

RECOMMENDATION OF THE REGIONAL DISPUTE REVIEW
BOARD

District Seven (hereinafter DOT)

Report Date: 5 May 2016

Hearing Date: April 28, 2016

Contractor: Pepper Contracting Services, Inc. (hereinafter Pepper)

FIN #/Contract #: 428962-1-52-01, 428962-1-52-02, 424561-3-52-01, and 424561-4-52-01/T7331

Project Description: Milling and Resurfacing of State Road 60 (Courtney Campbell Causeway) From a Pt. W. of Damascus Rd. to Pinellas/Hillsborough County Line and the Construction of a Shared Use Path (the trail) including Construction of a 475' Pedestrian Bridge.

A. Facts.

1. The trail was designed by Ayers and Associates for 1.75 miles west of the pedestrian bridge and by Kissinger Campo & Associates for 1.70 miles east of the bridge. Both designs called for Type D Curb on both sides of the trail with 12" of Type B Stabilization, topped by Optional Base, Group 1 (Pepper elected to use 5" of RAP) and 1" of SP 9.5 Structural Course, Traffic Level C.
2. Pepper elected to construct the trail by installing stabilization, optional base and 1" structural course first and then saw-cut the edges, excavated using a trencher which was followed by the installation of the Type D curb.
3. A portion of the trail was paved starting on 2/4/15.
4. Kacher (subcontractor to Pepper) began saw-cutting on 2/4/15 to prepare for the trenching and placing the curb.
5. On or about 2/13/15 DOT noticed damage to the asphalt edges and informed Pepper vial e-mail that it would not accept repairs to the asphalt edges in the form of patchwork.
6. In spite of this warning of non-acceptance of patched surfaces by DOT on 2/13/15, the contractor continued using the same installation sequence.
7. From 3/29/15-3/30/15 the remainder of the trail was paved. On 4/17/15 Pepper completed the installation of the Type D curb.

8. On or about 4/28/15 the parties had a meeting to discuss the repair of the damaged asphalt edges. Pepper's intent was to repair the trail by patching the damaged areas. DOT insisted that the damage be repaired as per 330-9.2 and 330-9.5; i.e., by "*...removing and replacing the full depth of the layer, extending a minimum of 50 feet on both sides... of the defective areas for the full width of the paving lane...*"

B. The Dispute. Pepper states:

1. That 339, Miscellaneous Asphalt Pavement of the Std Specs is applicable to the asphalt pavement of the trail.
2. The designs, calling for a "*flush D Curb on the outer edges,*" was defective in that it failed to consider how this curb was to be installed and that it was a "*set-up*" for the spalling to occur.
3. The repair method directed by DOT is not supported by the Contract and is unreasonable.
4. DOT had previously allowed patching on an adjacent design/build project by Hubbard.
5. That it is entitled to recover the extra cost it incurred to mill and resurface the trail as directed by DOT.

C. Contractor Position.

1. The PPM Section 8.6 does not call for Type D Curb adjacent to the thin asphalt. The addition of the D Curb next to the thin base and thin asphalt resulted in this spall issue.
2. Along the 3.5 miles of the project there are very few access points to the trail. This was the key why it constructed the stabilization, the base and the asphalt layer first, with the installation of the D Curb last. During the hearing Pepper also argued that it was industry practice to place the curb last.
3. At some point, Pepper decided to take over the excavation for the curb and changed from a trencher to a mini excavator. While this reduced the spalling, it still occurred frequently.
4. During a number of meetings starting in April 2015, Pepper admitted to deficient areas that were "teacup" to "dinner plate" size. It proposed patching of the spalls and then to install 4" wide Thermoplastic stripes to hide the imperfection of the asphalt edges.
5. DOT did not accept any of those proposals for repair of the spalled areas. Instead it relied upon 330-9.5.1.1 which called for removal and

- replacement the full depth layer, extending 50' on both sides of the defective area for the full width of the paving lane.
6. Pepper later suggested a thinner, 3/8 mill depth to protect the integrity of the trail base and using a 4.75 mix for the 1" structural layer. DOT accepted this proposal.
 7. DOT based its acceptance criteria of the asphalt surface on aesthetical appearance.
 8. Section 339, Miscellaneous Asphalt applies to this asphalt surface and calls for, among others, "*...provide for a finished surface that is reasonably smooth, of uniform texture and shaped so as to drain...*" The trail asphalt should be accepted under this criteria.
 9. According to oral testimony by Pepper, DOT allowed for patching on an adjacent and recent trail project before final acceptance. This amounts to different acceptance standards by different DOT representatives.
 10. What remains to be resolved is whether Pepper is entitled to recover the cost for the entire repair of the trail's asphalt surface.

