

DISPUTE REVIEW BOARD RECOMMENDATION

May 02, 2003

Mr. Mark DeLorenzo, P.E.
AIM Engineering & Surveying, Inc.
5802 Breckenridge Parkway, Ste. 100
Tampa, Florida 33610

Mr. Stephen W. Smith
Smith & Company, Inc.
2400 SE Federal Highway, Suite 220
Stuart, Florida 34994

RE: SR-50 from SR-50A to US-98 (SR-700), and SR-45 (US-41) from V.F.W. Road to Benton Avenue.
F.P.ID 254805-1-52-01, etc., FAP: 3014050P(EXO),
Contract No. 20358
Hernando County.
District Seven

ISSUE: Subsoil Excavation Under Pipes

Dear Sirs:

The Florida Department of Transportation (FDOT) and Smith & Company, Inc. (SCI), the Contractor, requested the Dispute Review Board (DRB), for the referenced project, to **determine if SCI is Entitled to recover additional cost associated with removal, disposal and replacement of unsuitable (subsoil) material from storm sewer pipe trenches during construction**. Should entitlement be established, the DRB was **Not to decide quantum** of such entitlement at this time, as the parties, FDOT and SCI would attempt to negotiate the value of the entitlement.

Pertinent issues, correspondence and other information relating to SCI's and FDOT's position were forwarded to the DRB for review and discussion at the hearing that was held on April 4, 2003. At the conclusion of the hearing the DRB requested additional information concerning the minutes of the weekly progress and monthly DRB meetings from FDOT and unforeseen additional work and impact the unsuitable subsoil material had on the project from SCI. This additional information was received from both parties and utilized by the DRB in preparing the recommendation.

CONTRACTOR'S POSITION:

Smith & Company, Inc. ("SCI") submits this position paper concerning its Subsoil Overrun claim that the Disputes Review Board (the "Board") will consider on April 4, 2003. SCI's, entitlement to additional compensation and contract time is detailed in SCI's claim package previously submitted on February 13, 2003.¹

The subsoil overrun on the Project changed the nature of SCI's work and caused SCI to incur damages, including but not limited to, pipe crew extended performance costs, additional costs to remove and dispose unsuitable material and additional costs to obtain suitable material. As detailed in SCI's attached Request for Equitable Adjustment, SCI relied upon FDOT's Standard Specifications, Special Provisions and anticipated plan quantities that indicated SCI could use subsoil excavated from

¹ (Footnote from SCI's Position paper) *FDOT continues to refer to this claim as "Subsoil Excavation Under The Pipes." This is not the time for word games. Throughout the Project, SCI has consistently maintained that SCI's work was impacted due to unforeseen subsoil issues. SCI's subsoil overrun claim relates to unsuitable subsoil found throughout the Project that impacted SCI's prosecution of the work.*

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the pipe trench as backfill on the Project. This assumption is confirmed by FDOT's decision to only include pay items for subsoil excavation and embankment on the Project and not address structure or select bedding material excavation. FDOT intended that SCI utilize subsoil excavated on the Project for pipe backfill operation.

Additionally, **nothing in FDOT's approved plans revealed that subsoil excavated from pipe structures was not suitable for use as backfill.** Rather, actual unforeseen Project conditions prevented SCI from performing as SCI and FDOT anticipated. The unforeseen work FDOT required that SCI perform due to the subsoil overrun issue warrants additional compensation pursuant to FDOT's Standard Specifications. See Section IV, SCI's Request (attached).

Previous discussions between FDOT and SCI indicate that FDOT seeks to avoid complying with its obligations to adjust SCI's contract by claiming SCI did not provide FDOT any notice concerning this issue. FDOT's contention is misplaced. FDOT's conduct and FDOT's documents confirm that FDOT anticipated that SCI would submit a subsoil overrun claim.

SCI provided FDOT information during the Project concerning this matter (see SCI's November 1999 letter). Additionally, FDOT's daily reports confirm that after SCI notified FDOT and that FDOT had actual notice about the subsoil overrun issue, FDOT tracked the work SCI performed. FDOT's dailies tracked the man-hours SCI expended and the number of truckloads required to remedy the subsoil overrun issue on the Project. FDOT's documents also confirm that FDOT at the very latest, knew about the subsoil overrun issue before April 2001 which contradicts FDOT's suggestion that FDOT first learned of the subsoil overrun claim in December 2002. Mr. Murphy and Mr. Driggers made sure that the language FDOT proposed regarding the April 2001 settlement agreement reserved SCI's right to pursue the subsoil overrun claim. During settlement discussions between the parties in April 2001, SCI and FDOT agreed to specifically exclude the subsoil overrun issue and its related impact to SCI's work. **At that time, it was not possible for FDOT and SCI to quantify the effects the subsoil overrun would have on SCI's overall performance on the Project.** Had FDOT sought to resolve the subsoil overrun issue, that information would have been contained in the settlement document FDOT authored and signed.

During the April 2001 negotiations, between SCI's project manager, Keith Driggers, and FDOT, FDOT provided SCI a proposed settlement agreement memorializing the parties understanding. The letter FDOT proposed, however, included terms Mr. Driggers and FDOT had never discussed. FDOT's proposed letter sought to include all outstanding claim issues SCI had on the project. After reviewing FDOT's proposed letter, Keith Driggers spoke with SCI's Vice-President Bob Murphy. Mr. Murphy and Mr. Driggers wanted to make sure that SCI's outstanding claims would not be compromised if SCI signed FDOT's proposed letter. While reviewing SCI's list of pending claims, Mr. Murphy and Mr. Driggers considered SCI's existing subsoil issues, which included, among others, the unsuitable subsoil issue. SCI considered all issues relating to underground material on the Project as subsoil issues. Therefore, SCI suggested that FDOT include the term "potential subsoil overrun" as an exception to the proposed settlement agreement; thus, SCI was free to pursue the unsuitable subsoil claim despite signing the April 2001 settlement agreement. **SCI never intended to waive its unsuitable subsoil claim when it signed the April 2001 settlement.** Attached for your review is Bob Murphy's and Keith Driggers' affidavi²t concerning the April 2001 settlement negotiations.

Despite SCI and FDOT'S discussions throughout the Project agreement and July 2001 supplemental agreement concerning subsoil issues, FDOT contends it did not know about the unsuitable subsoil problem. To the contrary, FDOT's conduct confirms that FDOT knew about the subsoil overrun issue. FDOT agreed during meetings and other occasions that neither party anticipated that the subsoil material at the pipe trenches could not be utilized in backfill operations. Thereafter, FDOT directed SCI to remove unsuitable subsoil and authorized SCI to import suitable material from off-site sources. Further evidence that FDOT knew about SCI's subsoil overrun claim occurred is reflected by FDOT engineer, Joy Lukcic's, acknowledgement in December 2002 that FDOT anticipated receiving SCI's subsoil overrun claim. Throughout the Project, FDOT was fully aware that SCI's excavation and backfilling (sic) activities were impacted due to unsuitable subsoil. Without FDOT's knowledge and

² For affidavits and attachments see original position papers.

