

## DISPUTES REVIEW BOARD RECOMMENDATION

22 June, 2005

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Ref: SR-5 (US 1) From Post Road to Pineda Causeway Contract No: 21485, Financial Project No: 237550-1-52-01. Disputes Review Board hearing regarding (1) Median Directional Curb, (2) Asphalt Driveway Delay, (3) Sheet Piling Extra Work and (4) Bedding Stone Extra Work.

Dear Sirs:

The Florida Department of Transportation and RKT Constructors, Inc. requested a hearing concerning the above referenced issues. The contractor has stated, in their position paper, that the four issues listed above have impacted their schedule and has had a monetary impact to the project. The Department has stated, in their position paper, that the four issues did not have any impact to the project.

### **CONTRACTOR'S POSITION**

We will state the Contractors position by referencing, copying and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Contractor.

The Contractors position paper has the following statements and references to document their claim for entitlement.

#### ISSUE 1. MEDIAN CURB

“RKT was verbally directed by FDOT to remove and replace curb RT 139+49 to 139+61 and written direction was to follow. The directive never came in writing so RKT wrote a letter dated December 17, 2004 to confirm the direction.”

RKT is contending that the plans, sheets #5, 49, 64, 271, and 272, support their construction of the median curb. The median curb was built to the directions provided in the plans.

When the curb was constructed a 10-9/16 inch drop off was found to exist between the north bound and south bound median curbs. This condition was "...a direct result of verbally directed extra work...". The results of this extra work was a delay of 19 calendar days.

## ISSUE 2. SIDEWALK/DRIVEWAY

This issue is related to the sidewalk elevations not being correctly provided in the plans. The sidewalks across the driveways was laid out and formed according to plan and the error was discovered. New elevations were provided to RKT and new survey and lay out was done. The sidewalks were then reformed for concrete placement.

RKT contends that this error caused them to perform additional work and incurred additional material costs. RKT had to "bring in fill to build up embankment", "grading base rock for driveways #58 and #59", "removed all the existing concrete driveway from #57 and filled area up with dirt and millings from driveway #56".

As a result of this elevation error and the work required to make the corrections RKT is requesting 23 additional days be added to the contract.

## ISSUE 3. SHEET PILING

This project called for rock to be constructed between stations 151+43 and 152+79 on the east side of the roadway. RKT submitted a proposal to use sheet piling in this area to mitigate additional fines from SJWMD. The proposal was accepted by all parties.

RKT is contending that two sink holes at stations 151+16 and 150+16 delayed the construction of the required turn lane. This delay caused the lane shift which RKT said was required for the sheet pile installation to be done.

RKT states that due to the hurricanes and the work associated with these storms they incurred an additional one month cost for the rental of the sheets.

RKT is requesting 13 days for extra work for the sheeting and cost associated with additional sheet rental.

#### ISSUE 4. BEDDING STONE

RKT contends that they were delayed in the placement of the bedding stone under the rubble rip rap due to a change order for the stone. In addition to the change order hurricanes, construction of a left turn lane, and two sink holes also had an impact to the operation.

The construction of the 42" pipe and the sink holes caused RKT to delay making the required traffic shift to provide working space for the sheeting and placement of the bedding stone. RKT is requesting 6 additional days to perform this extra work.

#### **DEPARTMENT'S POSITION**

We will state the Departments position by referencing, copying and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Department.

The Departments position paper has the following statements and references to document their claim for no entitlement.

#### ISSUE 1. MEDIAN CURB

The Department states that there was a RFI from RKT in January of 2005 on how to construct the median curb. The EOR replied that the methodology was in the plans and no additional information was necessary to construct the curb. The Department states..."the curb at that location was finally laid out and constructed using only information provided in the plans. The Department firmly believes that this issue does not constitute an error or omission in the contract documents, but rather is an issue with RKT's ability to layout work as per Standard specification 5-7, and in particular 5-7.3..."

#### ISSUE 2. SIDEWALK/DRIVEWAY

"Originally, RKT did not construct the sidewalk as per the contract plan elevations. While RKT was re-forming the sidewalk, the Department suspected on September 20, 2004 that the sidewalks between Sta. 133+95 and Sta. 134+79 were not layed out at the right elevation and asked RKT to verify the elevations. Upon verification, it was discovered that the sidewalks were indeed layed out correctly in accordance with plans, however, the plan elevation would require revisions in order to provide smooth transition between the driveways and the sidewalk." The

contractor received revised elevations from the EOR and constructed the sidewalks as per Standard Specification 5-1.3.

