

DISPUTE REVIEW BOARD HEARING  
OCTOBER 2, 2003

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SR 435 (Kirkman Road)  
FIN 239-1-52-01  
Project No. 75270-3519  
Contract No. 21588

By letter to the Board, dated Sept. 5, 2003, Hubbard Construction Company (HCC), requested the Board conduct a hearing on the issues of both maintaining commercial material and payment of temporary detection on the subject project. By subsequent letter from Hubbard, dated Sept. 11, 2003, a request was made to postpone the Hearing regarding the issue of temporary detection.

A Hearing was scheduled and conducted to hear the issue of maintaining commercial material at the project field construction office on Sept. 29, 2003.

CONTRACTORS POSITION

- Contract pay items did not include maintaining commercial material for driveway maintenance.
- Nothing in the contract documents states that Hubbard is to provide as much material as required, without being paid for any additional material above what could reasonably be inferred.
- It has been customary in the past that FDOT pay for additional material as it was needed after the initial placement.
- The plan note merely states "purchase, supply and place", does not state "and maintain".
- Section 9-3.3.1 states the lump sum payment can be adjusted if the lump sum pay item is proven in substantial error.
- Section 102-7.4 states "the quantity to be paid for will be the volume, in cubic meters, of all materials authorized by the engineers, acceptably placed and maintained for Driveway Maintenance, etc."
- Section 5-2 outlines the governing order of documents. In this case the pay item note on sheet 20 of the plans governs over the Standard Specification and that note did not reference "maintenance", only "furnishing, placing and removing".
- Maintenance of the driveways, beyond the initial placement, was caused by a combination of weather (rain and wind), grade elevations and the volume of traffic.

- Multiple losses of material and replacements can't be estimated when bidding the project.

#### FDOT POSITION

- The maintenance of commercial material is included in the lump sum payment item for Maintenance of Traffic.
- The entire purpose of commercial material for maintenance of driveways is to "maintain" the driveway, so the plan note is simply stating that the furnishing, placing and removal is also included in the cost while the driveways are being maintained.
- Section 102-6 refers to the materials to be used and the construction methods.
- Section 102-6.3 states "place, level, manipulate, compact and maintain the material, to the extent appropriate for the intended use".
- Section 102-7.1 states "when an item for this work is included in the proposal, the quantity to be paid for will be at the Contract lump sum price for Maintenance of Traffic."
- Section 102-8 states "when an item of Maintenance of Traffic is included in the proposal, price and payment will be full compensation for all work and costs specified under this section except as may be specifically covered for payment under other items."
- Section 5-2 is not relevant since there is no discrepancy between the plan notes and the other contract documents.
- This contract did not provide an estimated quantity of material for driveway maintenance and it should be understood that the Department intended for the Contractor to estimate the amount of work required based on his means and methods and sequencing of construction.
- Weather affects many other items of work from which the contractor must recover, without an allowance for extra payment.

#### DRB FINDINGS

- Contract documents do not contain a specific unit bid item for Commercial Materials for Driveway Maintenance.
- Contract documents do not contain an estimate of quantities of Commercial Materials for Driveway Maintenance.
- Since an estimate of quantities was not included in the contract documents, the lump sum payment item did not contain a "substantial error in plan quantity" and since there were no "authorized plan changes" related to this issue, Section 9-3, Compensation for Altered Quantities" does not apply.
- Pay Item 2339-1, showing a total estimated plan quantity of 92.2 Metric Tons, is included in the bid documents. On sheet 20 of the project plans there is a pay item note : "2339-1 Includes 18 MT of Miscellaneous Asphalt for Maintenance of All Paved Driveways and Cross Streets (within 48 Hours of Disturbance) at an Application Rate of 110 KG/M2."

## DRB RECOMMENDATION

Based on a review of documents submitted by both parties and on information presented at the DRB Hearing: Pay Item 2339-1 is contained in the bid documents and provided payment for the use of Miscellaneous Asphalt that would have provided a method of weather-proofing the driveways had it been utilized. Payment for Commercial Material for Driveway Maintenance is included in the lump sum payment for Maintenance of Traffic and the Board recommends no entitlement for commercial material payment.

The Board sincerely appreciates the cooperation of both parties and for the information presented.

Please remember that a response to the Board 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.

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

Respectfully Submitted  
Disputes Review Board

Charles C. Sylvester, Jr.	DRB Chairman
Dallas L. Wolford	DRB Member
Peter A. Markham	DRB Member

Signed for and with the concurrence of all members

  
Charles C. Sylvester, Jr. P/E. Chairman