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consent, SCI would never have been authorized to export unsuitable subsoil and import acceptable subsoil.

FDOT cannot be permitted to hide behind technicalities in certain contract provisions when FDOT's conduct and documentation evidences FDOT's actual knowledge of outstanding claims on the Project. Pursuant to Special Provision 10, addressing Conditions Requiring Supplemental Agreement, the Board must rule that SCI is entitled to additional compensation and contract time. The subsoil overrun issue changed the "nature" of SCI's work and frustrated SCI's pipe crews original, planned method and manner of performance. Accordingly, SCI sustained damages.

SCI requests that the Board only consider whether SCI is entitled to additional compensation from FDOT due to the subsoil overrun issue, and not determine quantum. We appreciate your consideration of this matter and look forward to meeting with you on April 4, 2003.

Presentation to Dispute Review Board April 4, 2003

Purpose

Request an equitable adjustment ("REA") to Smith & Company, Inc. ("SCI") contract for

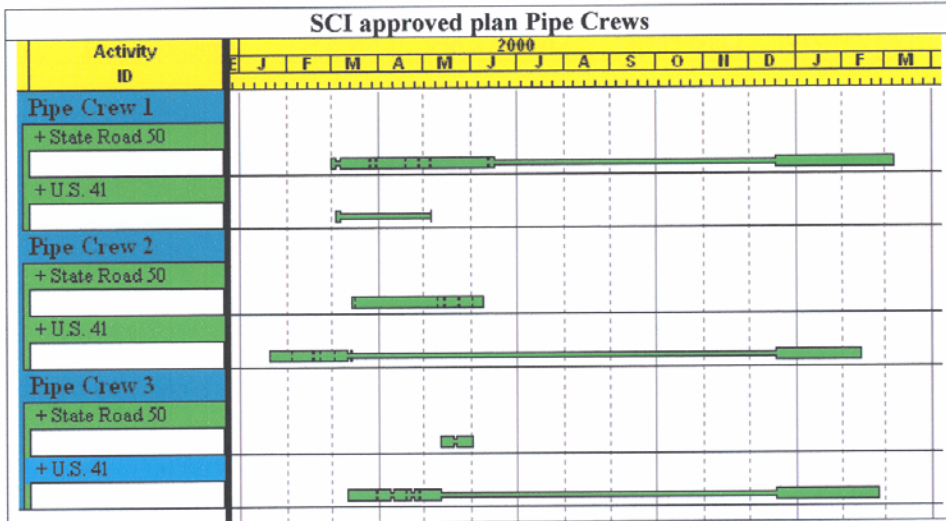
- Unforeseen additional work required due to unsuitable subsoil material from the pipe trenches on the Project; and
- Impact of this unforeseen condition on the nature of work SCI was required to perform.

Impact to Smith & Company, Inc.

- Removal and disposal of the unsuitable material;
- Obtaining acceptable backfill material from off-site; and
- Extended performance of its pipe crews.

SCI Original Plan for Pipe Crew

The following graphs represent SCI approved plan for its pipe crews on the project.



Smith Plan was for a total of 507 crew days.

FDOT PAY ITEM SUMMARY

Item Number	Item	Unit	SR 50	SR 41	Total
120-4	Excavation Subsoil	CY	8,951.000	51,040.00	59,991.00
120-6	Embankment	CY	256,873.000	78,283.000	335,156.00

Based on the fact that the FDOT only included pay items for excavation of subsoil and embankment, and did not include a pay item for excavation for structures or select bedding material, the FDOT assumed

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that the material obtained from the excavation of the trench was suitable for bedding material as well as back fill.

- FDOT assumed that the material excavated from the pipe trench would be an acceptable backfill.

Contract Provisions Summary

Special Provisions Section 125 Excavation for Structures; 125-12 Basis for Payment; 125-12.7 Removal and Replacement of Material Unsuitable for Backfill: states in part the following:

When it cannot **reasonably be anticipated** from information contained in the plans, that material excavated for the structure will be unsuitable for use as backfill... the work of disposing of such material ... will be paid for as unforeseeable work, and the work of bringing in substitute material for the backfill will be paid for as specified for the particular case shown below:

(d) When authorization is given for obtaining the material from outside the right of way and from other than designated borrow areas, such **excavation will be-paid for as unforeseeable work.**

Contract Provisions Summary

Special Provisions Section 125 Excavation for Structures; 125-12 Basis for Payment; 125-12.7 Removal and Replacement of Material Unsuitable for Backfill: states in part the following:

(e) Where pipe bedding is provided, as specified in 125-8, by the use of select granular material, the quantity of such select material obtained either as commercial material or from material from the grading operations other than in the immediate vicinity of the pipe to be bedded, as authorized by the Engineer, will be paid for at the contract price per cubic yard for Select Bedding Material. No payment for this material will be made for material available from the grading operations at a location not sufficiently remote as to **require loading on trucks.**

Contract Provisions Summary

Special Provisions Section 125 Excavation for Structures; 125-12 Basis for Payment; 125-12.8 Pay Items: states in part the following:

Payment for the work under this section when provided for directly, shall be made under:

Item 125-1 Excavation for Structures - per Cubic Yard

Item 125-3 Select Bedding Material - per Cubic Yard

Based on the fact that the FDOT only included pay items for excavation of subsoil and embankment, and did not include a pay item for excavation for structures or select bedding material, the **FDOT assumed that the material obtained from the excavation of the trench was suitable for bedding material as well as back fill.**

Contract Provisions Summary

As evidenced in the FDOT's daily construction reports, subsoil material excavated on the Project was not suitable for use as backfill. SCI did not reasonably anticipate this condition when SCI prepared its bid for the Project from the information contained in the FDOT's plans.. Additionally, there was no other source available on site to perform such backfill operations; therefore, SCI is entitled and the FDOT is required to equitably compensate SCI for the following:

- a) Disposing unsuitable material away from the Project site; and
- b) Bringing in suitable material for the backfill from sources the FDOT approved which were outside the Project limits.

This unforeseen, additional work also impacted SCI's pipe installation operations. Accordingly, SCI is entitled to an equitable adjustment for the cost and time impact SCI's pipe crews necessarily incurred.

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Contract Provisions Summary

Since the pipe activities already had an existing pay item, Section 4-3.2.1 states in part the following:

4-3.2.1 Significant Changes in the Character of Work: The Engineer reserves the right to make... changes in the quantities and such alterations in the work as necessary to satisfactorily complete the project...

