the locations and in accordance with the Roadway and Traffic Design Standards, Index 305 and the Contract Documents."*
4. *Index 305 in the Roadway and Traffic Design Standards Dated January 1998 details the construction of the Joints, including the joint seal.*
5. *Plan Sheet 9, Note No. 8 under the section labeled "Full Depth Slab Replacement" states: "Install bond breaker and either low modulus silicone joint sealant (for concrete-concrete joints) or hot pour joint sealant (for concrete-asphalt) joints."*

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6. *This particular issue was referred to the Disputes Review Board on Financial Project Number 258410-1-52-01. The Contract documents for both projects are similar. **The Board on this project ruled that the cost of the joint seal around the replaced slab is included in Pay Item No. 2353-70, Concrete Pavement Slab Replacement.***

*In summary, the points outlined above identify that the compensation for the full depth slab replacement includes the joint construction. The Contract Plans specify the Full Depth Slab Replacement operation to require the sealing of the joint. The Roadway and Traffic Design Standards further detail the joint construction which includes the joint seal. It is the Department's position that the contractor has been provided payment for sealing the joints around the replacement slabs under pay item 2353-70, Concrete Pavement Slab Replacement.*

### **Rebuttal of the Contractor's Position Letters dated December 10, 2001 and December 19, 2001:**

1. *Hubbard Construction Company's letter dated December 19, 2001 refers to two areas of joint sealing in dispute. The perimeter of the replaced slabs and the overcut areas of the removed slabs.*

*The overcut areas were paid for as clean and reseal. The Contractor confirmed on January 3, 2002 that inclusion of the overcut areas as a disputed issue was a misunderstanding. The only issue in dispute is the payment for the sealing of the joint around the replaced slab.*

2. *Lovin Construction's letter dated December 10, 2001 states that a demonstration slab is required by Section 353-3.5. The function of this demonstration is to show the contractor's ability to furnish replacement slabs in accordance with the contract documents. This section further identifies the items of work to be demonstrated. **It does not specify the sealing of the joint to be demonstrated.** Therefore the contractor believes the joint sealing is not included in the slab replacement work.*

*Section 353-3.5 is entitled "Demonstration slab ". This section only describes the work associated with the demonstration slab. It does not identify all work included for payment under item No. 2353-70. The basis of payment section states that the unit price for Concrete Pavement Slab Replacement includes the joint construction work.*

3. *Lovin Construction's letter dated December 10, 2001 refers to Section 350, Portland Cement Concrete Pavement. He also refers to Section 353-11 which states: "Where applicable, joint sealing materials will be an approved product on the QPL and will be placed in accordance with the manufacturer's instructions.". The Contractor states that nowhere in the TSP, Standard Specifications, or the Plans does it specify that the joints be sealed and paid for under the pay item for concrete pavement slab replacement.*

*The Technical Special Provisions for Concrete Pavement Slab Replacement does not refer to Section 350 in its entirety. It specifically references only 350-15 with respect to joint construction.*

*Plan Sheet 9, Note No. 8 under Full Depth Slab Replacement specifies the joints to be sealed. This does not appear to be a dispute as to whether the joint needs to be sealed.*

4. *Lovin Construction's letter dated December 10, 2001 states that the plan quantity for pay item No. 2350-72, Cleaning and Resealing Joints, included the perimeter of the replaced slabs.*

*This is not entirely accurate, the plan quantity for pay item No. 2350-72 was based on the existing transverse joints spaced at 6 meter intervals. The majority of the replaced slabs created one additional transverse joint which was not included in the plan quantity and was assumed to be included in the unit price for pay item 2353-70. The Designer has informed us that the original estimate was not a*

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*detailed breakdown of the work to be performed, but an estimate of the existing joints to be resealed.*

5. Lovin Construction's letter dated December 10, 2001 claims that the joint sealing was never an issue until the slab removal was complete and the joint sealing contractor began his work.

*The timing of the joint sealing was discussed early in the project with the Engineer of Record and Hubbard's Project Manager. It was decided to delay the sealing of the joints on the existing mainline until after the grinding was complete. Hubbard's Project Manager was aware of this change.*

### **BOARD FINDINGS:**

- The Contract Technical Special Provisions, Section 353 Concrete Pavement Slab Replacement, sub article 353-13 Basis of Payment states in part:

*...Such price and payment will be full compensation for all work specified in this TSP and **will include all joint construction**... and all necessary incidentals.*

### **BOARD RECOMMENDATION:**

**While both parties cited numerous specifications and plan notes, it is the Board's determination that Technical Special Provision 353-13 is clear that the cost of the joints should be included in Pay Item 2353-70, Concrete Slab Replacement.**

**Absent documentation that the Department has historically paid separately for sealing of the joints in question, thereby creating a precedent upon which the subcontractor could rely in preparing his bid, based on the materials supplied to the Board and presentations to the Board at the DRB hearing, **the Board finds that the Contractor is not entitled to separate payment** for the initial sealing of the joints.**

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

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 an acceptance of this recommendation by both parties.

I certify that I have participated in all of the meetings of this DRB regarding Issue No. 2 and concur with the findings and recommendations.

Respectfully Submitted

Disputes Review Board  
John H. Duke, Sr.; DRB Chairman  
Ashley R. Cone; DRB Member  
Lester C. Furney; DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



John H. Duke, Sr.  
DRB Chairman