

RECEIVED

SEP 21 2016

DISPUTE REVIEW BOARD RECOMMENDATION **OCALA OPERATIONS**

September 19, 2016

Michael McCammon, P.E.
Ocala Operations Engineer
Florida Department Transportation
627 NW 30th Ave
Ocala, FL 34475

Foster Bachschmidt
Vice President, COO
D.A.B. Constructors, Inc.
P.O. Box 1589
Inglis, FL 34449

REF: SR 40 from CR 328 to SW 80th Ave
Marion County, FPID No. 238719-1-52-01
Contract No. T5486
Hearing No. 2: Pond 2 Differing Site Conditions

Subject: Disputes Review Board Recommendation

Gentleman,

D.A.B. Constructors, Inc. (DAB) and the Florida Department of Transportation (FDOT) have requested a Dispute Review Board Hearing of “**entitlement**” on the above referenced project as a result of differing site conditions at Pond 2. The project consist of improvements to SR 40 from CR 328 to SW 80th Ave in Marion County, from two lanes to four lanes divided rural and included, stormwater ponds, ditch improvements, signalization upgrades and utility relocation. Both parties were unable to come to an equitable agreement and have filed position papers.

ISSUE: Upon construction of Pond 2, DAB discovered abundant limestone fragments and boulders that they believe were not shown in the soil survey provided for bid purposes. This caused additional construction methods, time and equipment to be required for the removal and disposal of the unusable material. While both parties agreed that there were differing site conditions, the parties differed greatly on “**entitlement**” as to additional compensation to accomplish the work.

CONTRACTORS POSITION:

The following statement is paraphrased from the contractor's position papers and subsequent rebuttal to FDOT's position.

The issue in dispute arises from D.A.B,s (DAB) claim of "differing site conditions" due to discovery of abundant limestone fragments and formations throughout the excavation envelope of Pond 2. DAB maintains that the roadway soils survey indicates Pond 2 to be free of anything but occasional encounters of trace to abundant limestone fragments. In fact, the excavation included abundant limestone fragments throughout the excavation, not occasionally, which made material attained from excavation unusable throughout the project as embankment material. Further contributing to DAB's damages were the abundant limestone formations which required significant excavation efforts to remove. Excavation of rock formations resulted in large boulders that required special handling and crushing/breaking prior to being hauled for disposal.

D.A.B. request that the DRB provide a ruling on the extent of DAB's Entitlement to equitable compensation for damages resulting from the Differing Site Conditions encountered in Pond 2 of the SR40 project.

DEPARTMENT'S POSITION:

The following statement is paraphrased from the Department's position papers and subsequent rebuttal to Contractor's position.

The Department has agreed that the limestone formations encountered by the Contractor in Pond 2 represented "differing site condition" as defined in Standard Specification 4-3.7. Further, the Department has not disputed that the Contractor should be compensated for extra work associated with the removal of unforeseen limestone formations. The Department has processed payment of just under 30% of the Contractor's claimed amount in a Unilateral Agreement dated June 24 2016 for excavation and removal of unforeseen limestone formations. The Department maintains that the certified claim submitted by the contractor includes cost for work not associated with the excavation and removal of limestone formations or boulders.

The Department would like DRB to make a recommendation regarding material in Pond 2 which is not considered regular excavating and hauling and has not been already compensated under contract pay item unit price.

The Department maintains that:

1. The issue at hand has only to do with DAB's request to be compensated for excavation and disposal of materials not represented by the differing site conditions.
2. What was not agreed upon was the cost to haul the unsuitable material to locations other than those contemplated by DAB at the time of bid. The Department is not responsible for bidding decisions DAB made or the risk they took in their interpretation of soil borings.

FINDINGS OF FACTS

The Board's decisions are governed by the plans, specifications (standard, supplemental, technical, special), and the contract. Therefore our recommendation is based on the documents referenced herein, the hearing and the following facts.

1. The Contractor's first request for a DRB hearing dated June 23, 2016 request a DRB hearing for Entitlement. The DRB Chairman asked for confirmation of this request and the Entitlement request was reaffirmed. After numerous attempts, finally September 12, 2016 was agreed upon for the hearing.
2. Although available, no backup to the Certified Claim was provided by the Contractor.
3. Both parties agree that the conditions in Pond 2 were consistent with Section 4-3.7 "Differing Site Conditions".
4. The contractor met the requirements to submit a claim by submitting a written Notice of Intent to claim for differing site conditions in accordance with Specifications 5-12.2 on October 20, 2014.
5. The borings provided for Pond #2, indicate the presence of select and non-select fill within the excavation limits of Pond #2.
6. The borings provided for Pond #2, do not indicate the presence of Stratum #5 within the excavation limits of Pond #2.

DRB RECOMMENDATION:

The Board finds that the Contractor is **entitled** to compensation for unanticipated extra Cost of excavating, handling and hauling of the material that was removed from Pond 2 after notification of NO! #9 with the exception of any such material that was used within the project limits and excluding any material imported from other sources of excavation.

RATIONAL:

While it is true that encountering lime rock should reasonably be expected throughout the project, the boulder size lime rock formations encountered by the contractor in Pond 2 required extra effort to excavate, handle and remove from the project site. To separate any suitable material surrounding the large lime rock formations also would have required extra effort caused by the different conditions.

CONCLUSION:

The Board sincerely appreciates the cooperation of all parties and the information presented for the review in order to make the recommendation. The Disputes Review Board's recommendation should not prevent or preclude the parties from negotiating an equitable solution (should it be appropriate) to any issue.

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 by that party.

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

Respectfully Submitted

Dispute Review Board

Robert P. Bayless, Chairman

Phil Hammaker, Member

Clara Scott, Member



Robert P. Bayless, P.E., Chairman

CC: Ronda Daniell, FDOT
Nicole Aiton, FDOT
Will Gelner, DAB Constructors, Inc.