If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract...

The term "significant change" shall be construed to apply only to the following circumstances:

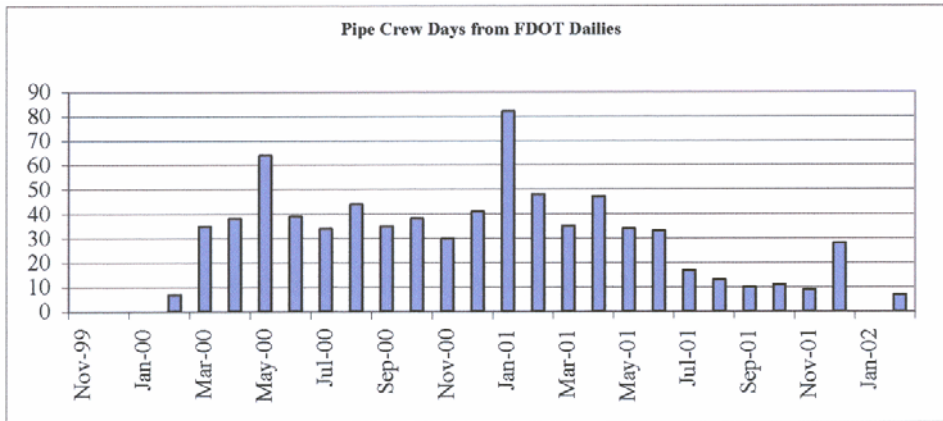
- (A) *When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or*

Contract Provisions Summary

As a direct result of the unforeseen work associated with the removal, disposal and purchase of acceptable backfill and bedding material from off-site, the "nature" of the work significantly changed. SCI's original planned method and manner was significantly changed both in the removal, rehandling and disposal of the pipe trench material as well as the purchase of new material. Therefore, the FDOT is required and SCI is entitled to an equitable adjustment to its contract as a direct result of this unforeseen work.

SCI Actual Performance

In order to quantify the total number of days SCI crews actually were on the project, the FDOT Daily Construction Reports for SCI's Storm Crew work were reviewed and are summarized below:



Actual Crew Days for SCI Pipe Crews

Actual Crew Days	779 crew days
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Schedule Analysis

- *SCI approved baseline schedule 507 crew days.*
- *Actual crew days established in the FDOT Daily Construction Reports of 779 crew days*
- *SCI crews were on the project an additional 779-507=272 crew days.*
- *FDOT granted SCI an additional 13 calendar days on SA No. 2.04, 2.06, 2.07, 11, 12, and 13.*
- *SA's 2.03 and 26 included additional work, but no time was granted. An estimated 2 crew days.*

Requested crew days impacted by the additional, unforeseen work and significant change is

272 - 15 = 257 crew days.

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In order to quantify the time impact to the project, the requested crew days have been adjusted as follows:

Total Crew Day Impact	257 crew days
Total Float in Baseline	<u>6 crew days</u>
Adjusted Crew Day Impact	251 crew days
Assume 3 crews	<u>/ 3 crews</u>
Crew Day Impact	84 work days
	<u>x 1.4 days</u>
Adjust for Calendar Days	118 calendar days

Based on the approved baseline schedule, the pipe crews had 6 days of total float. Utilizing the original plan of 3 crews, the adjusted crew day impact is $251 / 3 = 84$ crew days. Adjusting the crew days to calendar days equals an estimated 118 calendar days. SCI is entitled to 118 calendar day-time extension. **However, the sole issue for the Disputes Review Board concerning this matter is entitlement -- not quantum.**

FDOT's Knowledge & Consent

SCI would neither exported material nor imported additional material on the Project without FDOT's knowledge and consent, which is required under Section 120-5 and 120-5.1 of the 1991 Standard Specifications. **FDOT requested that SCI perform such operations in the FDOT's November 12, 1999 letter** (No. 0077), which stated, in part, the following:

We need to know the FDOT Pit source approval from District 1 & 7 Material & Research office, etc., for the Embankment material that your company has elected to use for **pipe** operations per SCI's letter No: 0028.

SCI Notification to the FDOT

As you are aware, SCI Letter No. 0028 notified the FDOT of the following:

According **to your direction** Smith & Company, Inc. is using **borrow material** instead of on-site **unsuitable soil** for backfill of our pipe operations...

SCI further notified the FDOT on February 8, 2000, SCI Letter No. 22, which states in part the following:

Smith & Company, Inc. (SCI) has **encountered sizeable deposits of deleterious materials on this project** ...SCI will seek additional compensation for this work

Summary

Therefore, because FDOT directed SCI to remove unsuitable subsoil material from the Project, and the FDOT authorized SCI to import material from off site, SCI is entitled and the FDOT is required to issue an equitable adjustment to SCI's contract.

SCI requests that the Disputes Review Board find that SCI is entitled to a contract adjustment due to the unsuitable subsoil overrun issue.

DEPARTMENT'S REBUTTAL:

February 21, 2003 Rebuttal

We have completed our evaluation of Smith & Company, Inc. submittal package and letter of position and have discovered many discrepancies and misrepresentations throughout. The initial item is the title used by SCI "Subsoil Overrun Claim" which is misleading. The indication here is that the standard subsoil excavation had overrun. This is not the case. **The overall contract subsoil had a 31% under run (plan 59,991, actual 41,162).** The entire submittal package references only the material excavated from the pipe trench, which is clearly covered in the contract documents. The title chosen after conversation with FDOT and SCI was "Subsoil Excavation Under Pipes" as indicated in the DRB hearing letter dated February 4, 2003, which is a closer representation of the actual issue, but is still not entirely accurate. Perhaps a **better statement is pipe trench excavation and backfill.** The use of the term subsoil is misleading. The issue at hand is if Smith & Company, Inc. is due additional compensation and time for

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the disposal of the overburden pipe trench material and importing new pipe backfill material from their on going Suncoast Parkway project.

The remaining discrepancies and misrepresentations are summarized from Smith & Company's letter of position dated February 13, 2003.

1. Paragraph 2

- a. **SCI** - The subsoil overrun on the project changed the nature of SCI's work and caused SCI to incur damages, including but not limited to, pipe crew extended performance costs, additional costs to remove and dispose unsuitable material and additional costs to obtain suitable material. As detailed in SCI's attached Request for Equitable Adjustment, SCI relied upon FDOT's Standard Specifications, Special provisions and anticipated plan quantities that indicated SCI could use subsoil excavated from the pipe trench as backfill on the project. This assumption is confirmed by FDOT's decision to only include pay items for subsoil excavation and embankment and not address structure of select bedding material.
- b. **RESPONSE** - The standard specification section 4-3-2.1 Significant Changes in the Character of Work: describes a significant change as
 - A. **When the character of work as altered differs materially in kind or nature from that involved or included in the original proposed construction or**
 - B. When a major item or work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of the original contract item quantity or in case of a decrease below 75 percent, to the actual amount of work performed.

