

DISPUTES REVIEW BOARD RECOMMENDATION

December 15, 2003

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Ref: FPN: 256957, Contract Number: 21562
Pinellas County; SR 55 (US 19) From North of SR 60 to North of the CSX RR.

Gentleman:

Cone & Graham, Inc. (Cone Graham) and the Florida Department of Transportation (Department) requested a hearing before the Disputes Review Board (Board) to determine entitlement to the following issue:

Is Cone Graham entitled to additional compensation for payment of the placement of asphalt base in areas that the Department has indicated would be paid for through pay items for Optional Base Group 4 and 5?

A hearing was held before the Board, in the offices of the Washington Infrastructures Services, Inc. (Washington) office, on December 10, 2003, to determine resolution of this issue.

CONTRACTOR'S POSITION

Cone Graham contends that the Contract does not specify the use of Asphalt Base Course (ABC) for the Optional Base Group 4 and 5 and that entitlement exists for additional compensation. As support for their position Cone Graham provides the following points:

1. Supplemental Specification Section 285-3, Selection of Base Option, states: The plans will include typical cross sections indicating the various types of base construction (material and thickness) allowable. Select one base option allowed for each typical cross-section shown in the plans. Only one base option is permitted for each typical cross-section. Notify the Engineer in writing of the base option selected for each typical cross-section at least 45 calendar days prior to beginning placement of base material.
2. There is no typical section in the contract that specifies Optional Base Group 4 or 5.
3. There is no typical section in the contract that specifies the use of ABC for Optional Base Group 4 or 5.
4. The typical section is the sole contractual method for designating types of base in the contract.
5. The areas designated by the Engineer to be paid as Optional Base Group 4 and 5 are in an area shown in the typical sections to be

DISPUTES REVIEW BOARD RECOMMENDATION

constructed as optional base group 12 (type B-12.5 only) and are under the curb and gutter on Drew Street and the frontage roads.

6. There was no indication that the area under the curb and gutter would not be paid as Base Group 12.
7. The “Pavement/Base Details” on Sheet 5 of the plans indicate how to place the lifts of the specified Base Group 12 to make the final grade work out with the curb and gutter. There is no indication in this detail that would have led Cone Graham to believe they would not be paid as the typical section indicates.
8. There was no indication in the plans to use Optional Base Group 4 and 5 and no designation that these pay items were to be ABC only.
9. Cone Graham’s subcontractor did not quote an item of ABC for Optional Base Group 4 and 5, nor did their subcontract.

DEPARTMENTS POSITION

The Department contends that no additional compensation is due Cone Graham for the following reasons:

1. The Contract Plans require Type B-12.5 asphalt.
2. The “Pavement/Base Details” on Sheet 5 of the contract plans clearly indicates that Optional Base Group 4 and 5 are to be used under the curb and gutter and this is shown by the arrow pointing to the area extending below the curb and gutter as being Type B-12.5 (400 Lbs/SY – Drew Street), (450 Lbs/SY – Frontage Rds). None of the other typical section details show the use of OBG-4 and OBG-5.
3. Index 514 (Sheet 1 of 2) of the January 2000 Roadway and Traffic Design Standards indicates Base Group 4 and 5 and the thickness for each of those groups. General note #3 states: “The designer may require the use of a single base option, for instance *Type B-12.5* (Note actually says ABC-3) in a high water condition. This will still be Optional Base”.
4. Supplemental Specifications, subarticle 285-3 Selection of Base Option states: “The plans will include typical cross-sections indicating the various types of base construction (material and thickness) allowable.”

The typical cross-sections provide adequate information indicating the various types of base construction (material and thickness). The only areas of the project where payment under items for Optional Base Group 4 and 5 would apply are depicted on the sheet 5 detail for the Frontage Roads and for Drew Street. Asphalt is clearly required in these areas (under the curb and gutter). The thickness of the asphalt required determines which optional base group is utilized for payment. Given the absence of any other areas in the typical sections where any materials allowed for Optional Base Group 4 or 5 would be used, it is unclear why Cone Graham would bid these items with the lime-rock option. As such

DISPUTES REVIEW BOARD RECOMMENDATION

Cone Graham is not eligible for additional compensation, or an adjustment to the existing contract unit prices.

DISPUTE REVIEW BOARD FINDINGS

The Board finds that the Typical Sections shown on the Contract Plans for the Frontage Roads and Drew Street indicate the use of Optional Base Group 12 (Type B-12.5 Only).

The Contract Plans do not specifically refer to Optional Base Groups 4 and 5 by name as they do for Optional Base Group 12.

The Pavement/Base Detail (Sheet 5 lower right hand corner) does not indicate a depth of material for the 400 Lb/SY or 450 Lb/SY material other than by assuming a depth of 100Lb/SY inch.

Supplemental Specifications, subarticle 285-3 Selection of Base Option states: “The plans will include typical cross-sections indicating the various types of base construction (material and thickness) allowable.”

DISPUTE 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 upon the above documents. We have also taken into consideration the position papers, rebuttals and oral presentations given by all the parties.

The Board finds entitlement to additional compensation for Cone Graham in the area under the curb and gutter along Drew Street and on the Frontage Roads as they have requested. No determination or recommendation has been made as to the monetary value of the work and this is left to the parties to negotiate. If negotiations are unsuccessful then the parties may request the Board to make a recommendation as to the monetary value of the additional work.

The Board sincerely appreciates the cooperation of all parties and the information presented for its review in making this recommendation. The Boards recommendation should not prevent, or preclude, the parties from negotiating an equitable solution (should it be appropriate) to any issue pursuant to their partnering agreement.

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

DISPUTES REVIEW BOARD RECOMMENDATION

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

Signed with concurrence of all Board members.

John C. Norton

Chairman

Gerald Stanley

Member

Lester Furney

Member