

REGIONAL DISPUTES REVIEW BOARD RECOMMENDATION

June 1, 2004

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**RE: Financial Project Number 232352-1-52-01, Widening & Resurfacing
Sawgrass Expressway from S. of Sunrise Blvd. To S. of Atlantic Blvd.,
Contract No. 21559, Regional Disputes Review Board Recommendation on
Hardrives, Inc. Request for Additional Compensation**

Dear Sirs:

The Florida Department of Transportation Turnpike Office (Department) and Bergeron Land Development (BLD) requested a hearing concerning entitlement for additional compensation for additional costs incurred by Hardrives, Inc. (HD) in the milling and paving of asphalt. Summaries of FDOT's and Bergeron's positions were forwarded to the Regional Disputes Review Board (RDRB), and a hearing was held on May 25, 2004.

ISSUE: "Is the contractor entitled to additional compensation for additional costs incurred in the milling and paving of asphalt?"

Contractor's Position

Per Bergeron's sub-contractor, Hardrives, Inc., (HD) letter dated April 14, 2004, their claim is based on the Department's imposition of requirements on their operations which are not found in the contract documents. "Essentially, the Department dictated our means, methods and procedures (without contractual support) making it impossible for us to achieve the production rates reasonably anticipated for the work."

Department's Position

The following contract documents, pertaining to this issue, were used by the CEI while administering this contract:

1. The 2000 Standard Specifications for Road and Bridge Construction
 - a. Sub-article 102-1.1, 102-2.1, 327-3, 6th paragraph
 - b. Plan sheets 21 to 27 which indicate the milling and resurfacing details, and sheet 295, general notes numbers 3, 12, 14, and 21.

The schedule of construction chosen by HD was to mill and resurface beginning with the inside lane. For areas with “normal” cross slope (the cross slope is such that the inside lanes are higher than the outside lanes) this is acceptable. However, for areas with reverse cross slope (the cross slope is such that the inside lanes are lower than the outside lanes) a ½” lip is created that will trap and create a “wedge” of water. As the lane with the reverse cross slope transitions back to a normal cross slope, it’s cross slope decreases and then changes direction. When the cross slope becomes 0.5%, the wedge of water is 8’ wide resulting in an extremely hazardous condition.

Plan sheets 122 to 154, 221 to 226, 247 to 257 and 282 to 287 show areas with reverse cross sections.

BLD and/or HD were obligated by the contract to devise a way, mean, or method to simultaneously comply with both the requirement for milling the surface and providing the lanes with drainage facilities to maintain a smooth riding surface under all weather conditions, provide positive drainage, maintain the roadway in such a manner so that the safety and convenience of the public is not adversely impacted and that the roadway is not left in a hazardous condition at any time during the construction. The Department did not dictate or direct BLD and/or HD in its ways, means, methods or procedures, but instead required that BLD and/or HD comply with the contract in it’s entirety, and not perform milling at the expense of providing the other requirements of the contract.

The Effects of Paving from the High Side on HD’s Production

- A. A portion of the monetary value (\$624,356.66) of HD’s claim is based on the additional days HD claims it took them to mill and resurface the project. HD’s claim package states that their stated anticipated production rate is 1050+ Tons/Day.

During the pre-paving conference held on May 22, 2003 HD stated that their “anticipated rate of production is 500-600 Tons/Day.

1. Based on BLD’s Approved Baseline Schedule, the calculated production rates are as follows:
 Asphalt placed for milling and resurfacing = 173.68
 Asphalt placed for widening = 1,038.33 Tons/Day
 Friction Course = 481.76 Tons/Day
 Average for all asphalt = 245.28 Tons/Day
2. The actual production rates achieved by HD are as follows:
 Asphalt placed for milling and resurfacing = 568.41 Tons/Day
 Asphalt placed for widening = 508.07 Tons/Day
 Friction course = 419.04 Tons/Day
 All asphalt = 559.62 Tons/Day

Clearly the actual production rate achieved by HD while milling and resurfacing was in line with what HD stated at the Pre-paving conference and more than 3 times greater than that calculated from the durations shown on BLD’s Approved Baseline schedule.

B. Milling and Resurfacing Shoulder

- a. A portion of the monetary value (\$57,456.14) of HD's claim is based on restraints HD claims were imposed on their operations. Plan Sheet 295, Note 3, limits lane closings to off-peak hours. For daytime operations, the plans define off-peak hours as 9:30 a.m. to 3:00 p.m. northbound and 10:00 am to 3:00 pm southbound. Obviously, if HD was working on the northbound shoulder, paving could not begin until R1 was closed. Since it takes between 30 to 45 minutes to properly close a lane, based on the contract documents, HD should have anticipated that milling and resurfacing could not begin until almost 11:00 a.m. It takes between 15 to 30 minutes to roll the mat, allow it to cool and stripe and between 15 to 30 minutes to re-open the lane. Based on the contract documents, HD should have anticipated that milling and resurfacing could not proceed past 2:00 p.m.