The borings clearly show that there is a range of material present including clayey materials. SCI questioned the accuracy of the plan borings on two other occasions and the Department conducted investigations in these areas and found that the plan borings were accurate. SCI chose to import back fill material due to the ease of compaction and the need to dispose of the excavated A-3 material from their nearby Suncoast Parkway project. Many property agreements were received showing that Smith & Company, Inc. delivered excavated material from SR50/US41 to private property. The plans clearly indicate the type of materials to be encountered and the specifications clearly indicate that all material is to be unclassified. The specifications spell out how excavation and backfill is handled for pipes and structures.

2. Paragraph 3

- a. **SCI** - Additionally, nothing in FDOT's approved plans revealed that subsoil excavated from pipe structures was not suitable for use as backfill. Rather, actual, unforeseen Project conditions prevented SCI from performing as SCI and FDOT anticipated. The unforeseen work FDOT required that SCI perform due to the subsoil overrun issue warrants additional compensation pursuant to FDOT's Standard Specifications. See Section IV, SCI's Request (attached).
- b. **RESPONSE** - The plan borings have been show to be an accurate account of what was encountered. The specifications clearly state how the material for structures and pipe is to be handled.

3. Paragraph 4

- a. **SCI** - Previous discussion between FDOT and SCI indicate that FDOT seeks to avoid complying with its obligations to adjust SCI's contract claiming SCI did not provide FDOT any notice concerning this issue. FDOT's contention is misplaced. FDOT's conduct and FDOT's documents confirm that FDOT anticipated that SCI would submit a subsoil overrun claim.
- b. **RESPONSE** - The notification was for standard subsoil as per index 500.

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4. Paragraph 5

- a. **SCI** - SCI provided FDOT information during the Project concerning this matter (see SCI's November 1999 letter). Additionally, FDOT's daily reports confirm that after SCI notified FDOT about the subsoil overrun issue, FDOT tracked the work SCI performed. FDOT's dailies tracked the man-hours SCI expended and the number of truckloads required to remedy the subsoil overrun issue on the Project. FDOT's documents also confirm that FDOT knew about the subsoil overrun issue before April 2001. During settlement discussions between parties in April 2001, SCI and FDOT agreed to specifically exclude the subsoil overrun issue and its related impact to SCI's work. At that time, it was not possible for FDOT and SCI to quantify the effects the subsoil overrun would have on SCI's overall performance on the Project. Had FDOT sought to resolve this issue, that information would have been contained in the settlement document FDOT authored and signed.
- b. **RESPONSE** - The letter states that we directed them to use the new material. **This is a false statement.** This is evident by their letters of request to use the material from the Suncoast Parkway projects and the correspondence between SCI's project managers requesting this material be released from the Suncoast Parkway projects for use on SR50 and US41. Initially when the heavy embankment operation was being performed on SR50, the trucks were tracked for estimating purposes. The truck counts were kept by SCI personnel and presented to inspection personnel. This activity ceased when the information was no longer needed. Tracking man-hours is a standard procedure on the daily reports. The agreement specifically excluded standard subsoil per index 500. **The reason it was labeled potential subsoil overrun was because SR50 quantities had overrun at that time but US41 was not complete.** Again, this item was added at the last minute and this was the understanding between Mr. Keith Driggers and Ms. Joy Lukcic at the time of the agreement. The overall subsoil quantity was an underrun for the project and thus this issue is mute (sic).

5. Paragraph 6

- a. **SCI** - Moreover, FDOT's conduct confirms that FDOT knew about the subsoil overrun issue. **FDOT agreed during meetings and other occasions that neither party anticipated that the subsoil material at the pipe trenches could not be utilized in backfill operations.** Therefore, FDOT directed SCI to proceed with removal operations and authorized SCI to import suitable material from off-site sources. Further evidence that FDOT's conduct indicates FDOT knew about SCI's subsoil overrun claim occurred when SCI provided FDOT's engineer, Joy Lukcic, SCI's claim in December 2002. At that time, Ms. Lukcic acknowledged that FDOT anticipated receiving SCI's subsoil overrun claim.
- b. **RESPONSE** - Meeting **minutes do not confirm the statement.** Standard subsoil did not overrun. The anticipated **claim was the "Mass Diagram" earthwork claim.** Also, SCI provided their claim to Mr. Jim Moulton, not Ms. Joy Lukcic. The only acknowledgement that the Department made at that time, not knowing the content of the claim only having the understanding from the Memorandum of Agreement, was that there was an exclusion in the agreement for subsoil excavation overrun, not pipe excavation. Since the overall subsoil quantity was an underrun for the contract the Department felt that the excluded potential subsoil overrun was resolved. The Department was anticipating the mass diagram earthwork claim as discussed in the weekly progress meetings as well as DRB meetings.

The statements provided in Smith & Company's letter of position dated February 13, 2003 have not been substantiated by any back up material and are misrepresentations of the actual facts. Please consider the above information and the previous submittal package as just cause for a favorable ruling.

April 24, 2003 Rebuttal

We have completed our evaluation of Smith & Company, Inc.'s submittal package of additional information dated April 17, 2003 and have discovered many discrepancies and misrepresentations which will be clarified herein. The clarification statements follow the outline as presented in SCI's submittal package. The information provided by Smith & Company, Inc. is intended to cloud the issue by presenting part of the contract documents and Daily Reports and not presenting the information in whole to make a valid determination. The following statements will show this and provide clarification.

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SCI Exhibit 1

SCI continues to make statements that "the Department directed the Contractor to bid the project as if the material was suitable for backfill, and if not, the Contractor would be compensated for this additional work..." The **bid documents do not make such statements and SCI has not provided information to back-up this statement.** SCI also quotes the specifications indicating "When it cannot reasonably be anticipated from the information contained in the plans, the material excavated from the structure will be unsuitable and paid for as backfill..." In the previous Department submittal package it was shown that **SCI questioned the boring on two separate occasions** and the **Department conducted additional investigative borings and determined that the planned borings were accurate.**

SCI Exhibit 2

SCI references the design standards which show the standard subsoil excavation as mentioned in the Settlement Agreement. SCI has been compensated in full per contract pay item 120-4 (Excavation Subsoil) for the standard subsoil excavation as performed in accordance with the Standard Index 500.

SCI Exhibit 3

The Roadway Soil Survey references Index 500 to inform the contractor that certain materials need to be removed per this index. The survey also references Index 505 to inform the contractor that the excavated material must be used in accordance with this standard.