D. The Department's Position.

1. Pepper had previously argued that the "unique design" calling for Type D Curb on both sides of the trail, was the cause for the spalling of the asphalt edges. At no point prior to construction did Pepper question any constructability issue on this asphalt/curb installation. DOT insists that it was the contractor's means and methods that caused the failures.
2. DOT rejects Pepper's notion that Section 339, Miscellaneous Asphalt Pavement, should govern acceptable repair methods for the structural asphalt pavement of the trail. The plans call for Type SP Structural Course, Level C, which is governed by Section 334 which refers back to Section 330.
3. In accordance with 330-9.2 the asphalt surface of the trail was to be, "*...of uniform texture and compaction with no pulled, torn, reveled, crushed or loosened portions and free of segregation, bleeding, flushing, sand streaks, sand spots or ripples...*"
4. As per 330-9.5 all surface deficiencies were to be corrected by "*...removing and replacing the full depth of the layer, extending a minimum of 50 feet on both sides (when possible) of the defective area for the full width of the paving lane...*"
5. Even when DOT warned on 2/13/15 that it would not accept a patched up surface, Kacher/Pepper continued with the same installation sequence. It would seem that now the contractor, after having been warned, had the

- opportunity to try a different sequence, such as trenching through the base and subgrade only, place the curbs and then pave.
6. There were 201 locations that did not meet the surface texture requirements outlined in 330-9.2 and applying the repair criteria of 330-9.5 it would have resulted in 56 joints. To reduce the number of joints DOT directed that most or all of the trail be milled and repaved. DOT offered to pay for milling and repaving areas that were outside the repair criteria.
 7. Pepper had previously offered several proposals for repair:
 - a. Repair the minor areas by patching and then install a 6" stripe to hide the repairs.
 - b. Use a 4.75 mm mix and do an overlay.
 - c. Mill 3/8 and resurface with 4.75 mm mix.
 8. DOT accepted option c. above and paid for mill and resurface of the portion of the trail that needed no repair by Pepper.
 9. DOT states that Pepper should not be entitled to compensation for the repair of the asphalt deficiencies.

E. RDRB Findings.

1. Pepper has not demonstrated that the trail designs by Ayers and Kissinger Campo were defective.
2. Pepper states that the "very few access points" to the trail was the key reason for paving the trail first and then installing the curb afterward. Since the contractor controlled the access to the trail, there is no valid reason for a forced construction sequence.
3. The contractor could have installed the curb first followed by the pavement. Since this sequence of constructing the curb first followed by the pavement was never attempted, one cannot conclude that the design was the cause for the edge failures.
4. The asphalt failures occurred during and after the excavation for the curbs.
5. Pay Item 0380-0334-1-13, Superpave Asphaltic Concrete, Traffic C, covered the SR 60 mainline pavement and the trail pavement. Section 339, as claimed by Pepper, is not applicable to this structural asphalt pavement.
6. Pepper claimed that on an adjacent and recent design/built project by Hubbard on a similar trail, DOT allowed patching of the surface asphalt. DOT did not dispute this assertion and stated that it was a different time and a different resident engineer.
7. There appear to have been more relaxed acceptance criteria applied on the recent Hubbard project and since then there have not been any changes or

alterations to the relevant DOT specifications. So it appears that Pepper was caught up in the transition between the relaxed acceptance requirements (as on the Hubbard project) and this project wherein DOT strictly applied the contract requirement for pavement surface appearance.

8. On this project, DOT applied the contract requirements with regard to the correction of asphalt surface deficiencies.

F. RDRB Recommendations.

1. Pepper is **NOT ENTITLED TO ADDITIONAL COMPENSATION** on this issue.
2. In view of the more relaxed interpretation of the asphalt surface acceptance criteria on the adjacent Hubbard project, this recommendation should not prevent or preclude the parties from attempting to negotiate an equitable resolution.

Pat McCann, James Guyer and Hal Massa were the members of the Board.

Signed for, and all members concurring,



Harold A Massa, PE (ret)

Chairman of the RDRB