Thus, per the contract documents, HD could not and should not have anticipated actually placing asphalt more than 3 hours in the northbound direction and 2 ½ hours in the southbound direction.

C. Additional Joints to Repair

- a. A portion of the monetary value (\$38,304.09) of HD's claim is based on additional joints that had to be repaired as a result of HD having to mill and resurface from the high side.
1. The rolling straight edge results for the structural asphalt indicated that there were 108 deficiencies. Of these, only 4 or 5 were at locations in the vicinity of areas with reverse cross slope. The areas of reverse cross slope accounted for 12.7% of the areas milled and resurfaced. The percentage of deficiencies in these areas was only $5 / 108 = 4.6\%$. Clearly there were no additional joints to repair as a result of milling and resurfacing from the high side.

D. Increased Asphalt Waste

- a. The last portion of the monetary value (\$46,762.50) of HD's claim is based on increased waste.
1. HD states that there was more asphalt wasted as a result of the increased number of joints. The additional number of days HD states it took them to complete the milling and resurfacing accounted for 925.65 Tons. As stated above the number of days HD calculated to mill and resurface the project does not agree with the anticipated production rates calculated from the Activity Durations shown on the Approved CPM Baseline Schedule.

- E. Please see CTE letter No. S2000.2.791 dated May 3, 2004 for more detailed analysis of all the particulars stated by HD in their submittal dated April 14, 2004.

Rebuttal Statement:**CONTRACTOR:**

The method that the contractor was going to use was standard practice by leaving a 1/2" rise or drop-off was acceptable per Standard Index 600, Sheet 6 of 11, Note 3 for travel lane treatment for milling and repaving. Note 3 states "If D is 1 1/2" or less, no treatment is required."

The Department required HD to make the pavement edge flush with the adjacent lane which called for the milling and repaving duration to be shortened. The Department representative informed HD's superintendent that he must make lanes match to provide positive drainage in the super-elevated sections. The Department also instructed milling operations to cease at approximately 3:00 a.m. so that the opening time frame for all travel lanes could be met. HD requested to show the RDRB a scroll of milling and resurface sequences in the delays that this requirement, and the Department did not object but reserved their right to review it and comment on it at a later date. Everyone agreed.

DEPARTMENT:

The Department's representative stated that he informed the contractor to repave and match the adjacent lane on the same day in order to prevent water from being trapped and causing hazardous driving conditions. Instructions were given to the contractor to stop milling and begin repaving to meet the time frame for opening lanes as outlined in the MOT plans.

RDRB Findings

The RDRB asked the Department if they would review the scroll and respond with any comments they might have. Tom Driscoll said they would let the RDRB know by Thursday, May 27, 2004. The RDRB also asked the Department to provide contract documentation which states milled surfaces shall be repaved immediately after milling.

The contractor was asked to provide information from their baseline schedule that might show additional materials in their claim for additional compensation for delays in their milling and repaving activities. This information was also to be provided to the RDRB by Thursday, May 27, 2004.

RDRB Recommendation

The RDRB finds that there is entitlement due the contractor (HD). In the 2000 Standard Specifications for Roadway and Bridge Construction, Section 327-3 Construction, page 242, paragraph 6 states "Provide positive drainage of the milled surface and the adjacent pavement. Perform this operation on the same day as milling. Repave all milled surfaces no later than the day after the surface was milled." The contractor could have continued milling on the travel lane or adjacent lanes on the same day as long as positive drainage

was provided . The repave could have taken place the following night and been within the specifications for positive drainage and paving as stated in the specification. This would have improved the contractor's production rates. The department had no comment on the scrolls and did not provide any additional information to the RDRB as requested by Thursday, May 27, 2004 that would have overridden the standard specification.

The Board appreciates the cooperation by all parties involved and the information provided to make this recommendation. Please remember that failure to respond to the RDRB and the other party concerning your acceptance or rejection of the RDRB recommendation within 15 days will be considered acceptance of the recommendation.

I certify that I participated in the Hearings of the RDRB regarding the Dispute indicated above and concur with the findings and recommendations.

Respectfully Submitted,

Regional Disputes Review Board

Frank Proch, Regional Dispute Review Board Chairman
Don Henderson, Regional Dispute Review Board
Joe Capeletti, Regional Dispute Review Board

RDRB Chairman

CC: Thomas Driscoll, Turnpike DCE
Bill Sears, Project Manager
Eric Willenberg