SCI Exhibit 4

Smith & Company, Inc. stated in their submittal package that at station 290-300 on SR50 that material was removed during the pipe placement operation and good material was brought in. Included are photos that show the original concrete paved ditch in this area and photos that show SCI filled in this area with existing excavated material. When the pipe was placed, this material had to be excavated and was replaced with material from the Suncoast Parkway project for backfill. **This shows that SCI placed the material that was removed and are requesting the Department to pay for their inefficiencies of double handling this material.** This is a classic example of what occurred throughout the life of the project. The attached Daily Reports of Construction dated June 3 and 4, 2000 indicate that this material was **initially placed to fill in the existing ditch and to build a crane pad to drive the sheet piling for the retaining wall.**

SCI Exhibit 5

The Daily Reports merely state the facts as they actually occurred. **If the material did not meet the criteria for backfilling per the special provisions, then it is unsuitable for that use.** The reports state that the overburden material was hauled off. Also, the Daily Report dated 7/19/00 shows station 375 to 400. In this location the pipe flow line was higher than the existing grade and/or the excavated subsoil grade. SCI has been **compensated for all of the standard subsoil excavation as per Standard Index 500.**

SCI Exhibit 6

The area in reference is the same area as shown in exhibit 4 that was filled in by Smith & Company from material from Pond 2 on SR50 and this material was removed during the pipe placement operation. The imported material from Pond 2 on US41 mentioned in the Daily Report was stockpiled from the Suncoast Parkway project at SCI's option due to their need for disposal and used for the ease of compaction. At the time, **SCI was concerned with contract time and the use of this material would speed up their production by cutting back on the compaction time.**

SCI Exhibit 7

Once again, the Daily Reports merely state the facts. The report indicates that unsuitable material was hauled to an offsite pit (not Castle Pit) and included old pieces of pipe and concrete. This is general construction trash. This has no bearing on the issue at hand.

SCI Exhibit 8

The aerial photographs and Daily Reports show that the area from 307 to 317 on 8/27/01 was under subgrade construction. The Daily Reports in general stated that unsuitable construction material was being hauled offsite by Star Hauling. The construction in this area consisted of removal of existing

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pavement, removal of some existing limerock, mixing of remaining materials for subgrade and placement of new limerock and asphalt. This has no bearing on the issue at hand.

The plan borings, cross sections, drainage structure sheets, special provisions, Standard Specifications, Standard index and **in general all contract documents clearly provide the contractor with enough information as to what could be anticipated at the time of bid.** The submittal package provided by the Department of items discussed at weekly and DRB meetings show that Smith & Company, Inc. **did not mention the issue of dispute in the context as presented in their claim package.** The minutes mention several different items at once to try to confuse the issue at hand due to the lack of support in their submittal package.

The facts still remain the same. **Smith & Company, Inc. did not provide proper notice of this issue to the Department as per specifications.** Secondly, at the time of the Settlement Agreement of April 13, 2001, SCI would have known this was an issue and this would have been specifically excluded in the agreement along with the standard subsoil issue. Lastly, the contract documents are clear as to the handling of the existing material and **the plans provided accurate borings at the time of bid.** The information provided in this document and all previous documents clearly show that Smith & Company, Inc. is not due any additional compensation for materials associated with the installation of drainage pipe and structures as claimed.

DEPARTMENT'S POSITION:

*"The contract, plans and specifications clearly demonstrate that the contractor, Smith & Company, Inc., is not due any additional compensation. Special Provisions section 125-12.7 (ref 2-a-10) "Removal and Replacement of Material Unsuitable for Backfill" states "**When it cannot be reasonably anticipated from information contained in the plans, that material excavated for the structure will be unsuitable for use as backfill, and such material proves to be unsuitable for this use, the work of disposing of such material away from the site will be paid for as unforeseeable work, and the work of bringing in substitute material for the backfill will be paid for as specified.....**"*

The borings are representative of the material actually encountered in the field during the placement of the pipes and structures. The Department investigated two other occasions in which Smith & Company, Inc. claimed that the borings in the plans were incorrect and the findings showed that the original borings were accurate. This information is provided in the memorandum dated October 12, 1999 (ref 7-11) in which the pond borings were verified in a letter dated August 2, 2000 (ref 7-25) in which the borings for Retaining wall #5 were also verified. **Had SCI thought that the borings in the plans in the pipe placement areas were not representative of the material then they could have had this material verified as well.**

Special Provisions section 125-2 (ref 2-a-2) states **"All materials excavated shall be unclassified and considered as excavation regardless of the material encountered"**. Special Provisions section 125-6 (ref 2-a-4) states **"All materials not needed or not suitable for backfilling over or around the structure shall be used or disposed of as stipulated in 120-5"**. Specification 120-5 (ref 2-b-2) states **"Unless otherwise provided by the plans or special provisions, any surplus materials then remaining and not needed for job requirements shall become the property of the Contractor and are to be disposed of by him, outside the right of way, to the satisfaction of the Engineer"**. Special provisions section 430-13.9 (ref 2-c-15) General states **"The above prices and payments shall be full compensation for all work specified in this Section and shall include all excavation, except the volume included in the items for the grading work on the project, and except for Select Bedding Material paid in accordance with 125. Such prices and payments also include all backfilling, disposal of surplus material, and all clearing and grubbing outside of the required limits of clearing and grubbing as shown in the plans.**

The standard specification section 4-3-2.1 **Significant Changes in the Character of Work:** describes a significant change as

- (A) When the character of work as altered differs materially in kind or nature from that involved or included in the original proposed construction or
- (B) When a major item or work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of the original

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contract item quantity or in case of a decrease below 75 percent, to the actual amount of work performed.

The **character and nature of the work has not changed.** The plan sheets clearly show that **portions of the existing material are not suitable for backfilling.** During the excavation and pipe placement operations (JPA and storm), much of the unsuitable material was mixed with suitable material and created material that met specifications for embankment. The mixed material along with the existing material was tested (ref section 8) and the majority of the material met specifications for embankment and was used by SCI for backfilling. The installation of water and sewer required the use of select backfill material per Technical Special Provisions and plan detail (ref 2-d-1 to 2-d-5).

The **settlement offer of April 13, 2001** (ref 4-5) clearly shows that **Smith & Company agreed to resolve all issues known or unknown, prior to April 13, 2001.** The open issue of the potential subsoil overrun was understood by all parties to be the standard subsoil excavation as indicated in Standard Index 500 and is clearly not the issue at (sic) presented. The exception for the potential for subsoil overrun was a last minute additional at SCI's request prior to signing the agreement. Mr. Driggers and Ms. Lukcic specifically discussed the overrun of subsoil excavation on SR50. At the time of the agreement, there was clearly an overrun on the SR50 project for subsoil excavation by the US41 subsoil excavation was not complete and was anticipated to underrun. The final quantities indicate an overall underrun of subsoil excavation therefore this issue was deemed closed. Also, **at the time of the settlement agreement, 72% (34,318 lf/47,521 lf) of the storm sewer pipe was installed and SCI would have known if the pipe excavated material was an issue** and put the Department on notice.