The Department acknowledges that this change is due to an error on the plans which required modification to the contract documents and therefore asked RKT, as per Standard Specification 5-4: *“...not to take advantage of any apparent error or omission discovered in the Contract Documents...”*. “

The Department states that the “...analysis of the actual status of the project at the time of the revision was implemented, shows that the revision did not have any impact on the controlling activities of the project, the roadway base and asphalt”

### ISSUE 3. SHEET PILING

“The temporary sheet piling activities, including the original project pay item rip-rap bank and shore, were not part of the original accepted job schedule. These activities were added to the updated schedule.

RKT’s updated schedule (May 25, 2004), shows the controlling item of work, Roadway Base (Sta. 135+00 to Sta. 153+00,), to be completed in Phase 3 at the end of June 2004. The Temporary Sheet Piling was shown to begin during Phase 4 mid-July 2004. Clearly, by the logic of RKT’s schedule the Temporary Sheet Piling had no bearing on the Roadway Base. These activities are two completely independent activities. This work could have been performed either under Phase 3 or Phase 4 of construction.

Furthermore we have compiled an “as-built” construction schedule of the revetment system showing the actual sequence of construction events on the project. As exemplified in Attachment 8-15, a cross section of the revetment system, the logic would be to construct the temporary sheet piling prior to the installation of the roadway base. As the “as-built” schedule indicates the temporary sheet piling was constructed prior to the installation of the roadway base demonstrating that RKT had not scheduled the project as they had intended to build it.

The Department is convinced that this change did not delay any controlling work item, and it was not by itself, at anytime, a controlling item of work and therefore did not delay the completion date of the entire project.”

### ISSUE 4. BEDDING STONE

“The bedding stone activities, including the original project pay item rip-

rap bank and shore, were not part of the original accepted job schedule. These activities were added to the updated schedule (May 25, 2004). FDOT had notified RKT on October 31, 2003 that the bedding stone would need to be installed on the project, but RKT did not reflect these activities in their schedule until May 25, 2004 (seven (7) months later).

RKT's updated schedule (May 25, 2004), shows the controlling item of work, Roadway Base (Sta.135+00 to Sta.153+00), to be completed in Phase 3 at the end of June 2004. The Bedding Stone was shown to begin during Phase 4 at the end of July 2004. Clearly, by the logic of RKT's schedule, the Bedding Stone had no bearing on the Roadway Base. These activities are two completely independent activities. This work could have been performed either under Phase 3 or Phase 4 of construction.

Furthermore, we have compiled an "as-built" construction schedule of the revetment system showing the actual sequence of construction events on the project. As exemplified in the Attachment A-13, a cross section of the revetment system, the logic would be to construct the bedding stone prior to the installation of the roadway base. As the "as-built" schedule indicates, the bedding stone was constructed prior to the installation of the roadway base demonstrating that RKT had not scheduled the project as they had intended to build it.

The Department is convinced that this change did not delay any controlling item of work, and it was not by itself, at anytime, a controlling item of work and therefore did not delay the completion date of the entire project.

## **DISPUTES REVIEW BOARD FINDINGS**

### **ISSUES 1, 2, 3, & 4**

The work associated with these four issues was not shown to be critical on the approved Critical Path (Critical Activity) schedule as submitted by the Contractor. The controlling item has been shown as road base.

These issues did not have a negative impact to the time of the contract since none of the issues were a critical activity.

The occurrences of the Hurricanes and sink hole did have a monetary impact to the Contractor regarding the temporary sheet piling.

The sidewalk plan elevation error did have a monetary impact to the contractor causing additional work to be performed.

## **DISPUTES 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 on the above documents.

The Board has reviewed all the information provided by the Department and RKT. We listened to all the parties at the hearing held on 10 June, 2005. Our recommendation is that there is no entitlement of time due the Contractor regarding all four issues. Issue 3 (Sheet Piling) the contractor is entitled to be compensated for the additional rental cost for the sheets. Issue2 (Driveway) the contractor is entitled to the additional cost of restaking, regrading, additional fill, and reforming of the sidewalk.

The Board sincerely appreciates the cooperation of all parties and the information presented for our review in making this recommendation.

The Board unanimously reached the recommendation and reminds the parties that it is only a recommendation. If the Board has not heard from either party within 15 days of receiving this recommendation, the recommendation will be considered accepted by both parties.

Submitted by the Disputes Review Board

Don Henderson, P.E., Chairman    Peter Markham, P.E., Member    Mark Puckett, P.E., Member

Signed for and with concurrence of all members

Don Henderson, PE