The first indication of the issue at hand was the submittal package on December 18, 2002. SCI did not follow specification 5-12 for the submission of a contract claim and the unsuitable material issue in question could not be tracked and standard claim documentation could not be developed due to improper notification of claim. The earthwork claim that we were verbally notified of at weekly meetings and DRB meetings became known as the **Mass Diagram claim.** The indications were that the original mass diagram was going to be submitted along with the actual constructed mass diagram that showed SCI's delays and SCI's inefficiencies were created because they could not build the project as planned. Not only was a mass diagram not submitted but also an as-built schedule showing the claimed delays of 118 days was not included in the claim package.

Subsequent to the April 13, 2001 settlement offer, a meeting was held on October 12, 2001 to discuss the interim Contractor's Past Performance Rating and to iron out schedule issues. A letter dated October 15, 2001 (ref 7-37 to 7-41) documents this meeting. The letter documents that Smith & Company's current schedule at that time shows 41 days behind schedule and Mr. Driggers had stated that the entire 41 days was the responsibility of SCI. Contained in the settlement offer is an agreement that SCI will submit a schedule showing the added contract days and completing the project within the allowable contract days. This agreement settled all time issues. Smith & Company, Inc. elected to show the as-built schedule beginning on May 21, 2001. A letter dated August 17, 2001 was sent to SCI for agreement that all time issues prior to May 21, 2001 were resolved and as-built information would not need to be provided prior to May 21, 2001. This letter was not signed and the meeting on October 12, 2001 was intended to resolve these issues but SCI was unwilling to participate in the negotiations.

The Department seeks the expertise of the Disputes Review Board to obtain a resolution to the issues concerning Smith & Company's request for equitable adjustment for the claimed removal and replacement of unsuitable material and impacts to their pipe crews for the installation of the storm sewer system.

CONTRACTOR'S REBUTTAL:

Smith & Company, Inc. ("SCI") responds to AIM Engineering & Surveying, Inc.'s ("AIM") April 15" letter (No. 1285) to the Disputes Review Board ("DRB") on the Department's behalf concerning "earthwork/subsoil issues" on the referenced project as follows:

SCI takes exception to the five-page laundry list summarizing "DRB Meetings" and "Weekly Meetings" the Department submitted. **The Department cannot in good faith assert that after receiving notice of the unsuitable subsoil claim in November 1999, it only discussed the matter with Smith at 12 out of 122 meetings.** SCI strongly refutes the Department's contention and can provide evidence to the contrary.

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A review of the actual meeting minutes the Department did provide, however, are instructive even though the best evidence of what the parties discussed is contained in the actual meeting minute tape. Nevertheless, the following excerpts from the **meeting minutes confirm that the Department never intended that the April 2001 Settlement Agreement included the unsuitable subsoil issue.** Just days after the April 2001 Settlement, the Department acknowledged that Smith sought a contract adjustment due to the unsuitable subsoil issue. Just as SCI always maintained, FDOT considered that all subsoil issues related to the Project were preserved under the "potential subsoil overrun" exception in the April 2001 Settlement.

The meeting minutes provide as follows:

Dispute Review Board (DRB) Meeting No: 018 -May 9, 2001 (Excerpt)

Engineer's Comments:

- Issues with the City of Brooksville: SCI has none with the City of Brooksville. SCI has settled issued on inefficiencies, design impacts, and contract time with the agreement of lump sum settlement of \$802,000 and 207 days time extension; this included paving some side streets, Hurricane George. **SCI's settlement is through April 13, 2001,** except for the following issues: using granite in the asphalt, paying extra for the plants in Pond #5, Bell South and **subsoil excavation.**

Dispute Review Board (DRB) Meeting No. 023 - November 7, 2001 (Excerpt)

Opening remarks on the condition and progress of the work by the Contractor: K. Driggers (SCI):

- **Extra subsoil in roadway and pipe trench - SCI needs to Quantify it.**

Discussion: Claims list provided by AIM discussed:

- Four issues still outstanding - they urge them to resolve ASAP since it is so late in the job.

Dispute Review Board (DRB) Meeting No: 026 - March 7, 2002 (Excerpt)

Discussion:

- **SCI says there is a discrepancy with subsoil** and there is unforeseen material in the ponds. They are having it evaluated by Dirt Tech. When they get a new **mass diagram** produced, SCI will be submitting a request for equitable adjustment.

Dispute Review Board (DRB) Meeting No: 027-April 18, 2002 (Excerpt)

Outstanding Issues:

- Equitable adjustment for fitting overruns/product of water and force mainlines.
- **Unsuitable material and replacement of embankment. SCI is completing the earthwork now so they can get something submitted.**

Discussion:

- John Duke asked for clarification on the subsoil and fittings overruns. Were they mostly quantities? The contractor explained the materials in Ponds #2 and #3 were not what the plans showed them to be. Also, there was more subsoil on SR50 and less on US41, than the plans showed. **Along with that, the subsoil in the pipe trench was not shown adequately.** All of this combined changed the mass diagram. Mr. Duke asked if it was not so much volume change but haul distance. Contractor agreed.

Weekly Progress/Utility Meeting - April 23, 2002. Letter No. 1033 - Meeting #111

Discussion Items:

- SCI is looking at the fitting overruns and seeing if it affected the production of the length of the line. They may have a request for equitable adjustment. SCI overran 600% on one and 800% on the other.
- **SCI is quantifying subsoil and unsuitable material issue now.**

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Dispute Review Board (DRB) Meeting: No: 028 - May 30, 2002 (Excerpt)

Outstanding Issues:

- Request for equitable adjustment for large fitting overrun JPA
- **Going to submit one for earthwork also - mass diagram troubles due to incorrect-plan data.**³
- Overrun of subsoil excavation on SR50 and under run on US41.

Dispute Review Board (DRB) Meeting No. 029 - June 20, 2002 (Excerpt)

Outstanding Issues:

- Fittings overrun - Keith (SCI) believes something went to FDOT on this. AIM says it went to the City of Brooksville for review.
- **Subsoil overrun/earthwork mass diagram** - When asked, where SCI stood on this, Jim Allen (SCI) replied they were running some additional calculations as of last Friday. These volume calculations will determine how SCI will approach this issue.
- **Pipe backfill - this is part of the other issue.**

Dispute Review Board (DRB) Meeting No: 030 - July 18, 2002 (Excerpt)

Opening remarks on the condition and progress of the work by the Contractor; J. Allen (SC!):

- **SCI's consultant is working on a draft of the package on subsoil/earthwork/trench material. It should be another two weeks before it is ready.**

Dispute Review Board (DRB) Meeting No: 031-August 23, 2002 (Excerpt)

Outstanding Issues:

- Utilities fittings overrun is still outstanding. The City of Brooksville has reviewed it and SC! received a response August 14, 2002, from FDOT. SCI is in the process of putting together a counter response. They are not looking for compensable time but for lost crew time due to the problem disrupting production.
- **Subsoil, embankment, pipe trench - SCI's consultant is working on this and is behind. SCI should have something by early next week.**

The Department's own documents confirm, that twelve months after the settlement, the Department contends included the subsoil claim, the Department's continuously discussed resolving this issue with SCI. At the very first meeting after the parties reached the settlement agreement, the Department offered its own interpretation of the settlement and the issues SCI was free to pursue later. FDOT labeled this reserved claim, as a "**subsoil excavation** claim. At subsequent meetings the issue was labeled as "**Extra subsoil in roadway and pipe trench**" and "**Unsuitable material and replacement of embankment**"

One thing the Department **never did was state the claim was waived**. Why? The Department knew this issue remained open. SCI simply needed additional time to quantify the additional costs and impacts SCI's crews suffered due to this unforeseen issue. Only after the Department received SCI's request for an equitable adjustment, did the Department take the position that this issue had been settled. The **April 2001 settlement is not a "gotcha" settlement**. The Department's conduct after the April 2001 settlement speaks volumes of what the parties intended that the settlement cover and not cover. The settlement did not include the unsuitable subsoil issue.

FDOT directed SCI to perform this additional and unforeseen work as SCI confirmed in its November 11, 1999, letter to the Department in regards to "**Backfill in Pipe Trench to Replace, Unsuitable Material.**" SCI then notified the Department on February 8, 2000 that as a result of "**Unsuitable Material Overrun.**" SCI would be seeking additional compensation for this work. The DRB should find in SCI's favor.

Additionally, SCI received the Department's April 24, 2003 Rebuttal. SCI adamantly refutes the Department's response. Specifically, FDOT's response to "**SCI Exhibit 6,**" confirms that **unsuitable material was removed from the pipe trench and SCI "imported material" for backfill**. In accordance with the Contract, SCI is to be compensated for the removal and replacement of the unsuitable material.

³ (Board Comment) the minutes go on to say: "**The material that was supposed to be coming out of pond #3 & #4 changed.**"

DISPUTE REVIEW BOARD RECOMMENDATION

SCI requests that the DRB issue its recommendation that SCI is entitled to an equitable adjustment related to the additional and unforeseen work SCI performed on the Project due to unsuitable subsoil.

BOARD FINDINGS:

- The Florida Department of Transportation Special Provisions for the subject contract state:

47. EXCAVATION FOR STRUCTURES. (7-97) (FA 3-24-97) (REV 2-12-97)

SECTION 125 (Pages 136-145 of the Standard Specifications and Pages 15 and 16 of the Supplemental Specifications Book) is deleted and the following substituted:

Section 125 Excavation for Structures

125-1 Description:

The work specified in this section consist of excavating for bridge foundations, box culverts, pipe culverts, storm sewers and all other pipe lines, retaining walls, headwalls for pipe culverts and drains, catch basins, drop inlets, manholes and similar structures. It shall also include (1) the construction and removal of cofferdams, sheeting, bracing, etc.; (2) pumping or otherwise dewatering foundations; (3) the removal and disposal of any existing structures or portions of structures not covered by other items in the contract, including foundations, abutments, piers, wings, and all other materials, obstructions, etc., found necessary to clear the site for the proposed work; (4) backfilling, disposal of surplus material and final cleaning, as may be necessary for the proper execution of the work. This Section shall not include the work excavating for bases or pavements, curbs, curb and gutter, valley gutter, ditch pavement or rubble gutter.

125-2 Classification:

All materials excavated shall be unclassified and considered as excavation regardless of the material encountered.

125-4 Excavation:

...

125-4.4 Pipe Trench Excavation: Excavate trenches for pipe culverts and for storm sewers to the elevation of the bottom of the pipe and to a width sufficient to provide adequate working room. Remove soil not meeting the classification specified as suitable backfill material in 125-8.3.2.2, to a depth 4 inches below the bottom of the pipe elevation. Remove rock, boulders or other hard lumpy or unyielding material to a depth of 12 inches. Remove muck or other soft material to a depth necessary to establish a firm foundation. Where the soils permit, make the trench sides vertical up to at least mid-point of the pipe. Etc ...

125-6 Disposal of Surplus:

All materials not needed or not suitable for backfilling over or around the structure shall be used or disposed of as stipulated in 120-5. Etc....

125-8 Backfilling:

125-8.1 Requirements for all Structures:

125-8.1.2 Use of A-7 Material:

In the backfilling of trenches, A-7 material may be used from a point 1 foot above the top of the pipe up to the elevation shown on the Standard Index Drawings as the elevation for undercutting of A-7 material.

...

125-8.3 Requirements for Pipe Culverts and Storm Sewers:

125-8.3.1 General: Trenches for pipe may have up to 4 zones that must be backfilled.

***Lowest Zone:** The lowest zone is backfilled for deep undercuts up to within 4 inches of the bottom of the pipe.*

***Bedding Zone:** The zone above the Lowest Zone is the Bedding Zone. Usually it will be the backfill which is the 4 inches of soil below the bottom of the pipe. When rock or other hard material has been removed to place the pipe, the Bedding Zone will be the 12 inches of soil below the bottom of the pipe.*

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Cover Zone: The next zone is the backfill that is placed after the pipe has been laid and will be called the Cover Zone. This zone extends to 1 foot above the top of the pipe. The Cover Zone and the Bedding Zone are considered the Soil Envelope for the pipe.

Top Zone: The Top Zone extends from 1 foot above the top of the pipe to the base final grade.

125-8.3.2 Material:

125-8.3.2.1 **Lowest Zone:** Backfill areas undercut below the Bedding Zone of a pipe with coarse sand, or other suitable material, obtained from the grading operations on the project, or a commercial material if no suitable material is thus available.

125-8.3.2.2 **Soil Envelope:** In both the Bedding Zone and the Cover Zone of the pipe, backfill with materials classified as **A-1, A-2, or A-3**. The Contractor may use **A-4 material if the pipe is concrete pipe**.

125-8.3.2.3 **Top Zone:** Backfill the area of the trench above the soil envelope of the pipe with materials allowed in Roadway and Traffic Standard, **Index No. 505**.

...

125-11 Method of Measurement:

When **direct payment for Excavation for Structures** is provided in the proposal, and such payment is on **a unit basis**, such excavation will be measured in its original position by the cross section method to determine the amount of material. The yardage of excavation used as a basis of payment will then be that material actually removed below the original ground line or stream bed, but not including that shown on the plans to be paid for either as Regular Excavation, Subsoil Excavation, Lateral Ditch Excavation or Channel Excavation, or which is included in the item for Grading, and except that no payment will be made for material removed in excavating for footings or foundations outside of an area which is bounded by vertical planes 1 foot outside of the limits of the footing and parallel thereto. **For pipe trenches the width to be used in the calculation shall be the diameter of the pipe, plus 2 feet.**

125-12 Basis of Payment:

125-12.1 When No **Direct Payment Provided:** When direct payment for Excavation for Structures is not provided for in the proposal, **all work** specified in this Section, **other than as specified in 125-12.3 through 125-12.7, shall be included in the contract price for the concrete or other items covering the applicable structure.**

125-12.7 Removal and Replacement of Material Unsuitable for Backfill: **When it cannot reasonably be anticipated from information contained in the plans that material excavated for the structure will be unsuitable for use as backfill, and such material proves to be unsuitable for this use, the work of disposing of such material away from the site will be paid for as unforeseeable work, and the work of bringing in a substitute material for the backfill will be paid for as the particular case shown below:**

...

- (d) **When authorization is given** for obtaining the material from outside the right-of-way and from other than designated borrow areas, **such excavation will be paid for as unforeseeable work.**
- (e) **Where pipe bedding is provided**, as specified in 125-8, by the use of select granular material, the quantity of such select material obtained either as commercial material or **from material from the grading operations other than in the immediate vicinity of the pipe** to be bedded, **as authorized by the Engineer**, will be paid for at the contract price per cubic yard for Select Bedding Material. **No payment for this material will be made for material available from the grading operations at a location not sufficiently remote as to require loading on trucks.**

- **Additional Excerpts from DRB & Project Meetings – SR 50/US 41**

DRB Meeting No: 020 – August 1, 2001

SCI: Wrote letter to the Department several months ago that **subsoil was going to overrun**; it has **almost tripled on SR 50** by itself; barely got started on subsoil removal on US 41. SCI

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will be asking in the near future for revised import embankment price due to the overrun of subsoil.

Weekly Progress/Utility Meeting – October 31, 2001

Discussion Items

2. AIM will put together a claim list – only **two claims outstanding**
 - a. **Extra subsoil**
 - b. Granite for asphalt
7. US 41 – SCI is finishing up the Suncoast Parkway and has **extra sand they would like to bring over to backfill US 41 after they subsoil**. Because of **timing issues** they would like to **stockpile** it between the eastside of US 41 and the westside of the frontage road. If traffic gets switched November 12th then it is going to be there 2-4 weeks. It is no problem except for site distance coming out of driveways. Some businesses may have concerns about their business being seen. Produce a sign for each business to try to appease them. Place silt fences for erosion control.

Weekly Progress/Utility Meeting – August 23, 2002

Discussion Items:

Subsoil Issue – SCI is preparing a document on the **mass diagram**.

DRB Meeting No: 032 – September 13, 2002

Outstanding Issues:

3) Earthwork?

AIM wondered if this was **still an issue**. Mr. Driggers states that he assures them that **if liquidated damages are assessed several issues will come up**.

- The Roadway Soil Survey on Plan Sheet 147 identify:
 - Stratum No. 2** as being **A-2-6**, having a Plastic Index % of 11-24 with a description of “*Gray, Brown & Red Mottled Clayey Sand*”
 - Stratum No. 5** as being **A-7-5/A-7-6**, having a Plastic Index % of 20-67 with a description of “*White to Gray Brown & Red Mottled Sandy CLAY*”
 - Stratum No. 8** as being **A-6**, having a Plastic Index % of 12-23 with a description of “*Gray & Brown to reddish Brown Clayey SAND to Sandy CLAY*”
- All are identified as plastic and are to be removed from crossed hatched areas on the cross sections. Stratum 5 is highly plastic.
- Stratums 2 and 8 material could be used in accordance with Standard Index 500. The Cross Sections show the core borings and identify the strata. This information is not shown on the Drainage Structures Cross Sections.
- The subsoil referred to by the Contractor does not meet the definition of subsoil under the contract but does meet the definition of unsuitable material as defined in Section 125. It would not be unusual for the terminology to be confused and used (interchangeably) in the wrong context.
- SCI Letter November 11, 1999: **Letter 0028 from Larry R. Minor (SCI) to Frank E. Proch (AIM) states:**
 - “**According to your direction** Smith & Company, Inc. is **using borrow material** instead of on-site unsuitable soil for **backfill** of our pipe operations underneath proposed sidewalk and roadway on the above referenced project”. (Emphasis added)

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- AIM Letter November 12, 1999: **Letter 0077 from Frank E. Proch (AIM) to Keith Driggers (SCI) states:**

*"We need to know the FDOT Pit source approval from District 1 & 7 Materials & Research office, etc., for the Embankment material that **your company has elected to use for pipe operations per SCI's letter No.: 0028.**"* (Emphasis added)

- These two letters are the **basis of the ambiguity created between the parties.**

The Contractor feels that **he had been authorized to import material** for backfill pursuant to 125-12.7 (d) and that the letter of November 12, 1999 from the CEI served to notify him that he need to get FDOT Pit source approval **from his elected source.**

The CEI feels that he had **made it clear** that it was the **Contractor's option** to import material **for his own benefit** in backfilling the pipe.

- Given that the subsoil on SR-50 overran and US-41 underran considerably, it appears that the soil borings could not be completely relied upon due to the variability in the soil strata.
- The chronology of FDOT Daily Reports contained in Tab 2 of the Contractor's REA, dated December 18, 2002, notes the removal and replacement of unsuitable pipe material on numerous dates.

DISPUTE REVIEW BOARD RECOMMENDATION:

Based on materials supplied the DRB and presentations at the hearing, the Board recommends that Smith & Company, Inc. **is entitled** to an equitable adjustment to the contract for Removal and Replacement of Material Unsuitable for Backfill pursuant to Section 125-12.7 **for such materials removed and replaced beyond what could reasonably be anticipated from information contained in the plans.**

The 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 acceptance of this recommendation.

I certify that I have participated in all meetings of this DRB regarding this issue and concur with the findings and recommendations.

Respectfully Submitted,

Dispute Review Board:

E.K. Richardson, Chairman

John H. Duke, Sr., Member

Lester C. Furney, Jr., Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



E.K. Richardson, DRB Chairman